

DEPARTMENT OF BOATING AND WATERWAYS

2000 EVERGREEN STREET, SUITE 100
SACRAMENTO, CALIFORNIA 95815-3888
(916) 263-1331



July 1, 2002

Mr. Ted Warburton
Coyote Point Marina
1900 Coyote Point Drive
San Mateo, California 94401

Dear Mr. Warburton,

Enclosed are the Vessel Pumpout Facility Installation contract agreements for execution. The contract agreements consist of:

1. Standard Agreement 2 copies
2. Standard Agreement/Exhibit A&B 1 set
3. A resolution or minute order is also required with the contracts. A sample resolution is attached for your information.

Before the contract is official, it must be approved by the State. Do not begin any work or order any materials until you have received your copy of the approved contract.

Please have all documents signed by the appropriate authority and return all documents to:

California Department of Boating and Waterways
Attn: Sam Larot
2000 Evergreen Street, Suite 100
Sacramento, Ca 95815-3888

An approved copy will be returned to you after approval.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Atkinson", with a long horizontal line extending to the right.

Kevin Atkinson
Local Assistance
916-263-8149

Enclosures



STATE OF CALIFORNIA
STANDARD AGREEMENT
 STD 213 (Rev 09/01)

AGREEMENT NUMBER

- This Agreement is entered into between the State Agency and the Contractor named below:
 STATE AGENCY'S NAME
 DEPARTMENT OF BOATING AND WATERWAYS (DEPARTMENT)
 CONTRACTOR'S NAME
 COUNTY OF SAN MATEO (GRANTEE)
- The term of this Agreement is: July 2, 2002 through July 1, 2009 (Seven Years)
- The maximum amount of this Agreement is: \$ 9,500.00 NINE THOUSAND FIVE HUNDRED DOLLARS
- 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 - Vessel Pumpout Facility Installation Contract	2 pages
Exhibit B - Vessel Pumpout Facility Installation Contract Standard Terms and Conditions	5 pages
Contractor Certification Clauses (CCC 201)	3 pages

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

CONTRACTOR		<i>California Department of General Services Use Only</i>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) COUNTY OF SAN MATEO		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS 455 County Center, 4 th Floor Redwood City, CA 94063-1646		
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 RAYNOR TSUNEYOSHI, Director		
ADDRESS 2000 EVERGREEN STREET, SUITE 100 SACRAMENTO, CALIFORNIA 95815-3888		

Exempt per:

VESSEL PUMPOUT FACILITY INSTALLATION CONTRACT
REIMBURSEMENT

COUNTY SAN MATEO – COYOTE POINT MARINA

1. GRANT

- (a) The DEPARTMENT will make a grant up to SEVENTY FIVE PERCENT (75%) of the PROJECT COSTS, to the GRANTEE, for installation of vessel pumpout facilities at the Coyote Point Marina in accordance with EXHIBIT B. The grant shall not exceed the amount of NINE THOUSAND FIVE HUNDRED DOLLARS (\$ 9,500.00).
- (b) The grant provides for reimbursement with **Federal Funds [FED CATALOG 15.616]**.

2. PROJECT COMPLETION DATE

The GRANTEE shall complete the installation of the vessel pumpout facility (such installation as described in the Clean Vessel Act Grant Application dated June 10, 2002, and hereinafter referred to as PROJECT) no later than July 1, 2003.

3. TERM OF CONTRACT

- (a) The term of this CONTRACT, subject to the provisions for prior termination, shall begin on the effective date of the CONTRACT and shall continue for SEVEN (7) years from such date.
- (b) This CONTRACT may be extended, amended or canceled upon agreement of both the DEPARTMENT and the GRANTEE.

4. USERS FEES

The GRANTEE may charge a fee for the use of the facilities constructed with the GRANT; however, such fees may only be used to defray operation and maintenance costs incurred from the operation of the vessel pumpout facility. The GRANTEE may charge a total fee in excess of \$5.00 for the use of the pumpout facilities constructed; the \$5.00 fee may be increased or decreased annually in accordance with percentage changes in the United States Bureau of Labor Statistics Consumer Price Index (CPI) using the CPI index for December 1993 (436.8) as the base for any such adjustment.

5. SPECIAL PROVISIONS

- (a)
 - 1. The pumpout facilities constructed under this grant shall be operated, maintained, and be open and available to the public for the full period of this CONTRACT.
 - 2. Operation of the pumpout facilities shall be available during normal business hours per day and shall not be hindered by locked enclosures, padlocks, pass keys, electronic keys, token systems or other means.
 - 3. The pumpout facilities constructed under this grant shall be equipped with an hour meter to record its usage.
- (b) The grant recipient shall construct and install signage that shall:
 - 1. Indicate the presence of a vessel pumpout facility (State supplied sign);
 - 2. Acknowledge that the facility was constructed or improved with funds from the Clean Vessel Act. The suggested language shall be "This facility was funded under the Clean Vessel Act by your purchase of fishing equipment and motorboat fuels" (State supplied sign).
 - 3. Provide appropriate information at the pumpout station that indicates fees, restrictions, operation instructions, and a contact name and number if the facility is inoperable.
- (c) Upon expiration of the CONTRACT, all improvements made by the GRANT shall become property of the GRANTEE.
- (d) GRANTEE shall each year provide information about the use and reliability of the vessel pumpout facility in the form of a post-implementation evaluation report (PIER) provided by the Department and shall transmit the results of the PIER to the DEPARTMENT no more than 30 days after receipt of the PIER.
- (e) Notices required between the parties shall be deemed to have been given when mailed to the respective addresses herein, first-class postage fully prepaid thereon.

VESSEL PUMPOUT FACILITY
INSTALLATION
CONTRACT
STANDARD TERMS AND CONDITIONS

ARTICLE I – DEFINITIONS

- A. CONTRACT means the contract to which these standard terms and conditions are appended.
- B. PROJECT COSTS means those permitting, planning, management, signage, labor, design, material and construction costs which are necessarily incurred by the GRANTEE for the purpose of completing the PROJECT and are covered by the GRANT; however, such PROJECT COSTS shall not include any expenses incurred prior to the effective date of this CONTRACT.
- C. GRANT means a grant provided pursuant to Harbors and Navigation Code Section 72.75 and the Federal Clean Vessel Act of 1992 to finance all or part of the PROJECT COSTS.
- D. OPEN AND AVAILABLE TO THE PUBLIC means that all users (public and private) shall have full and reasonable access to the pumpout/dump station for the purpose of sewage disposal. Fees shall be equal for all pumpout users at a facility open and available to the public. However, members and customers may prepay for pumpouts within a fee structure, so that a separate fee for pumpouts at the time of use would not be needed for those members and customers.

ARTICLE II – CONSTRUCTION OF PROJECT

- A. All contracts for construction of the PROJECT shall:
 - 1. Be awarded in accordance with all applicable laws and regulations, including but not limited to competitive bidding.
 - 2. Contain the following clause: "Representatives of the Department of Boating and Waterways shall be allowed access to all parts of the construction work."
 - 3. Contain a clause that there shall be no discrimination against any employee who is employed in the work covered by such contracts or against any applicant for such employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age, marital status, and denial of family care leave, and that such provisions shall include, but not be limited to: employment, upgrading, promotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. GRANTEE and subcontractors shall insure that the evaluations 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 (GC Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (CCR Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission

implementing GC Section 12990 (a-f), set forth in Chapter 5, Div. 4 of Title 2 of the CCR, are incorporated into this CONTRACT 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.

4. Contain a clause that the contractor shall comply with all air pollution and environmental control rules, regulations, ordinances and statutes which apply to the PROJECT and any work performed pursuant to the contract.
- B. Inspection reports and related inspection data shall at all reasonable times be accessible to the DEPARTMENT personnel, and request copies of such reports and data shall be provided to the DEPARTMENT by the GRANTEE.

ARTICLE III - DISBURSEMENT OF GRANT

- A. GRANTEE shall acquire advance written acceptance of the completed project from the DEPARTMENT prior to any disbursement of funds.
- B. The GRANTEE shall request final payment in writing under this CONTRACT no later than SIXTY (60) days following the date of acceptance of the PROJECT by the GRANTEE.
- C. The DEPARTMENT may withhold any payment of GRANT funds for failure by the GRANTEE to comply with any of the conditions and provisions of this CONTRACT.

ARTICLE IV - LIABILITY

- A. The GRANTEE waives all claims and recourse against the DEPARTMENT including the right to contribution for any loss or damage arising from, growing out or in any way connected with or incident to this CONTRACT.
- B. The GRANTEE shall indemnify, hold harmless, and defend the DEPARTMENT, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability arising out of the acquisition, design, construction, operation, maintenance, existence or failure of the PROJECT.
- C. If the DEPARTMENT is named as a co-defendant pursuant to Government Code Sections 895, et seq, the GRANTEE shall notify the DEPARTMENT and represent it unless the DEPARTMENT elects to represent itself. If the DEPARTMENT undertakes its own defense, it shall bear its own litigation costs, expenses and attorney's fees.

ARTICLE V - WAIVER OF RIGHTS

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

ARTICLE VI - REMEDIES NOT EXCLUSIVE

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

ARTICLE VII - OPINIONS AND DETERMINATIONS

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

ARTICLE VIII - ASSIGNMENT

No assignment or transfer of this CONTRACT or any part hereof, rights hereunder, or interest herein by GRANTEE shall be valid unless and until it is approved in writing by the DEPARTMENT and made subject to such reasonable terms and conditions as the DEPARTMENT may impose.

ARTICLE IX - SUCCESSORS AND ASSIGNS OBLIGATED

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

ARTICLE X - APPROVAL

The CONTRACT is of no force or effect until signed by both parties and approved by the Department of General Service, if required. GRANTEE may not commence performance until such approval has been obtained.

ARTICLE XI - AUDIT

All contracts entered into by the GRANTEE involving an expenditure of GRANT funds shall contain a provision which indicates that the contracting parties shall agree that the 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 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 reasonable have information related to such records. Further, contracting parties agree to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this CONTRACT. (GC 8546.7, PCC 10115 et seq., CCR Tittle 2, Section 1896).

ARTICLE XII - RECYCLING CERTIFICATION

The GRANTEE shall certify in writing under penalty of perjury, the minimum, not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the PCC Section 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this CONTRACT, regardless of whether the product meets the required recycled product percentage as defined in the PCC

Section 12161 and 12200. GRANTEE may certify that the product contains zero recycled content. (PCC 10233, 10308.5, 10354)

ARTICLE XIII – CERTIFICATION CLAUSES

The GRANTEE shall abide by the *CONTRATOR CERTIFICATION CLAUSES* contained in the document CCC201 are hereby incorporated by reference and made a part of this CONTRACT by this reference as if attached hereto.

ARTICLE XIV – ANTITRUST CLAIMS

- 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.

ARTICLE XV - CHILD SUPPORT COMPLIANCE ACT

"For any contract in excess of \$100,000, the contractor acknowledges in accordance with, 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.
- 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."

ARTICLE XVI - UNENFORCEABLE PROVISION

In the event that any provision of this CONTRACT is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this CONTRACT have force and effect and shall not be effected thereby.