



**COUNTY OF PLACER**  
**Community Development/Resource Agency**


Michael J. Johnson, Agency Director

**PLANNING**  
**SERVICES DIVISION**

Paul Thompson, Deputy Director

**MEMORANDUM**

**TO:** Honorable Board of Supervisors

**FROM:** Michael J. Johnson, Agency Director 

**DATE:** January 24, 2012

**SUBJECT:** Federal Section 6 Cooperative Endangered Species Conservation Fund Grant and Grant Award Contract

**SUMMARY/ACTIONS REQUESTED:** The Planning Services Division is requesting that the Board adopt a resolution authorizing the Purchasing Manager to accept a U. S. Fish and Wildlife Service Section 6 Cooperative Endangered Species Conservation Fund (CESCF) Planning Grant via the State Department of Fish and Game (DFG), and authorize the Purchasing Manager to sign a \$350,000 grant agreement which will release 2011 Section 6 grant funds.

**BACKGROUND:** Placer County has been awarded a Planning Assistance Grant (Section 6) from DFG for a variety of critical tasks required to complete the PCCP. These Section 6 funds will help to complete the Placer County Conservation Plan. The total Section 6 amount was \$779,124 dollars, \$350,000 from the State of California; \$350,624 from the County of Placer to be provide in funds or in-kind services, and \$78,540 for DFG overhead cost. The Board will need to adopt a resolution (Exhibit 1) authorizing the Purchasing Manager to accept funds and sign a contract with DFG (Exhibit 2).

**FISCAL IMPACT:** Approval of this resolution accepting the grant funds and the subsequent signing of the contract will make available to the County \$350,000 of grant funding to help complete the Placer County Conservation Plan. Accepting this grant is contingent upon a County match of \$350,624. Current Placer County contracts and staff time represent more than a sufficient match to meet these obligations.

**Exhibits:**

- Exhibit 1: BOS resolution accept a Habitat Conservation Planning (HCP) Grant from the State Department of Fish and Game
- Exhibit 2: Department of Fish and Game Cooperative Endangered Species Fund (Section 6) Grant Agreement (P1182013)

cc: Jennifer Byous, Planning Division  
Allison Carlos, County Executive Office  
Brett Wood, Purchasing Manager  
Patrick Moeszinger, Department of Fish and Game

# Before the Board of Supervisors County of Placer, State of California

In the matter of:

Resolution No.: \_\_\_\_\_  
FIRST READING: \_\_\_\_\_

A RESOLUTION AUTHORIZING AND DIRECTING  
THE PURCHASING MANAGER TO ACCEPT A  
HABITAT CONSERVATION PLANNING GRANT  
FROM THE STATE DEPARTMENT OF FISH AND  
GAME TO HELP COMPLETE THE PLACER  
COUNTY CONSERVATION PLAN, AND EXECUTE  
DOCUMENTS IN CONNECTION THEREWITH

The following Resolution was duly passed by the Board of Supervisors of the County of  
Placer at a regular meeting held \_\_\_\_\_, by the following vote on  
roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Attest:

Clerk of said Board

Chairman, Board of Supervisors

\_\_\_\_\_  
Clerk of the Board Signature

\_\_\_\_\_  
Chairman Signature

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BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF PLACER,  
STATE OF CALIFORNIA, AS FOLLOWS:

WHEREAS, the County of Placer, the City of Lincoln, and Placer County Water Agency (PCWA) are parties to the Placer County Conservation Plan ("PCCP"), and the Agreement with respect to the Placer County Conservation Plan recorded in the official records of Placer County as Document Number P1182013, issued by the United States Fish and Wildlife Service ("USFWS" or "Service") under Section 10a of the Federal Endangered Species Act, 16 U.S.C. section 1631 et seq.; and

WHEREAS, a grant application for funds to complete the PCCP has been submitted through the State Department of Fish and Game, and grants in the amount of \$350,000 has been awarded to assist in funding the completion of the PCCP process;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF PLACER that the Purchasing Manager is hereby authorized and directed to accept a Cooperative Endangered Species Conservation Fund (Section 6) Grant from the State Department of Fish and Game to help complete the Placer County Conservation Plan, and execute documents in connection therewith, and communicate the County's acceptance of the grant to the State Department of Fish and Game.



January 4, 2012

County Of Placer  
3091 County Center Drive  
Attn : Loren Clark  
Ste 140  
Auburn, CA 95603

Re: P1182013 00 2011 PLACER COUNTY CONSERVATION PLAN

**ACKNOWLEDGMENT OF WORK COMMENCEMENT AUTHORIZATION DISCLAIMER**

Where approval from the California Department of Fish and Game (DFG) and the California Department of General Services (DGS) applies, the attached agreement shall be of no force or effect until it is signed by both parties and/or approved by the DGS. The signing of this agreement by your organization does not authorize the commencement of work.

By signing this letter, your organization acknowledges and agrees not to begin work until all approvals have been obtained, the agreement has been fully executed, and authorization has been given to begin work. Should any work begin before all approvals are obtained or authorization is given, services will be considered voluntary.

Please be advised that a failure to sign and return this letter with your signed agreement will result in a delay in approving your agreement.

\_\_\_\_\_  
*Authorized Signature*

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

\_\_\_\_\_  
*Printed Name and Title of Person Signing*

GRANT AGREEMENT (ECD/HCPB)

GRANT AGREEMENT NUMBER

P1182013

DEPARTMENT OF FISH AND GAME

Cooperative Endangered Species Conservation Fund (Section 6) Grant

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

STATE AGENCY'S NAME

Department of Fish and Game

GRANTEE'S NAME

County of Placer

2. The term of this The effective date of this grant is either the start date or the approval date by the Department of Fish and Game, whichever is later. No work shall commence until the effective date.

this Grant Agreement is: December 30, 2011 through October 31, 2014

3. The maximum amount of \$350,000.00

this Grant Agreement is: Three Hundred Fifty Thousand Dollars and No Cents

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

- Exhibit A – Scope of Work 4 Pages
- Exhibit B – Budget Detail and Payment Provisions 3 Pages
- Exhibit D – General Grant Provisions 4 Pages
- Exhibit E - Federal Provisions 3 Pages

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

GRANTEE

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

County of Placer

DATE SIGNED (Do not type)

BY (Authorized signature)

PRINTED NAME AND TITLE OF PERSON SIGNING

Brett Wood, Purchasing Manager

ADDRESS

2962 Richardson Drive, Auburn, CA 95603

STATE OF CALIFORNIA

STATE AGENCY'S NAME

Department of Fish and Game

DATE SIGNED (Do not type)

BY (Authorized signature)

PRINTED NAME AND TITLE OF PERSON SIGNING

Helen Carriker, Deputy Director, Administration

ADDRESS

1416 9th Street, 12th Floor, Sacramento, CA 95814

ECD/HCPB Agreements are exempt from Department of General Services review and approval:

EXEMPT PER: SCM 4.06

1. The Grantee agrees to provide, to the Department of Fish and Game (DFG) services as described herein:

Development, finalization, and environmental review of the Placer County Conservation Plan (PCCP) in coordination with Placer County, the City of Lincoln, South Placer Regional Transportation Authority (SPRTA), the Placer County Water Agency (PCWA), and the City of Roseville should they elect to join the planning process at a later date. Duties include managing and reporting on the PCCP process, preparing and circulating the draft and final PCCP, preparing the PCCP Implementation Agreement, and preparing and circulating the administrative, draft, and final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the PCCP.

2. The services shall be performed in Placer County, California.
3. The Project Officials during the term of this Agreement will be:

**DFG Grant Manager**

Name: Patrick Moeszinger  
Phone: (916) 358-2850  
Fax: (916) 358-2912  
Email: pmoeszinger@dfg.ca.gov

**Grantee Project Director**

Name: Jennifer Byous  
Phone: (530) 745-3008  
Fax: (530) 745-3080  
Email: jbyous@placer.ca.gov

Direct all inquiries to:

Department of Fish and Game  
North Central Region  
Attention: Patrick Moeszinger  
Address: 1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670  
Phone: (916) 358-2850  
Fax: (916) 358-2912  
Email: pmoeszinger@dfg.ca.gov

Grantee: Placer County  
Planning Services  
Attention: Jennifer Byous  
Address: 3091 County Center Drive  
Auburn, CA 95603  
Phone: (530) 745-3008  
Fax: (530) 745-3080  
Email: jbyous@placer.ca.gov

The Grant Manager may be changed at any time by DFG by providing a ten (10) day advance written notice to the Grantee.

The Grantee's Project Manager may be changed at any time by the Grantee by providing a ten (10) day advance written notice to DFG.

#### 4. SCOPE OF WORK

##### A. Background and Objectives

When the Placer County habitat conservation plan was initiated in 2001, the California Department of Finance identified Placer County (County) as the fastest growing County in the state. The majority of this growth was occurring and is expected to continue to occur over the next fifty years in the lower foothills of the Sierra Nevada and the valley floor of the County. Though this projected growth will pose a significant challenge to management of valley and foothill ecosystems, there is an opportunity through a comprehensive habitat conservation planning process to permanently

protect sensitive species and their habitat. However, there remains a risk of losing this opportunity to comprehensively plan for resource protection if steps are not taken now to manage western Placer County's ecosystems on a landscape level. In the absence of a locally based, comprehensive effort, the status quo condition will continue, i.e., the project-by-project review of resources resulting in fragmented mitigation and virtually no conservation.

The County is currently developing a comprehensive, multi-species Habitat Conservation Plan (HCP) and Natural Community Conservation Plan (NCCP). This planning effort is referred to as the Placer County Conservation Plan (PCCP). The County has partnered with local, state and federal agencies to develop the plan. Participating local agencies seeking regulatory coverage through the PCCP include unincorporated Placer County, the City of Lincoln, South Placer Regional Transportation Authority (SPRTA), and the Placer County Water Agency (PCWA). The primary objective of the PCCP is to balance development with conservation of the County's natural resources, and provide for protection of sensitive species and their respective habitats.

The State of California is the only state to enact a law that closely complements the habitat conservation planning process of ESA. The Natural Community Conservation Planning (NCCP) Act encourages the development of multi-species, ecosystem-based plans that provide for the conservation and recovery of both listed and unlisted species within the plan area. The NCCP Act requires a recovery standard for permit issuance, independent scientific input, and significant public participation. When applied together, the ESA and NCCP Act bring their complementary strengths to conservation planning to provide greater conservation benefits than either Act alone. Information on the NCCP program can be found at [www.dfg.ca.gov/habcon/nccp](http://www.dfg.ca.gov/habcon/nccp).

The PCCP will permanently protect habitat, establish preserve designs, and establish management guidelines for the conservation and recovery of 31 sensitive species. The land cover types upon which they depend include agricultural cropland, annual grassland savannah, aquatic environments, chaparral, emergent wetlands, oak woodlands, riparian, and vernal pools. These eight major land cover types are unlikely to withstand the external pressures of urbanization and climate change. Consequently, the County and its member entities are committed to preparing and implementing an NCCP/HCP.

The PCCP planning effort has been on-going for nearly ten years and the following elements have been completed or will be completed before the 2011 Planning Assistance grants are awarded:

- Phase 1 Science Advisory Report
- Land Cover and Habitat Inventory for the Phase 1 Area
- Vernal Pool Ecosystem Assessment
- Emergent Wetland Mapping Study
- Salmonid Spawning Survey
- Wintering and Migratory Bird Report for Western Placer County
- Riparian Buffer Study and Functional Assessment Model for Riparian Systems
- Western Placer County Streams Literature Review and Stream Assessment

- First Agency Review of the Draft Conservation Plan
- Draft County Aquatic Resource Program (CARP) Ordinance and Administrative Operation Procedures Manual
- 2050 Spatially Explicit Population and Employment Projection

The 2011 Planning Assistance grant award would ensure timely completion of the PCCP. Drafting the Implementation Agreement, completing all agency and public review Plan comments, and finishing the Plan EIR/EIS will ensure a successful Plan conclusion.

The current \$537,195 grant-funding request will result in the development of an Implementation Agreement and completion of the Conservation Plan and the Plan EIR/EIS.

## **B. WORK TO BE PERFORMED**

### **Task 1. Implementation Agreement**

Placer County is requesting Section 6 funds to complete the Placer County Conservation Plan (PCCP) Implementation Agreement. The Implementation Agreement defines the Parties' roles and responsibilities as well as provides a common understanding of actions that will be undertaken to avoid, minimize and mitigate the effects on the Covered Species caused by the Covered Activities within the Plan Area, and to provide for the conservation of the Covered Species within the Plan Area. The purpose of the Agreement is:

- To ensure implementation of each of the terms and conditions of the HCP/NCCP, this Agreement, and the Permits;
- To provide long term assurances to the Permittees that, pursuant to the federal "No Surprises" provisions of 50 Code of Federal Regulations, sections 17.22(b)(5) and 17.32(b)(5), and California Fish and Game Code section 2820, subdivision (f), no additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources will be required of the Permittees, either to minimize and mitigate the impacts of Authorized Take, or to provide for the conservation and management of the Covered Species in the Plan Area, except as provided in this Agreement and the HCP/NCCP or required by law; and
- To describe remedies and recourse should any Party fail to perform its obligations as set forth in the Implementation Agreement.

### **Task 2. Conservation Plan Assistance**

The Draft Placer County Conservation Plan will soon be reviewed by the resource agencies. Several administrative drafts are anticipated prior to releasing this document for public review. Once under public review, modifications to the document are anticipated to address public comments and ensure that any outstanding agency and public concerns are resolved. Funding will assist with modifications to the PCCP document resulting from the public review period. Funding of this task represents the final funding needed to complete the conservation plan.

### **Task 3. EIR/EIS Completion**



The third task that Placer County is seeking funding for completion of the PCCP EIR/EIS to meet NEPA and CEQA requirements for purposes of issuing regulatory permits based on the Plan, including incidental take permits under the NCCPA and the FESA. The EIR/EIS will tier off of existing studies and growth projections, and will reflect the regulatory and planning framework in which the Conservation Plan will be implemented. The EIR/EIS will analyze the direct impacts of implementation of the Plan and the direct and indirect impacts of covered activities permitted under the NCCP, HCP, Streambed Alteration 1602 Agreements, and 401 and 404 Clean Water Act components of the PCCP.

The geographic scope of this project includes the area of Western Placer from the uppermost portion of the Coon Creek watershed to the County boundaries with Yuba, Nevada, Sutter and Sacramento County to the west. The cities of Roseville, Rocklin, Auburn and Loomis fall in the Phase One area, but are not participants in the PCCP at the present time. The EIR/EIS will address the non-participating jurisdictions in the context of cumulative impacts.

The EIR/EIS will be sufficient in scope to cover all actions necessary to adopt and implement the Plan. The EIR/EIS contractor will be working in parallel with other agency staff and consultants responsible for the Conservation Plan document, the economics and funding analysis, land acquisition costs, legal framework, and public facilitation. Placer County has compiled a substantial amount of background information, GIS data, and has engaged review by a Scientific Advisory Panel. The EIR/EIS contractor is expected to rely on the available existing information in preparing the document, but will exert its independent judgment of the efficacy and effects of the proposed plan.

**C. SCHEDULE OF COMPLETION DATES**

<u>Activity</u>	<u>Date</u>
Tasks 1, 2, and 3 to be completed by:	10/31/2014
Quarterly Progress Report 1 to be completed by:	4/30/2012
Quarterly Progress Report 2 to be completed by:	7/31/2012
Quarterly Progress Report 3 to be completed by:	10/31/2012
Quarterly Progress Report 4 to be completed by:	1/31/2013
Quarterly Progress Report 5 to be completed by:	4/30/2013
Quarterly Progress Report 6 to be completed by:	7/31/2013
Quarterly Progress Report 7 to be completed by:	10/31/2013
Quarterly Progress Report 8 to be completed by:	1/31/2014
Quarterly Progress Report 9 to be completed by:	4/30/2014
Quarterly Progress Report 10 to be completed by:	7/31/2014
Quarterly Progress Report 11 to be completed by:	10/31/2014

**D. REPORTS**

Reports and corresponding invoices are to be prepared quarterly with one hard copy delivered by mail to the Grant Manager. Progress reports shall document progress made, deliverables provided, estimated completion dates, accomplishments during the previous period, actions planned for the immediate future, and shall describe the reasons for any delays.

**1. INVOICING AND PAYMENT**

- A. For services satisfactorily rendered, and upon receipt and approval of the invoice(s), the State agrees to compensate the Grantee for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.
- B. The Grantee shall be paid **quarterly** in arrears, upon submission of an original and two copies of the invoice, which properly details all charges, expenses, direct and indirect costs. Invoices shall be submitted to:

Grant Manager:	Patrick Moeszinger – Environmental Scientist
Region / Division:	North Central Region – Region 2
Address:	1701 Nimbus Road, Rancho Cordova, CA 95670

- C. The original and one (1) approved copy of the invoice will be forwarded to the Department of Fish and Game's Accounting Claims Section by the Grant Manager. Payment of any invoice will be made only after receipt of a complete, supported, documented and accurately addressed invoice. Failure to use the address exactly as provided above may result in the return of the invoice to the Grantee. All invoices must be approved by the Grant Manager.
- D. The invoice shall contain the following information:
  - 1. The word "Invoice" should appear in a prominent location at the top of the page(s);
  - 2. Printed name of the Grantee;
  - 3. Business address of the Grantee including P.O. Box, City, State, and Zip Code;
  - 4. Name of the Region/Division of the Department of Fish and Game being billed;
  - 5. The date of the invoice and the time period covered;
  - 6. The number of the agreement upon which the claim is based, and;
  - 7. An itemized account of the services for which the Department of Fish and Game is being billed. Include all of the following:
    - a. The time period covered by the invoice, i.e., the term "from" and "to";
    - b. A description of the services performed;
    - c. The method of computing the amount due based on a line item budget/cost reimbursement method. Payments will be made by the State to the Grantee, in arrears, upon receipt of an itemized invoice showing the time period covered and the

work items accomplished. The invoice must be itemized using the categories and following the format of the attached budget.

- d. The total amount due. This should be in a prominent location in the lower right-hand portion of the last page and clearly distinguished from other figures or computations appearing on the invoice; the total amount due shall include all costs incurred by the Grantee under the terms of this agreement; and
- e. The original signature of the Grantee (not required of established firms or entities using preprinted letterhead invoices).

**2. GRANT WRITTEN PRIOR TO APPROVAL OF THE BUDGET ACT**

- A. It is mutually understood between the parties that this Agreement may have been written prior to approval of the Budget Act for the mutual benefit of both parties in order to avoid program and fiscal delays.
- B. This Agreement is valid and enforceable only if sufficient funds are made available by the Budget Act for the Fiscal Year(s) involved for the purposes of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Legislature and contained in the Budget Bill or any statute enacted by the Legislature which may affect the provisions, terms, or funding of this Agreement in any manner.
- C. 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, the State shall have no liability to pay any funds whatsoever to the Grantee or to furnish any other considerations under this Agreement and the Grantee shall not be obligated to perform any additional provisions of this Agreement.
- D. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to the Grantee to reflect the reduced amount.

**3. PROMPT PAYMENT CLAUSE**

Payment will be made in accordance with, and within the time specified in Government Code Chapter 4.5, commencing with Section 927.

**LINE/TASK ITEM BUDGET**

The County of Placer will provide \$350,624 in funds or in-kind services to complete tasks described in Exhibit A, Scope of Work.

ITEM	AMOUNTS		TOTAL
	DFG/Grant Cost	County Cost	
Personal Services		In-Kind**	
Operating Services:			
Postage, Office Supplies, Telephone/Fax, *Travel and Per Diem		In-Kind**	

Subcontractors				
TASK 1	Implementation Agreement	\$ 50,000	\$ 50,208	\$ 100,208
Task 2	Conservation Plan Assistance	\$ 125,000	\$ 125,208	\$ 250,208
Task 3	EIR/EIS Completion	\$ 175,000	\$ 175,208	\$ 350,208

<b>TOTAL PROJECT OPERATING EXPENDITURES</b>	<b>\$350,000</b>	<b>\$350,624</b>	<b>\$ 700,624</b>
*****	*****	*****	*****

\*\*\*\*

FOR DISPLAY PURPOSES ONLY

DFG OVERHEAD AT 22.44% \$ 78,540

\*\* OVERHEAD AMOUNT NOT PAID TO GRANTEE \*\*

<b>TOTAL GROSS PROJECT COST</b>	<b>\$428,540</b>	<b>\$350,624</b>	<b>\$779,164</b>
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1. **APPROVAL:** This Agreement is of no force or effect until signed by both parties and approved by the Department of Fish and Game. Grantee 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 Grantee, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT:** Grantee agrees that the California Department of Fish and Game (DFG), 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, CCR Title 2, Section 1896).
5. **INDEMNIFICATION:** Grantee agrees to indemnify, defend and save harmless the State of California, the DFG, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all of Grantee's employees or agents, 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 Grantee in the performance of this Agreement.  
  
The State of California shall defend, indemnify and hold the Grantee, its officers, employees and agents harmless from and against any and all liability, loss, expense, attorney's fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the State of California, or its agencies, their respective officers, agents or employees.
6. **DISPUTES:** Grantee shall continue with the responsibilities under this Agreement during any dispute.
7. **INDEPENDENT CONTRACTOR:** Grantee, and the agents and employees of Grantee, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State. Grantee acknowledges and promises that the DFG is not acting as an employer to any individuals furnishing services or work pursuant to this Agreement.
8. **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 there under (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.

9. **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.
10. **LICENSES AND PERMITS (if Applicable):** The Grantee shall obtain, at its expense, all licenses and permits required by law for accomplishing any work required in connection with this Agreement.
11. **RIGHTS IN DATA:** The Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or graphic work produced in the performance of this Agreement, are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Grantee may copyright the same, except that, as to any work which is copyrighted by the Grantee, the State reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.
12. **CONTINGENT FUNDING:** It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of State appropriation of funds for the mutual benefit of both parties in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.

This Agreement is valid and enforceable only if sufficient funds are made available pursuant to the California State Budget Act for the fiscal year(s) covered by this Agreement for the purposes of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Legislature of any statute enacted by the Legislature which may affect the provisions, terms or funding of this Agreement in any manner.

It is mutually agreed that if the Legislature does not appropriate sufficient funds for the Agreement, the State has the option to terminate the Agreement under the termination clause or to amend the Agreement to reflect any reduction of funds. The DFG has the option to invalidate the contract under the 30-day cancellation clause or to amend the Agreement to reflect any reduction in funds.

13. **RIGHT TO TERMINATE:**

- a. This agreement may be terminated by mutual consent of both parties or by any party upon thirty (30) days written notice and delivered by USPS First Class or in person.
- b. In the event of termination of this Agreement, Grant Recipient shall immediately provide Grantor an accounting of all funds received under the Agreement and return to Grantor all funds received under this Agreement which have not been previously expended to provide the services outlined within this agreement.
- c. Any such termination of this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination. Grantor shall reimburse Grantee for all allowable and reasonable costs incurred by it for the Project, including foreseeable and uncancellable obligations. Upon notification of termination from Grantor, Grantee shall use its reasonable efforts to limit any outstanding financial commitments.

14. **CONFIDENTIALITY OF DATA:** The Grantee shall protect from disclosure all information made available by the DFG. The Grantee shall not be required to keep confidential any data or information which is publicly available, independently developed by the Grantee, or lawfully obtained from third parties. Written consent of the DFG must be obtained prior to disclosing information under this Agreement.
15. **DISCLOSURE REQUIREMENTS:** Any document or written report prepared in whole or in part pursuant to this Agreement shall contain a disclosure statement indicating that the document or written report was prepared through an Agreement with the State. The disclosure statement shall include the Agreement number and dollar amount of all Agreements and subcontracts relating to the preparation of such documents or written reports. The disclosure statement shall be contained in a separate section of the document or written report.
- If the Grantee or any subcontractor(s) are required to prepare multiple documents or written reports, the disclosure statement may also contain a statement indicating that the total Agreement amount represents compensation for multiple documents or written reports. The Grantee shall include in each of its subcontracts for work under this Agreement, a provision which incorporates the requirements stated within this section.
16. **POTENTIAL SUBCONTRACTOR(S):** Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any subcontractor(s) and no subcontract shall relieve the Grantee of its responsibilities and obligations hereunder. The Grantee agrees to be as fully responsible to the State for the acts and omissions of its subcontractor(s) and of persons directly employed or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Grantee. The Grantee's obligation to pay its subcontractor(s) is an independent obligation from the State's obligation to make payments to the Grantee. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
17. **TRAVEL AND PER DIEM (if applicable):** The Grantee agrees to pay reasonable travel and per diem to its employees under this Agreement. The reimbursement rates shall not exceed those amounts identified in the Department of Personnel Administration and/or Universities of California travel reimbursement guidelines.
18. **LIABILITY INSURANCE (as applicable)** ~ Unless otherwise specified in the Grant Agreement, when the Grantee submits a signed Agreement to the State, the Grantee shall also furnish to the State either proof of self-insurance or a certificate of insurance stating that there is liability insurance presently in effect for the Grantee of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined. Grantee agrees to make the entire insurance policy available to the State upon request.

The certificate of insurance will include provisions a, b, and c, in their entirety:

- a. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to the State;
- b. The State of California, its officers, agents, employees, and servants are included as additional insured, by insofar as the operations under this Agreement are concerned; and
- c. The State will not be responsible for any premiums or assessments on the policy.

The Grantee agrees that the *bodily injury liability insurance* herein provided for, shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Grantee agrees to provide, prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the Department of General Services, and the Grantee agrees that no work or services shall be performed prior to giving of such approval. In the event the Grantee fails

to keep in effect, at all times, insurance coverage as herein provided, the State may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

The Department of Fish and Game will not provide for, nor compensate the Grantee for any insurance premiums or costs for any type or amount of insurance. The insurance required above, shall cover all Grantee supplied personnel and equipment used in the performance of this Agreement. When applicable, if subcontractors performing work under this Agreement do not have insurance equivalent to the above, the Grantee's liability shall provide such coverage for the subcontractor, except for coverage for error, mistake, omissions, or malpractice, which shall be provided by the subcontractor if such insurance is required by the State.

19. **GRANTEE STAFF REQUIREMENTS:** The Grantee represents that it has or shall secure at its own expense, all staff required to perform the services described in this Agreement. Such personnel shall not be employees of the California State Department of Fish and Game or any other California State entity.



1. **UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESSES:** The Grantee agrees that affirmative steps will be taken to assure that qualified small, minority and women-owned businesses are used when possible as sources of supplies, construction, and services in the performance of grant-assisted Agreements and subcontracts. Affirmative steps taken shall include the following:
  - a. Include qualified small, minority and women-owned businesses on solicitation lists;
  - b. Assuring that small, minority and women-owned businesses are solicited whenever they are potential sources;
  - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation of small, minority and women-owned businesses;
  - d. Establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority and women-owned businesses;
  - e. Using the services and assistance of the Small Business Administration, the Minority business Development Agency of the U.S. Department of Commerce, and the State Office of Small Business and Disabled Veteran Business Enterprise Certification; and
  - f. If the Contractor awards subcontracts, requiring the subcontractor to take the affirmative steps in paragraphs A through E of this section.
  
2. **DISCLOSURE REQUIREMENTS:** Any document or written report prepared in whole or in part pursuant to this Agreement shall contain a disclosure statement indicating that the document or written report was prepared through Agreement with the State. The disclosure statement shall include the Agreement number and dollar amount of all Agreements and subcontracts relating to the preparation of such documents or written reports. The disclosure statement shall be contained in a separate section of the document or written report.
  
3. **PRIVITY:** This Agreement is funded in whole or in part by a grant from the Federal Government. Neither the United States nor any of its departments, agencies, or employees are, or will be, a part to this Agreement or any lower tier subcontract or to any solicitation or request for proposal.
  
4. **COMPLIANCE WITH FEDERAL REGULATIONS:** The Contractor understands that the State is obligated, in accordance with its assistance Agreement with the Federal Government, to comply with the provisions of federal regulations contained in Title 48 Code of Federal Regulations (CFR) Part 31 and any conditions in the grant Agreement and any amendments thereto. In order to ensure that the State can meet these obligations, the Grantee warrants, represents, and agrees that it and its subcontractors, employees, and representatives will comply with: 1) all applicable provisions of Title 48 CFR Part 31; and 2) all general and special conditions contained in the Agreement.
  
5. **COPYRIGHTS:** The Grantee agrees to and does hereby grant to the Federal Government, a royalty-free nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes:
  - a. The copyright in any work developed under this Agreement; and
  - b. Any rights of copyright which the Grantee purchases, in whole or in part, with funds provided by this Agreement.
  
6. **STANDARDS FOR FINANCIAL MANAGEMENT SYSTEM:** The Grantee and all subcontractors shall maintain fiscal control and accounting procedures which are sufficient to:
  - a. The copyright in any work developed under this Agreement; and
  - b. Any rights of copyright which the Grantee purchases, in whole or in part, with funds provided by this Agreement.

7. **APPLICABLE COST PRINCIPLES:** The cost principles for this Agreement are applicable as set forth below (Office of Management and Budget (OMB):
- a. OMB Circular 21 – Education Institutions; or
  - b. OMB Circular A-87 – State, Local or Indian Tribe Governments; or
  - c. OMB Circular A-122 – Cost Principals for Non-Profit Organizations; or
  - d. OMB Circular A-133 – Audits of States, Local Governments and Non-Profit Organizations; or
  - e. Title 48 CFR Part 31 – For-Profit Organizations

Funds provided under this Agreement shall not be used for payment of salaries to individual consultants retained by the Grantee or any subcontractors in excess of the rate for Level 4, of the Federal Executive Schedule. The limit expressed herein does not include transportation and subsistence costs for necessary travel for work required under this Agreement.

8. **Contingent Funding:** It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds for the mutual benefit of both parties in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.

This Agreement is valid and enforceable only if sufficient funds are made available to the State by the US Government for the fiscal year(s) covered by this Agreement for the purposes of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress of any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.

It is mutually agreed that if the Congress does not appropriate sufficient funds for the Agreement, the State has the option to terminate the Agreement under the termination clause or to amend the Agreement to reflect any reduction of funds.

The DFG has the option to invalidate the contract under the 30-day cancellation clause or to amend the Agreement to reflect any reduction in funds.

9. **ENVIRONMENTAL QUALITY:** The Grantee and subcontractors shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, Title 42 U.S.C. 1857(h), Section 508 of the Clean Air Act, Title 33 U.S.C. 1368 Executive Order 11738 and, Title 40 CFR part 15.

The Grantee shall comply with mandatory standards and policies related to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Conservation Act (Publ. L. 94-163).

10. **RECYCLED PAPER:** The Grantee agrees to use recycled paper for all reports which are prepared as a part of this Agreement and delivered to the State. This requirement does not apply to reports which are prepared on form supplied by the Federal Government. This requirement applies even when the cost of recycled paper is higher than that of virgin paper.
11. **SINGLE AUDIT ACT:** To the extent applicable, the Grantee shall be subject to and shall comply with the provisions and requirements of the Single Audit Act of 1984 (Pub. L. 98-502) and implementing policies, procedures and guidelines, including applicable circulars issued by the Federal OMB.
12. **FEDERAL ASSURANCES:** It is further agreed that by signing this Agreement, the Grantee is subject to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the

Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and offers all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex, or disability. Further, it is agreed that no individual will be turned away from or otherwise denied access to or benefit from any program or activity that is directly associated with a program of the DFG on the basis of race, color, national origin, age, sex (in education activities) or disability.

13. **USE OF SUBCONTRACTOR(S):** If the Grantee desires to accomplish part of the services through the use of one (1) or more subcontractors, the following conditions must be met:
- a. The Grantee shall submit any subcontracts to the State for approval prior to starting any of the work;
  - b. The Agreement between the primary Grantee and the subcontractor must be in writing;
  - c. The subcontract must include specific language which establishes the rights of the auditors of the State to examine the records of the subcontractor relative to the services and materials provided under the Agreement; and
  - d. Upon termination of any subcontract, the State shall be notified immediately in writing, by the primary Grantee.

Further, any subcontract entered into as a result of this Agreement shall contain all applicable provisions stipulated in this Agreement.

14. **COMPLIANCE WITH FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT 2006 (FFATA):** As a recipient of a federal contract, grant or other federal funds, the State is required under the Federal Funding Accountability and Transparency Act of 2006 (FFATA) to report certain information about the State's contractors, grantees and sub-recipients of that federal funding. The Grantee, as a sub-recipient of federal funds, agrees to provide the State with data required under the FFATA unless exempted under that act. Grantee shall complete a Grantee's FFATA Certification form (State form) and submit it as instructed, on or before execution of the agreement. If not exempt the Grantee shall create a registration, or update its data if already registered, on the federal Contractors Central Registry (CCR) at [www.ccr.gov](http://www.ccr.gov). A DUNS number is required for the CCR registration and must be included on the FFATA Certification form. Grantee agrees to update its CCR registration and notify the State if there is a material change to its CCR data or its exemption status changes..

