

APPROVED AS TO FORM
 August 30, 2010

ROBERT E. SHANNON, City Attorney
 By *[Signature]*
 EASY J. ANDERSON
 CITY ATTORNEY

31921

AGREEMENT NUMBER	09-107-716
REGISTRATION NUMBER	eP 1109809

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

DEPARTMENT OF BOATING AND WATERWAYS (DEPARTMENT)

CONTRACTOR'S NAME

CITY OF LONG BEACH (GRANTEE)

2. The term of this

Agreement is: *Shall begin on the Effective Date and continue for THREE (3) years from the Date of Acceptance by the Department.*

3. The maximum amount of this Agreement is:

\$ 50,000.00
 FIFTY THOUSAND DOLLARS

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference, made a part of the Agreement.

Location: City of Long Beach – CVA Maintenance

- Exhibit A – Vessel Pumpout Facility Maintenance Contract Reimbursement
- Exhibit B – Vessel Pumpout Facility Maintenance Contract Standard Terms and Conditions
- Exhibit C – General Terms and Conditions
- Appendix A
- Contractor Certification Clauses

3/4 pages
 4 pages
 GTC 307
 2 pages
 CCC 307

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
 These documents can be viewed at www.dgs.ca.gov/contracts

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		California Department of General Services Use Only
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) City of Long Beach		
BY (Authorized Signature) <i>[Signature]</i>	DATE SIGNED (Do not type) 9/25/10	
PRINTED NAME AND TITLE OF PERSON SIGNING Patrick H. West, City Manager		
ADDRESS Marine Bureau 205 Marina Drive Long Beach, California 90803		
STATE OF CALIFORNIA		
AGENCY NAME DEPARTMENT OF BOATING AND WATERWAYS		
BY (Authorized Signature) <i>[Signature]</i>	DATE SIGNED (Do not type) 11/15/10	
PRINTED NAME AND TITLE OF PERSON SIGNING LUCIA BECERRA, Interim Director		
ADDRESS 2000 EVERGREEN STREET, SUITE 100 SACRAMENTO, CALIFORNIA 95815-3888		

Exempt per: SCM 4.04

VESSEL PUMPOUT MAINTENANCE CONTRACT
REIMBURSEMENT

CITY OF LONG BEACH

1. PARTIES

The parties to this Agreement are as follows:

- (a) DEPARTMENT: The Department of Boating and Waterways
- (b) GRANTEE: City of Long Beach
Marine Bureau
205 Marina Drive
Long Beach, California 90803

2. GRANT

- (a) The DEPARTMENT hereby grants up to FIFTY THOUSAND DOLLARS (\$50,000.00), to the GRANTEE, for operation and maintenance of the vessel pump-out and/or dump station facilities at the Long Beach marinas in compliance with the regulations of the Clean Vessel Act (50 CFR Part 85).
- (b) The grant shall not exceed SEVENTY FIVE PERCENT (75%) of the allowable project costs. The GRANTEE shall contribute the remaining TWENTY FIVE PERCENT (25%).
- (c) The grant provides for reimbursement with Federal Funds [FED CATALOG 15.616].
- (d) This GRANT is subject to the terms and conditions in Appendix A, as well as those in Exhibits B and C of this Agreement.

3. TERM OF CONTRACT

- (a) This CONTRACT shall cover the operation and maintenance expenses incurred from the EFFECTIVE DATE of the Contract to May 30, 2013. (3 years)
- (b) This CONTRACT may be extended, amended or canceled upon agreement of both the DEPARTMENT and the GRANTEE.

5. USER FEES

The GRANTEE may charge a fee for the use of the facilities constructed with the GRANT; however, such fees may only be used to defray operation and maintenance costs incurred from the operation of the vessel pumpout facility. The GRANTEE may not charge a total fee in excess of \$5.00 for the use of the pumpout facilities constructed without prior written approval of the Department. The \$5.00 fee may be increased or decreased annually in accordance with percentage changes in the United States Bureau of Labor Statistics Consumer Price Index (CPI) using the CPI index for December 1993 (436.8) as the base for any such adjustment.

6. SPECIAL PROVISIONS

- (a)
 - 1. The pumpout facilities constructed under this grant shall be operated, maintained, and be open and available to the public for the full term of this CONTRACT.
 - 2. Operation of the pumpout facilities shall be available during normal business hours per day and shall not be hindered by locked enclosures, padlocks, pass keys, electronic keys, token systems or other means.
 - 3. The pumpout facilities constructed under this grant shall be equipped with an hour meter to record its usage.
- (b) The grant recipient shall construct and install signage that shall:
 - 1. Indicate the presence of a vessel pumpout facility (State supplied sign);
 - 2. Acknowledge that the facility was constructed or improved with funds from the Clean Vessel Act. The suggested language shall be "This facility was funded under the Clean Vessel Act by your purchase of fishing equipment and motorboat fuels" (State supplied sign).
 - 3. Provide appropriate information at the pumpout station that indicates fees, restrictions, operation instructions, and a contact name and number if the facility is inoperable.
 - 4. Provide notice on the pumpout facility that identifies the local city, county, local public health officer, or boating law enforcement officer responsible for enforcing the pumpout regulations in the local area.
- (c) Operation and Maintenance of Project
 - 1. Because the Department has invested public funds in your marina for the pumpout facilities, the Department has a vested interest in their success. As a condition of the grant funds the Grantee is therefore responsible to ensure that the pumpout facilities are operated and maintained in a manner that will prevent discharge of any sewage to the waters of the State, shall be maintained in good working order, and shall be regularly cleaned for the term of this contract.
 - 2. The Department shall not be liable for any costs of maintenance, management, control or operation of the Project Area.
 - 3. The Department and its agents may, at any and all reasonable times during the term of this contract, enter the Project Area for purposes of inspecting the pumpout facilities to determine if the facility is being maintained according to the terms of this contract and the Recommended Minimum Maintenance Guidelines listed below.
 - 4. Failure to maintain the facility according to this section is a breach of this contract and may subject the Grantee to Termination of this contract.
 - 5. The Department and its agents may, at any and all reasonable times during the term of this contract, enter the Project Area and install upon the pumpout equipment (at no cost to the Grantee) a monitoring device to record the operation and reliability of the pumpout equipment installed under this grant.
 - 6. The Grantee shall at a minimum maintain the pumpout facility in accordance with the guidelines below.

Recommended Minimum Maintenance Guidelines:

EXHIBIT A

1. On a daily basis inspect the pumpout facility for cleanliness, suction hose and nozzle conditions, discharge pipe condition, and general pump operating condition. Perform cleanup/maintenance as required.
 2. As recommended by the equipment manufacturer perform preventative maintenance per recommended schedule.
 3. Grantee should complete all repairs within 72 hrs of identifying a pumpout facility need.
- (d) Upon expiration of the CONTRACT, all improvements made by the GRANT shall become property of the GRANTEE.
- (e) GRANTEE shall each year provide information about the use and reliability of the vessel pumpout facility in the form of a post-implementation evaluation report (PIER) provided by the Department and shall transmit the results of the PIER to the DEPARTMENT no more than 30 days after receipt of the PIER.
- (f) Notices required between the parties shall be deemed to have been given when mailed to the respective addresses herein, first-class postage fully prepaid thereon.

7. PROJECT CONTACTS

DEPARTMENT Contact: Kevin Atkinson
California Department of Boating & Waterways
2000 Evergreen Street, Suite 100
Sacramento, California 95815
phone: 916-263-8149
fax: 916-263-0648
email: katkinson@dbw.ca.gov

GRANTEE Contact: Mark Sandoval
City of Long Beach, Marine Bureau
205 Marina Drive
Long Beach, California 90803
phone: 562-570-3215
fax: 562-570-1815

Either party may make changes to the information above by giving ten (10) days written notice to the other party. Said changes shall not require an amendment to this agreement.

End

VESSEL PUMPOUT MAINTENANCE CONTRACT
STANDARD TERMS AND CONDITIONSARTICLE I – DEFINITIONS

- A. ALLOWABLE PROJECT COSTS means those permitting, planning, management, signage, labor, design, material and construction costs which are necessarily incurred by the GRANTEE for the purpose of operating and maintaining the PROJECT and are covered by the GRANT as eligible grant activities; such PROJECT COSTS shall not include any expenses incurred prior to the effective date of this CONTRACT nor any expenses incurred for ineligible activities.
- B. CONTRACT means the contract to which these standard terms and conditions are appended.
- C. DEPARTMENT means the Department of Boating and Waterways.
- D. EFFECTIVE DATE means either the start date or the approval date by the Department of General Services, whichever is later. No work shall commence until the effective date.
- E. GRANT means a grant provided pursuant to Harbors and Navigation Code Section 72.75 and the Federal Clean Vessel Act of 1992 (50 CFR Part 85) to finance all or part of the PROJECT COSTS.
- F. GRANTEE means the person or entity identified in Exhibit A as the GRANTEE.
- G. OPEN AND AVAILABLE TO THE PUBLIC means that all users (public and private) shall have full and reasonable access to the pumpout/dump station for the purpose of sewage disposal. Fees shall be equal for all pumpout users at a facility open and available to the public. However, members and customers may prepay for pumpouts within a fee structure, so that a separate fee for pumpouts at the time of use would not be needed for those members and customers.
- H. PROJECT means the Clean Vessel Act Grant proposal submitted by the GRANTEE to the DEPARTMENT and attached and made part of the CONTRACT as Exhibit D.

ARTICLE II – OPERATION AND MAINTENANCE OF PROJECT

- A. All contracts for the PROJECT shall:
1. Be awarded in accordance with all applicable laws and regulations, including but not limited to competitive bidding.
 2. Contain the following clause: "Representatives of the Department of Boating and Waterways shall be allowed access to all parts of the construction work."
 3. Contain a clause that the contractor shall comply with all air pollution and environmental control rules, regulations, ordinances and statutes which apply to the PROJECT and any work performed pursuant to the contract.

- B. Inspection reports and related inspection data shall at all reasonable times be accessible to the DEPARTMENT personnel, and request copies of such reports and data shall be provided to the DEPARTMENT by the GRANTEE.

ARTICLE III - DISBURSEMENT OF GRANT

- A. The DEPARTMENT shall have no obligation to disburse any of the GRANT to cover costs unless and until the GRANTEE demonstrates that it has acquired permits necessary (as applicable) to construct or repair the PROJECT.
- B. The Grantee may request periodic reimbursement payments for the operation and maintenance of the PROJECT. The reimbursement requests shall cover a minimum period of six (6) months of expenses, unless otherwise approved by the Department.
- C. Grantee shall account for all project costs expended under this grant as required by the DEPARTMENT. Prior to disbursement of funds, GRANTEE shall provide DEPARTMENT with a final summary of the project costs.
- D. The GRANTEE shall request final payment in writing under this CONTRACT no later than SIXTY (60) days following the end date of the contract term.
- E. The DEPARTMENT may withhold any payment of GRANT funds for failure by the GRANTEE to comply with any of the conditions and provisions of this CONTRACT.

ARTICLE IV - LIABILITY

- A. The GRANTEE waives all claims and recourse against the DEPARTMENT including the right to contribution for any loss or damage arising from, growing out or in any way connected with or incident to this CONTRACT.
- B. The GRANTEE shall indemnify, hold harmless, and defend the DEPARTMENT, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability arising out of the acquisition, design, construction, operation, maintenance, existence or failure of the PROJECT.
- C. If the DEPARTMENT is named as a co-defendant, the GRANTEE shall notify the DEPARTMENT and represent it unless the DEPARTMENT elects to represent itself. If the DEPARTMENT undertakes its own defense, it shall bear its own litigation costs, expenses and attorney's fees.

ARTICLE V - WAIVER OF RIGHTS

It is the intention of the parties hereto that from time to time either party may waive certain of its rights under this CONTRACT. Any waiver at this time by either party hereto of its rights with respect to a default or any other matter arising in connection with CONTRACT, shall not be deemed to be a waiver with respect to any other default or matter.

ARTICLE VI - REMEDIES NOT EXCLUSIVE

The use be either the DEPARTMENT or the GRANTEE of any remedy specified in the CONTRACT for the enforcement of the CONTRACT is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

ARTICLE VII - OPINIONS AND DETERMINATIONS

Where the terms of this CONTRACT provide for action to be based upon the opinion, judgment, approval, review, or determination of either the DEPARTMENT or GRANTEE, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

ARTICLE VIII – ASSIGNMENT, SALE, OR TRANSFER

- A. No assignment, sale, or transfer of this CONTRACT or any part hereof, rights hereunder, or interest herein by GRANTEE shall be valid pursuant to Exhibit C 3 unless and until it is approved in writing by the DEPARTMENT and made subject to such reasonable terms and conditions as the DEPARTMENT may impose.
- B. GRANTEE shall require, as a condition of assignment, sale or transfer of the property on which the PROJECT is constructed, the assignee, purchaser or transferee of the property to assume, in writing, in such manner as shall be satisfactory to the DEPARTMENT, the obligations of this CONTRACT. Failure to comply with this provision shall constitute a default pursuant to ARTICLE XII B of Exhibit B of this CONTRACT

ARTICLE IX - SUCCESSORS AND ASSIGNS OBLIGATED

This CONTRACT and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

ARTICLE X - PRIOR TERMINATION

The CONTRACT shall terminate on the date specified in EXHIBIT A, Paragraph 3 of this CONTRACT if (1) the GRANTEE has not met all conditions precedent to disbursement under this CONTRACT by such date, or (2) if no disbursement by the DEPARTMENT of GRANT funds occurs by such date.

ARTICLE XI - AUDIT

In addition to the audit requirements specified in Exhibit C-4, GRANTEE understands and agrees that, as a recipient of Federal Funds, it must comply with any applicable audit requirements imposed by federal law, regulations or policy, such as the Single Audit Act and the reporting requirements set forth in OMB Circular A-135.

ARTICLE XII – TERMINATION

- A. TERMINATION FOR CONVENIENCE
 - 1. The DEPARTMENT may terminate this CONTRACT at any time for the convenience of the State upon THIRTY (30) days prior written notice, delivered by certified mail or in person to GRANTEE. Upon notice of such termination, GRANTEE shall, within 30

days, return by check payable to the DEPARTMENT all unexpended grant funds not previously approved for expenditure by the DEPARTMENT.

2. GRANTEE may terminate this CONTRACT at any time upon THIRTY (30) days prior written notice, delivered by certified mail or in person to the DEPARTMENT, provided, however, that upon any such termination of the CONTRACT, GRANTEE shall, within thirty (30) days of such termination, reimburse by check payable to the DEPARTMENT all funds contributed by the DEPARTMENT to the PROJECT on a prorated basis as determined by the DEPARTMENT.

B. TERMINATION FOR DEFAULT

The DEPARTMENT may at any time upon NINETY (90) days prior written notice of default, and, when applicable, after having afforded GRANTEE an opportunity to cure any breach pursuant to ARTICLE VII, terminate this CONTRACT if the GRANTEE has failed to abide by any applicable provision of this CONTRACT. In such case, GRANTEE shall, within NINETY (90) days of its receipt of a notice of termination, reimburse by check all funds contributed by the DEPARTMENT to the PROJECT on a prorated basis as determined by the DEPARTMENT.

ARTICLE XIII WAIVERS

No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any written waiver on the part of any party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. A written waiver of any breach of any kind shall not be construed as a waiver of any subsequent breach of the same kind

ARTICLE XIV DISPUTE RESOLUTION

Any dispute arising under the terms of this CONTRACT which is not disposed of within a reasonable period of time by the GRANTEE and DEPARTMENT representatives normally responsible for the administration of this CONTRACT shall be brought to the attention of the Director of the DEPARTMENT or his designee. At the request of either party, the DEPARTMENT shall provide a forum for the discussion of the disputed matter(s). If agreement cannot be reached through the application of high level management attention, either party may assert its other rights and remedies within this CONTRACT in a court of competent jurisdiction

ARTICLE XV WAIVER OF THE STATUTE OF LIMITATIONS

GRANTEE waives the benefit of any limitations affected its liability hereunder or the enforcement thereof to the extent permitted by law.

ARTICLE XVI NOTICES

Notices required between the parties shall be deemed to have been given when mailed to the respective addresses herein, first-class postage fully prepaid thereon, unless otherwise required by law.

ARTICLE XVII – COMPLIANCE WITH FEDERAL REQUIREMENTS

GRANTEE shall comply with all applicable Federal laws, regulations and policies, including those summarized in Part 523, Chapter 1 of the U.S. Fish and Wildlife Service Handbook. These requirements include provisions for nondiscrimination, environmental standards, historic and cultural preservation, and other administrative guidelines, and are incorporated herein by this reference as if fully set forth.

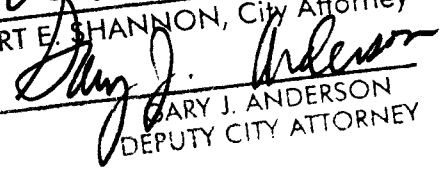
EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: This section is superseded by Article IV of Exhibit B to this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.



Sign and Date

APPROVED AS TO FORM
October 15, 2010
ROBERT E. SHANNON, City Attorney
By 
MARY J. ANDERSON
DEPUTY CITY ATTORNEY

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

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES 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 Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

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

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

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

[Signature] 10/29/10
Sign and Date

APPROVED AS TO FORM
October 15, 2010
ROBERT E. SHANNON, City Attorney
By [Signature]
GARY J. ANDERSON
DEPUTY CITY ATTORNEY

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

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

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

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

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

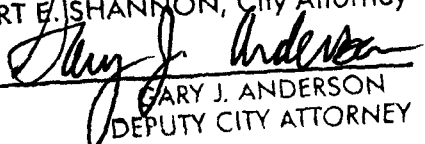
16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

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

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



Sign and Date

APPROVED AS TO FORM
October 15, 2010
ROBERT E. SHANNON, City Attorney
By 
GARY J. ANDERSON
DEPUTY CITY ATTORNEY

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

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

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

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

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

20. LOSS LEADER:

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

Exhibit C GTC-610 for CV and BIG (DBW 7-2-10)

B. H. Lee 10/28/10
Sign and Date

APPROVED AS TO FORM
October 15, 2010
ROBERT E. SHANNON, City Attorney
By Dary J. Anderson
DARY J. ANDERSON
DEPUTY CITY ATTORNEY

APPENDIX A
TERMS AND CONDITIONS

IN SUBMITTING THIS PROJECT PROPOSAL, THE APPLICANT HEREBY ACCEPTS THE TERMS AND CONDITIONS SET FORTH AS FOLLOWS:

- A. No construction of additional slips or additional on-shore facilities is authorized by this grant.
- B. The marine pumpout/dump station shall be used for the collection of boat sewage only. No bilge or oily waste shall be collected in the marine pumpout/dump station.
- C. Sewage disposal agreements with local waste water treatment plants, local sanitary commissions, and/or public works departments if applicable, shall be submitted to the local Health Department prior to construction of the marine pumpout/dump station.
- D. Plans and specifications for the pumpout/dump facilities shall be submitted and approved (as required) by the local Health Department prior to construction of the marine sewage pumpout/dump station.
- E. Plans and specifications, including all contract documents and any subsequent changes, must be submitted to the Department of Boating and Waterways (Department) for review and approval in writing prior to construction start-up.
- F. The design of the project is the responsibility of the applicant. All necessary permits must be secured by said applicant, who is responsible for compliance with all permit requirements, state and local codes and the inspection of the project to insure compliance of materials, products, and workmanship with the approved plans and specifications. Periodic inspections and a final inspection shall be made by the Department to insure funds are properly spent. These inspections will not include design/engineering adequacy nor State and Local code compliance as these items are the responsibility of the installer.
- G. Any changes to the approved grant plans and specifications must be approved by the Department prior to construction to be eligible for reimbursement.
- H. The following documents must be supplied to the Department before a request for reimbursement can be processed:
 - 1. An itemized statement of project costs listing the amount spent on each contractor or subcontractor.
 - 2. One (1) copy of any permits required by applicable Federal, State and Local agencies.
 - 3. Copies of all invoices and cancelled checks.

- I. The applicant will post two (2) signs: (1) a standardized logo Pumpout/Dump Station sign which credits the U.S. Fish and Wildlife Service and the Department; and (2) an informational sign that indicates fees, restrictions, hours of operation, operating instructions, and a contact name and telephone number to call if the facility is inoperable.
- J. Unless otherwise stipulated in the grant agreement a maximum \$5.00 fee may be charged for the use of pumpout and dump stations constructed with grant funds. The maximum fee shall be evaluated by the Department for inflation, etc. each year.
- K. The applicant agrees to operate and maintain the proposed project in good working order, inclusive of necessary supervision for the full term of the agreement. The minimum term shall be seven (7) years from the date of Department acceptance or as otherwise stipulated in the vessel pumpout contract agreement, whichever is greater.
- L. If the applicant ceases to operate and maintain the completed project as pumpout/dump facility, or changes the integrity of the facility, grant funds paid by the Department shall be reimbursed to the Department by the applicant on a prorated basis.
- M. The applicant will:
 - 1. Hold the State of California and its agents free from damages that may result from the construction of the project and use of the facility;
 - 2. Accomplish, without liability to the State of California, any alterations or relocations, as required for sewer, water supply, or any other utility facilities.
- N. All recreational vessels must have reasonable access to pumpout and dump stations funded under this grant program. Facilities shall continue to be accessible for the full term of the grant period.
- O. All pumpout and dump stations funded under this grant shall be **OPEN AND AVAILABLE TO THE PUBLIC**. **OPEN AND AVAILABLE TO THE PUBLIC** means that all recreational users (public and private) shall have full and reasonable access to the pumpout/dump station for the purpose of sewage disposal. Fees shall be equal for all pumpout users at a facility open and available to the public. However, members and customers may prepay for pumpouts within a fee structure, so that a separate fee for pumpouts at the time of use would not be needed for those members and customers.

APPROVED AS TO FORM 01-101-116
August 30, 2010
 ROBERT E. SHANNON, City Attorney
 By Gary J. Anderson
 GARY J. ANDERSON
 DEPUTY CITY ATTORNEY

CCC-307

CERTIFICATION

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

<i>Contractor/Bidder Firm Name (Printed)</i> <u>City of Long Beach</u>		<i>Federal ID Number</i> <div style="background-color: black; width: 100%; height: 20px;"></div>
<i>By (Authorized Signature)</i> 		
<i>Printed Name and Title of Person Signing</i> <u>Patrick H. West, City Manager</u>		
<i>Date Executed</i> <u>9/25/10</u>	<i>Executed in the County of</i> <u>Los Angeles</u>	

CONTRACTOR CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE:** Contractor 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:** Contractor 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 Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor 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: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor 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: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor 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 lesser 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: Contractor 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 Contractors 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 contractor 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, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor'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 contractor's compliance with the requirements under paragraph (a).

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

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: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor 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 Contractor violates any provisions of above paragraphs, such action by Contractor 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: Contractor 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 Contractor 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: Contractor 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. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor'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 contractor 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 contractor 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 Contractor 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 contractors that are not another state agency or other governmental entity.