

# *City of Brisbane*

## *Agenda Report*

**TO:** Honorable Mayor and City Council via City Manager

**FROM:** Director of Marina and Aquatic Services

**DATE:** Meeting of August 27, 2012

**SUBJECT:** State Department of Boating and Waterways (DBW) Abandoned Watercraft Abatement Fund (AVAF) Grant

**CITY COUNCIL GOALS:**

**#10:** To promote intergovernmental opportunities that enhances services and/or reduces the cost of operations and services to city residents.

**PURPOSE:**

To assist in the cost of properly removing and disposing of derelict vessels from the Marina.

**RECOMMENDATION:**

Adopt Resolution # 2012-21 to accept the AWAFF Grant funds of \$75,000.00 and authorize and direct Susan Hamblen, Administrative Assistant, to execute the contract for and on behalf of the City.

**BACKGROUND:**

The Marina routinely seizes and places liens on vessels of accounts that are 90 days delinquent. Usually, most of these accounts are settled. More recently, during this recession, more vessels per year go through the complete lien sale process and are sold at public auction to recapture some of the outstanding account balance.

We currently have vessels that have gone through the lien process or have been abandoned, and have determined that, due to the condition of the vessels, they are not in a sellable condition and it would be best for the City and the marine environment to simply remove them from the Marina and dispose of them properly.

The California State Department of Boating and Waterways (DBW) has grant monies available to public agencies for reimbursement for the removal of abandoned vessels from the states waterways, and they require the public agency to pay 10% of the removal cost.


Our grant application was approved by the DBW and they require a resolution authorizing us to enter into a contract to accept the funds for reimbursing the cost of removal, less 10%.

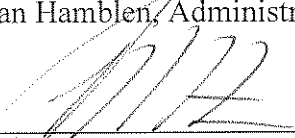
**FISCAL IMPACT:**

The 10% cost of the removal will be approximately \$7,500.00 and has been budgeted.

**ATTACHMENTS:**

DBW Contract # 12-214-502  
Resolution # 2012-21

  
\_\_\_\_\_  
Susan Hamblen, Administrative Assistant

  
\_\_\_\_\_  
Ted Warburton, Director of Marina and Aquatic Services

  
\_\_\_\_\_  
Clay Holstine, City Manager

RESOLUTION NO. 2012-21

A RESOLUTION OF THE CITY OF BRISBANE AGREEING TO ENTER INTO  
CONTRACT #12-214-502 WITH THE CALIFORNIA STATE DEPARTMENT OF  
BOATING AND WATERWAYS

WHEREAS, the Department of Boating and Waterways of the State of California (DBW) has agreed to provide \$75,000.00 in funding to be used to remove Abandoned Watercraft from the Waters of Brisbane Marina, and

WHEREAS, it is agreed that the City of Brisbane will pay 10% of the total AWAFF grant amount of \$7,500.00 for all invoices related to this work, and

WHEREAS, it is agreed that the City of Brisbane may submit invoices for in-kind staff time to the DBW if Staff is directly involved with the physical aspects of vessel disposal, and

WHEREAS, a proposed form of contract between the City of Brisbane and the DBW has been presented to the City Council, a copy of which is attached hereto and incorporated herein by reference.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Brisbane, as follows:

1. The contract between the City of Brisbane and the DBW is hereby approved.
2. The City of Brisbane Marina's Administrative Assistant, Susan Hamblen, is authorized and directed execute the contract for and on behalf of the City.

---

Clifford R. Lentz  
Mayor

I hereby certify that the foregoing Resolution No. 2012-21 was duly and regularly adopted at a regular meeting of the Brisbane City Council on August 27, 2012, by the following vote:

AYES:  
NOES:  
ABSENT:

ATTEST:

---

Sheri Marie Spediacci  
City Clerk

**DEPARTMENT OF BOATING AND WATERWAYS**

2000 EVERGREEN STREET, SUITE 100  
SACRAMENTO, CA 95815-3888  
(888) 326-2822  
www.dbw.ca.gov



July 18, 2012

Ms. Susan Hamblen  
City of Brisbane Marina  
400 Sierra Point Parkway  
Brisbane, CA 94005

**AWAF Contract #:** 12-214-502  
**Fiscal Year:** 2012/13  
**Amount:** \$75,000.00

Dear Ms. Hamblen:

Your application to participate in the Abandoned Watercraft Abatement Fund has been reviewed and approved. Enclosed is a complete copy of the contract between the Department of Boating and Waterways (DBW) and your agency. In addition to the contract, several documents have been enclosed for signature. For your convenience, areas of concern have been flagged.

An original copy of the Minute Order or Resolution from your County Board / City Council authorizing the execution of this contract is required. The Minute Order or Resolution must authorize by name and title the signatory of the contract.

Please return the signed and completed contract, verifications of insurance for your agency and contractors, and resolution to DBW for final approval. Once approved, a copy of the contract will be sent to you.

NOTE: Reimbursement payments will be issued only to the agency name and address as stated on the contract. Only the authorized signer as stated in the contract may sign reimbursement claims submitted to the department.

If you have any questions, please call Susan Sykes, Vessel Abatement Programs Analyst, at (916) 263-8194, or by email at [ssykes@dbw.ca.gov](mailto:ssykes@dbw.ca.gov).

Sincerely,

A handwritten signature in cursive script that reads "Denise Peterson".

Denise Peterson  
Boating Law Enforcement Manager  
Enforcement Unit

Enclosures

STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
 STD 213 (Rev 06/03)

AGREEMENT NUMBER

# 12-214-502

REGISTRATION NUMBER

# eP 1227423

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

STATE AGENCY'S NAME

DEPARTMENT OF BOATING AND WATERWAYS

CONTRACTOR'S NAME

CITY OF BRISBANE MARINA

2. The term of this Agreement is: AUGUST 01, 2012 through JULY 31, 2013

3. The maximum amount of this Agreement is: \$ 75,000.00  
 SEVENTY FIVE THOUSAND DOLLARS AND NO/100

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.

Exhibit A – Scope of Work (Attachment #1-AWAF Grant Application and Questionnaire, 2 pages; Attachment #2-Letter of Intent, 1 page; Attachment #3- Signatory Authority Letter, 1 page)	5 page(s)
Exhibit B – DBW Special Terms and Conditions	6 page(s)
Exhibit C – GTC-610 General Terms and Conditions	4 page(s)
Exhibit D – CCC-307 Certification	3 page(s)
Exhibit E – Doing Business with the State of California	2 page(s)
Exhibit F – Darfur Contracting Act	2 page(s)

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.ols.dgs.ca.gov/Standard+Language](http://www.ols.dgs.ca.gov/Standard+Language)

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

**CONTRACTOR**

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

CITY OF BRISBANE MARINA

BY (Authorized Signature)

DATE SIGNED(Do not type)



PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

400 SIERRA POINT PARKWAY  
 BRISBANE, CA 94005

**STATE OF CALIFORNIA**

AGENCY NAME

DEPARTMENT OF BOATING AND WATERWAYS

BY (Authorized Signature)

DATE SIGNED(Do not type)



PRINTED NAME AND TITLE OF PERSON SIGNING

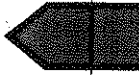
LUCIA C. BECERRA, ACTING DIRECTOR

ADDRESS

2000 EVERGREEN STREET SUITE 100 SACRAMENTO CA 95815

California Department of General  
 Services Use Only

Exempt per:



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BY (Authorized Signature)

DATE SIGNED (Do not type)



PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

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 BRISBANE, CA 94005

**STATE OF CALIFORNIA**

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CITY OF BRISBANE MARINA

BY (Authorized Signature)

DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

400 SIERRA POINT PARKWAY  
 BRISBANE, CA 94005

**STATE OF CALIFORNIA**

AGENCY NAME

DEPARTMENT OF BOATING AND WATERWAYS

BY (Authorized Signature)

DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

LUCIA C. BECERRA, ACTING DIRECTOR

ADDRESS

2000 EVERGREEN STREET SUITE 100 SACRAMENTO CA 95815

California Department of General Services Use Only

Exempt per:

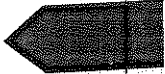


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 CONTRACTOR'S NAME  
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<b>CONTRACTOR</b>		California Department of General Services Use Only 
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) CITY OF BRISBANE MARINA		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS 400 SIERRA POINT PARKWAY BRISBANE, CA 94005		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME DEPARTMENT OF BOATING AND WATERWAYS		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING LUCIA C. BECERRA, ACTING DIRECTOR		
ADDRESS 2000 EVERGREEN STREET SUITE 100 SACRAMENTO CA 95815		
		<input type="checkbox"/> Exempt per:



**STATE OF CALIFORNIA**  
Department of Boating and Waterways  
2000 Evergreen Street #100  
Sacramento, CA 95815

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**EXHIBIT A**  
**Abandoned Watercraft Abatement Fund-Grant Program**

**SCOPE OF WORK (Letter of Intent, Plan of Action, and Questionnaire)**

Contractor agrees to provide to Department of Boating and Waterways (DBW) as described herein:

See Letter of Intent, Plan of Action, and Questionnaire of Exhibit A.

The services shall be performed in the jurisdiction of:

**City of Brisbane Marina**

The project representatives during the term of this agreement will be\*:

State Agency: Department of Boating and Waterways	Contractor: City of Brisbane Marina
Name: Susan Sykes	Name:
Phone: 916-263-8194	Phone:
Fax: 916-263-0357	Fax:
Email: ssykes@dbw.ca.gov	Email:

\* Contact information may only be changed by giving 30 days written notice and amendment of this Agreement.

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



**ABANDONED WATERCRAFT ABATEMENT FUND (AWAF)**  
**GRANT APPLICATION AND QUESTIONNAIRE**  
Fiscal Year 2012/13

Local Agency Name: CITY OF BRISBANE MARINA

Address: 400 SIERRA POINT PARKWAY

City: BRISBANE State: CA Zip Code: 94005

Phone: 650-583-6975 Fax: 650-583-6978

**Contact Person:** Name: SUSAN HAMBLEN

Phone: 650-583-6975

Fax: 650-583-6978

E-Mail: harbormaster@ci.brisbane.ca.us

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

**Grant request amount:** \$ 98,500.00

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

<p>1. Does your agency have a local marine law enforcement detail tasked with addressing abandoned vessels in your jurisdiction? If yes, explain in detail. If no, elaborate on your agency's efforts to create a program.</p>	<p>No. The Marina is a department of the City of Brisbane and the staff are not Peace Officers. There is no current plan on our agency's efforts to create a program.</p>
<p>2. Does your agency have a submerged navigational hazard abatement plan? Please explain.</p>	<p>No, however, the City's Municipal Code requires all vessels from becoming submerged navigational hazards through enforcement of the Municipal Code (attached). Though some vessels transit into the Marina during the time the marina is not staffed or the vessel deteriorates over time and the owner abandons it here.</p> <p>The Marina is a recreational boating facility</p>
<p>3. List by name and size the bodies of water or waterways your agency is responsible for in its jurisdiction.</p>	<p>The Marina is encompassed by a breakwater that surrounds some 30 acres of water and docks, consisting of 580 berths.</p> <p>The approach channel to the Marina consists of eight navigational channel markers spanning approximately 1/4 mile in length. The approach channel is shared with another marina, Oyster Cove, to the east, that consists of 235 berths.</p> <p>The City owns and is responsible for the Marina's waterways and approach channel. This is a public facility.</p>
<p>4. Local agencies are required to make a 10 percent match by cash, or in-kind. Is your agency able to comply with the 10 percent match in advance before any grant money is reimbursed?</p>	<p>Yes.</p>

*Per Harbors and Navigation Code 525 (C) "A grant awarded by the department pursuant to subparagraph (A) shall be matched by a 10% contribution from the local agency receiving the grant." This matching fund may be rendered in cash, or through in-kind contributions which must be verified, and are at the discretion of DBW. These contributions may include (but are not limited to) the following: administrative costs, personnel hours, removal, and/or storage.*

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

Prepared by: SUSAN HAMBLÉN Date: 4/25/2012  
 Reviewed by: TED WARREN TAY Date: 4/27/12  
 Signature of Approving Officer: Susan Hamblen Date: 4/27/12  
 Title of Approving Officer: Administrative Assistant Date: 4/27/12



CITY OF BRISBANE  
**BRISBANE MARINA**  
400 Sierra Point Parkway  
Brisbane, California 94005-1  
(650) 583-6975  
Fax (650) 583-6978  
www.ci.brisbane.ca.us

LETTER OF INTENT

April 26, 2012

Susan Sykes, Vessel Abatement Programs Analyst  
Department of Boating & Waterways  
2000 Evergreen Street, Suite 100  
Sacramento, CA 95815-3888

Dear Ms. Sykes,

Please find enclosed the grant application for the removal of numerous abandoned vessels in Brisbane Marina.

**Problem Statement:**

The vessels have suffered neglect, usually as a result of an owner who eventually stops paying berth rent and does not respond to attempted contact to maintain the vessel and pay the rent. It is now the responsibility of the City to dispose of them properly.

These vessels have either gone through the lien process and are in no condition to sell to the public or are in the process of having title taken on behalf of the City through a lien process.

**Statement of Need:**

The City is financially challenged due to the economy and loss of revenues to address abandoned vessels, but it is able to budget for the 10% matching funds.

**Plan of Action:**

We have established an excellent relationship with two nearby salvagers and their bids in the past have been competitive. We have been successful in the past working with Bishop Diving and Salvage and Parker Diving and Salvage to expeditiously, using sound environmental methods, remove vessels from SF Bay waters. Upon approval for a successful grant award we would call for bids from other salvagers to secure the vessels from the waterways.

Thank you for considering this grant request and we look forward to a positive outcome.

Sincerely,

Susan Hamblen  
Administrative Assistant

4/27  
NO SIGNATURE  
ON QUESTIONNAIRE.  
GEM 930  
EMMO  
BT  
4/20/12





CITY OF BRISBANE  
**BRISBANE MARINA**

400 Sierra Point Parkway  
Brisbane, California 94005-1898  
(650) 583-6975  
Fax (650) 583-6978  
www.ci.brisbane.ca.us

APR 30 4:11 PM '12

April 27, 2012

Susan Sykes, Vessel Abatement Programs Analyst  
Department of Boating & Waterways  
2000 Evergreen Street, Suite 100  
Sacramento, CA 95815-3888

Dear Ms. Sykes,

Susan Hamblen is authorized as signatory on the 2012-2013 AWAFF grant, and all subsequent correspondence and reimbursement forms.

Please contact me directly if you have any questions regarding this action. I am generally available Sunday through Thursday during normal business hours.

Sincerely,

Ted Warburton  
Director of Marina and Aquatic Services

## **EXHIBIT B**

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

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

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

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

The funds provided under this Agreement shall be used for the removal, storage and disposal of eligible water hazards. For purposes of this Agreement, "abandoned" is defined in Harbors and Navigation Code section 522(a):

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

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

If Grantee is reimbursed for the costs related to salvage and storage of an eligible water hazard by the registered or legal owner or other person known to have an interest in the water hazard, then the water hazard shall no longer be eligible for funding under this Agreement. Grantee shall notify DBW in writing of such reimbursement and shall return all fund disbursed by DBW to Grantee with respect to such water hazard immediately.

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

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

#### **4. HAZARDOUS MATERIALS**

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

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

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

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

#### **6. MEDIA**

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

#### **7. OUTSIDE SERVICES**

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

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

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

#### **9. SECURING OF BIDS**

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

#### **10. SUBCONTRACTORS**

The Grantee warrants that any marine salvage company performing work under this Agreement holds a valid business license and carries general commercial liability insurance coverage sufficient to fully insure against any and all risks of hazardous activities associated with the work to be performed under this Agreement. Grantee shall provide DBW with a certificate of insurance from any subcontractor prior to the commencement of any work under this Agreement.

#### **11. TRAFFIC CONTROL AND TRAFFIC SAFETY**

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

#### **12. AIR OR WATER POLLUTION VIOLATION**

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

prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

### **13. ENTIRE AGREEMENT**

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

### **14. APPROVAL OF CONTRACT 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 contract.

### **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. Neither DBW nor the State shall have any obligation to pay or to enforce any payment by Grantee to any subcontractor.



## **19. INSURANCE**

The 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 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 not cancel Grantee's coverage without 30 days prior written notice to DBW.
- D. The State of California, its officers, agents, employees, and servants are included as additional insureds with respect to the work performed for DBW under this Agreement.

If Grantee is self-insured, Grantee must provide DBW written explanation of the self-insurance program, which must be approved by the Office of Risk and Insurance Management (ORIM). Grantee warrants that its liability insurance shall be in effect at all times during the term of this 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 contract or for a period of not less than one year. New certificates of insurance are subject to the approval of the Department of General Services. 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 contract, DBW may, in addition to other remedies it may have, terminate this contract 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 contract because of failure of Grantee to fulfill any of the requirements of this contract.

- 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. 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 FUND REQUIREMENT**

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

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

The burden of proof in complying with the 10-percent contribution requirement is the responsibility of the grantee. Grant funds will not be disbursed until the grantee has complied with the 10-percent contribution requirement.

**23. BUDGET DETAIL AND PAYMENT PROVISIONS**

Invoicing and Payment

- A. DBW will reimburse the grantee for actual expenditures within the scope of the AWAFF program upon written request by Grantee. Reimbursement for any request must be substantiated by submitting documents such as invoices, service payment receipts, photos, etc., to DBW. **Note: Food expenditures are not reimbursable through the AWAFF program.**
- B. Invoices submitted to DBW for payment must contain the following:
  - 1. Name and address of Grantee
  - 2. Contract Number
  - 3. Date the service was performed
  - 4. Location of each service
  - 5. Proof of payment of service, as described in 23A, above
- C. Examples of documents to submit with reimbursement claims:
  - 1. Invoices from service providers
  - 2. Proof of payment for services received
  - 3. Photos of vessels with CF numbers (if available)
  - 4. DMV documents (if available)

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

Department of Boating and Waterways  
Enforcement Unit - AWAFF  
Attention: Susan Sykes  
2000 Evergreen Street, Suite 100  
Sacramento, CA 95815

- 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 contract. DBW is not obligated to make payment on any invoice 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. 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**: Contractor 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 Contractor in the performance of 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.

**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:
  - 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.

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

**EXHIBIT D**

**CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective 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>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

**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](http://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.

## 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:** 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 (PCC 10410):

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

Former State Employees (PCC 10411):

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

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC 10420)

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

**2. LABOR CODE/WORKERS' COMPENSATION:** 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.

## EXHIBIT F

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

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

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

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

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

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

**EXHIBIT F – DARFUR CONTRACTING ACT**

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

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

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

**OR**

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

**OR**

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

**CERTIFICATION For # 3.**

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

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

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