

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

APPROVED AS TO FORM  
Feb. 28, 2014

33437

CHARLES PARKIN, City Attorney

GRANT AGREEMENT

By Gary J. Anderson  
 GARY J. ANDERSON  
 DEPUTY CITY ATTORNEY

GRANTEE City of Long Beach, Marine Bureau

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

GRANT TITLE: **VESSEL TURN-IN PROGRAM (VTIP)**

GRANT NUMBER: C7701103

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 Long Beach, Marine Bureau

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

Address: 205 N. Marina Drive  
 Long Beach, CA 90803

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

BY: [Signature]  
 Assistant City Manager  
 (Authorized Signature)

BY: [Signature]  
 (Authorized Signature)

Suzanne Frick, Asst. City Manager  
 (Printed Name and Title of Authorized Representative)

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

Date 3.21.14

Date 4/14/14

EXECUTED PURSUANT  
 TO SECTION 301 OF  
 THE CITY CHARTER.

CERTIFICATE OF FUNDING

GRANT NO C7701103	AMENDMENT NO	CALSTARS VENDOR NO #0000004201-01	PROJECT NO
AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 5,000.00	FUND TITLE Abandoned Watercraft Abatement Fund #0577		AGENCY BILLING CODE NO 032011
PRIOR AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 0.00	ITEM 3790-101-0577	CHAPTER 20	STATUTE 2013
TOTAL AMOUNT ENCUMBERED TO DATE \$ 0.00 <u>5,000</u>	INDEX 1700	OBJECT CODE 702	PCA CODE 69002
T.B.A. NO	I hereby certify upon my own personal knowledge that the budgeted funds are available for this encumbrance.		
B.R. NO 77-1	ACCOUNTING OFFICER'S SIGNATURE <u>[Signature]</u>	DATE 4/18/14	

RECEIVED  
 APR 23 2014  
 DEPT OF PARKS AND RECREATION

**STATE OF CALIFORNIA**

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

APPROVED AS TO FORM

*Feb. 28*, 20 *14*

CHARLES PARKIN, City Attorney

*Gary J. Anderson*

GARY J. ANDERSON  
DEPUTY CITY ATTORNEY

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

**SCOPE OF WORK**

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

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

The services shall be performed in the jurisdiction of:

**City of Long Beach, Marine Bureau**

State Agency: Division of Boating and Waterways	Grantee (Agency Name): City of Long Beach, Marine Bureau
Name: Susan Sykes	Grantee Representative*: <i>SM</i> Assistant City Manager
Phone: 916-327-1825	Phone: <i>(562) 570-3215</i>
Fax: 916-327-1772	Fax: <i>(562) 570-3247</i>
Email: susan.sykes@parks.ca.gov	Email: <i>Elvira.Hallinan@longbeach.gov</i>

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

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



# CITY OF LONG BEACH

DEPARTMENT OF PARKS, RECREATION AND MARINE

Long Beach Shoreline Marina  
450 East Shoreline Drive, LB, CA 90802  
(562) 570-4950 FAX: (562) 570-1799

MARINE BUREAU  
Alamitos Bay Marina  
205 Marina Drive, LB, CA 90803  
(562) 570-3215 FAX: (562) 570-3247

Rainbow Harbor/Marina  
200B Aquarium Way, LB, CA 90802  
(562) 570-8636 FAX: (562) 570-8640

April 21, 2008

Susan Sykes  
CA Department of Boating & Waterways  
2000 Evergreen Street  
Sacramento, CA 95815

Reference: Vessel Turn In Program (VTIP)

Dear Ms. Sykes:

The City of Long Beach would like to thank you for the opportunity to apply for the Vessel Turn-In Program for Fiscal Year 2012 – 2013.

The City of Long Beach, Department of Parks, Recreation and Marine, Marine Bureau, operates the Long Beach Marina, which is comprised of the Alamitos Bay Marina, the Long Beach Shoreline Marina, and the Rainbow Marina, with a combined total of 3675 wet slips. Within our area of responsibility for navigable waterways are five launch ramps, four oil islands, two rivers, a dredged channel and approximately nine miles of ocean or bay front "near shore" water zone. These areas provide us with approximately ten to twenty abandoned vessels per year. Further, we also receive "abandoned vessels" immediately after lien auctions from other large marinas (Marina del Rey, Newport Beach) near our locations.

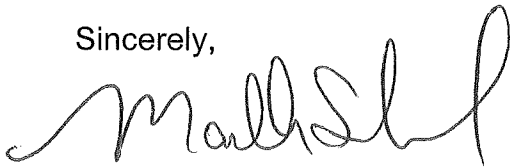
As a result of the recent slowing in the economy, Long Beach is experiencing an increase in past due accounts, permit cancellations and abandoned vessels. Some of our customers are unable to sustain the costs associated with boating. Therefore, through our monthly newsletter, we have requested that anyone interested in VTIP contact our office (see attachment). To date we have received several inquiries. Should Long Beach be awarded funding under this program, informational fliers will be posted within the Marina and the program will be featured in the monthly newsletter.

We have several companies available to salvage and transport vessel to disposal sites. Two salvage companies we have used are Vessel Assist of Long Beach and Down Under Dive Service. The most responsive vessel transport service has been Wilmington Boat Movers.

Our continuing plan is to have a list of pre-approved companies that are capable of completing the job of salvage, or transport in the shortest amount of time, avoid environmental damage and minimize clean up of contaminants to the State waters.

We wish to thank the Department of Boating and Waterways for all its previous support, and wish to extend our appreciation to DBW for its programs and grants the boaters within the City of Long Beach have benefited from.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Sandoval". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Mark A. Sandoval  
Manager, Marine Bureau

MAS:vac

VesselTurnInPgm

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



VESSEL TURN IN PROGRAM (VTIP)  
GRANT APPLICATION  
Fiscal Year 2013/14

Local Agency Name: City of Long Beach, Marine Bureau  
Address: 205 N. Marina Dr.  
City: Long Beach State: CA Zip Code: 90803  
Phone: 562-570-3242 Fax: 562-570-3247

Contact Person: Name: Elvira Hallinan  
Phone: 562-570-3242  
Fax: 562-570-3247  
E-Mail: elvira.hallinan@longbeach.gov

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

Grant request amount: \$ 25,000<sup>00</sup>

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

Prepared by: Elvira Hallinan Date: \_\_\_\_\_  
Signature of Officer: *Maria Sandoval* Date: 4/25/13  
Title of Officer: Manager of MARINAS & BEACHES

## EXHIBIT B

### Vessel Turn-In Program (VTIP)

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

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

#### **2. WATER HAZARDS ELIGIBLE FOR REMOVAL AND DISPOSAL**

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

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

- (1) The public agency has determined in its sole discretion that the vessel is in danger of being abandoned, and therefore has a likelihood of causing environmental degradation or becoming a hazard to navigation.
- (2) The decision to accept a vessel is based solely on the potential of the vessel to likely be abandoned and cause environmental degradation or become a hazard to navigation."

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

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

#### **3. RIGHT OF INSPECTION**

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

#### **4. 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 Harbors and Navigation Code section 526.1 in the performance of this Agreement, requiring that a surrendered vessel be that of the "verified titleholder."

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

## **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 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 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 contract. 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 Division 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 has 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 VTIP program upon written request by Grantee.
- B. Invoices from service providers and subcontractors to Grantee, submitted by Grantee to DBW for reimbursement, must contain the following:
  - 1. Name and address of Grantee
  - 2. Contract or invoice number
  - 3. Description of service performed
  - 4. Date the service was performed
  - 5. Location of each service
  - 6. Vessel name, CF# or HIN#

C. Documents to submit with reimbursement claims:

1. Invoices from subcontractors to Grantee
2. Proof of payment by Grantee to subcontractors for services received
3. Statement of 10% match contribution
4. Photos of vessels (if available)
5. Statement of Release completed and signed by owner(s)
6. Department of Motor Vehicles (DMV) documents: Certificate of Ownership signed by owner, or DMV Notice of Transfer and Release of Liability Form, completed and signed by owner(s)

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

Division of Boating and Waterways  
Enforcement Unit - VTIP  
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 invoice or reimbursement request 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 Division, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Grantee agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Grantee agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
6. **INDEMNIFICATION**: Grantee agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by subcontractor or Grantee in the performance of this Agreement.
7. **DISPUTES**: Grantee shall continue with the responsibilities under this Agreement during any dispute.
8. **TERMINATION FOR CAUSE**: The State may terminate this Agreement and be relieved of any payments should the Grantee fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the

State. All costs to the State shall be deducted from any sum due the Grantee under this Agreement and the balance, if any, shall be paid to the Grantee upon demand.

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

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

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

**11. CERTIFICATION CLAUSES:** The **GRANTEE CERTIFICATION CLAUSES** contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

**12. TIMELINESS:** Time is of the essence in this Agreement.

**13. COMPENSATION:** The consideration to be paid Grantee, as provided herein, shall be in compensation for all of Grantee's expenses incurred in the performance hereof, as outlined in Exhibit B, item #1.

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

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

Grantee shall comply with the requirements of the Government Codes Sections set out below.

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

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

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

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

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

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

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

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

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

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

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

**19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:**

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

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

**20. LOSS LEADER:**

If this agreement involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

EXHIBIT D

APPROVED AS TO FORM

Feb. 28, 2014


CHARLES PARKIN, City Attorney

By Gary J. Anderson

GARY J. ANDERSON  
DEPUTY CITY ATTORNEY

**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.

Grantee Agency Firm Name (Printed) <u>City of Long Beach, Marine Bureau</u>		Federal ID Number 
By (Authorized Signature) <u>[Signature]</u> Assistant City Manager		EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.
Printed Name and Title of Person Signing <u>Suzanne Frick, Assistant City Manager</u>		
Date Executed <u>3.21.14</u>	Executed in the County of <u>Los Angeles</u>	

**GRANTEE CERTIFICATION CLAUSES**

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

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

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

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

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,



4) penalties that may be imposed upon employees for drug abuse violations.

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

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

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

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

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

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

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

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

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

**6. SWEATFREE CODE OF CONDUCT:**

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

other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Grantee further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Division of Industrial Relations website located at [www.dir.ca.gov](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 (Pub. Contract Code §10410):

- 1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

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

- 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

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

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

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

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

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

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

**5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:**

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

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

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

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

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

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

## EXHIBIT F

### Bid/Proposal Attachment regarding the Darfur Contracting Act of 2008

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

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

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

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

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

## EXHIBIT F – DARFUR CONTRACTING ACT

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

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

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

OR

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

OR

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

**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.

Grantee Agency Name (Printed) <i>City of Long Beach, Marine Bureau</i>		Federal ID Number <div style="background-color: black; width: 100px; height: 20px;"></div>
By (Authorized Signature) <i>[Signature]</i> Assistant City Manager		EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.
Printed Name and Title of Person Signing <i>Suzanne Frick, Assistant City Manager</i>		
Date Executed <i>3.21.14</i>	Executed in the County and State of <i>Los Angeles</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**

APPROVED AS TO FORM

*Feb-28*, 20 *14*

CHARLES PARKIN, City Attorney

By *[Signature]*

GARY J. ANDERSON  
DEPUTY CITY ATTORNEY