

NATIONAL FISH AND WILDLIFE FOUNDATION
GRANT CONTRACT FOR SERVICES
Cosco Busan Recreational Use Grant Program
Oakland Estuary Enhancement Project (CA) #8006.12.033614

This Grant Contract for Services ("Contract") is between CalRecycle ("Grantee"), with an address of CalRecycle, 1001 "I" Street, 10th Floor, Sacramento, CA, 95814, and the National Fish and Wildlife Foundation ("NFWF"), located at 1133 15th Street, N.W., Washington D.C., 20005, with a branch office at 90 New Montgomery Street, Suite 1010, San Francisco, CA, 94105.

1. **Engagement.** At the request of the California Department of Fish and Wildlife ("CDFW") and the California State Lands Commission ("CSLC") under the San Francisco Bay Shoreline Parks and Outdoor Recreational Use Account Memorandum of Agreement executed by and among the CDFW, CSLC and the National Fish and Wildlife Foundation ("NFWF") as of November 18, 2010, NFWF hereby awards a grant to the Grantee, and the Grantee accepts such award, upon the terms and conditions set forth below.

2. **Scope of Services to be Performed.** Under the terms of this Contract, the Grantee's Contractor, Pacific States Environmental Contractors, Inc. ("Contractor") will perform all tasks, render all services, and provide all materials and deliverables necessary and appropriate (collectively, the "Services") for the removal of marine debris, abandoned vessels, old piers, and navigational hazards from the Oakland Estuary. The specific Services to be performed by the Contractor are as described in the proposal named Oakland Estuary Enhancement Project (hereinafter, the "Project Proposal"). Unless agreed in an amendment to this Contract duly executed by the parties hereto, the Grantee is required to assure that its Contractor will perform the Services in accordance with the budget and schedule set forth in the Project Proposal and the project requirements set forth in Exhibit A hereto ("Cosco Busan Recreational Use Grant Program Project Requirements"), incorporated herein by reference, and in all respects to the reasonable satisfaction of NFWF, CDFW, and CSLC.

3. **Term.** The period of performance for this Contract is from August 15, 2013 through May 31, 2014, unless sooner terminated in accordance with the terms and conditions set forth in Section 11.

4. **Payment.** As consideration for the Services to be performed by the Grantee's Contractor hereunder, NFWF shall reimburse the Grantee for payments made by it to the Contractor for all expenses reasonably and actually incurred by Contractor in performing the Services under this Contract, all in accordance with the budget incorporated in the Project Proposal; provided, however, that the total amount of reimbursement provided under this Contract shall not exceed Six Hundred and Fifty Thousand Dollars (\$650,000.00) (the "Reimbursement"), and Grantee has agreed to fund the remaining costs of the Project. If at any time during the term of this Contract the Grantee believes, based on work performed to date, that the budget provided in the Project Proposal may change in any one budget category by an amount that exceeds more than ten percent (10%) of the total Reimbursement or that the cost to fully complete the Services required under this Contract will exceed the total Reimbursement, the Grantee shall notify NFWF immediately, and, if requested, provide a written justification of the basis for the expected cost overruns and give a revised estimate of costs necessary to complete the Services.

Reimbursement shall be payable upon the submission by the Grantee of a payment request (hereinafter, a "Payment Request") via e-mail, mail, or fax to the NFWF Contact identified in Section 6 below. Invoices submitted by any subcontractor must be accompanied by the written approval of the Contractor. All invoices must also contain a written statement by the Grantee that the expenses for which payment is sought are (a) for work specified in the Project Proposal and (b) within the budget for such expenses as specified in the Project Proposal. Payment Requests shall not be submitted for less than One Thousand Dollars (\$1,000) in expenses nor more frequently than once (1) per month. Advance payment of funds may be made at the discretion of and subject to the approval of NFWF, CDFW and CSLC, based on an assessment of the Grantee's needs. In all other cases, payment will be made in arrears, as and after the Services are performed by the Grantee's Contractor. Payment shall be made by NFWF within thirty (30) days of receipt of the Payment Request and any necessary accompanying documentation. NFWF, acting after consultation with the CDFW and CSLC, reserves the right (a) to refuse to pay all or any part of the Compensation requested in a Payment Request if, at the time the Payment Request is submitted, the Grantee and/or its Contractor has failed to comply with any term or condition of this Contract or has otherwise failed to perform the Services to date to NFWF's reasonable satisfaction and (b) to retain up to ten percent (10%) of the total Reimbursement until submission and acceptance by CDFW and CSLC of the Final Reports, as defined below.

5. **Review and Reporting Requirements.**

The Grantee shall submit to NFWF annual written programmatic reports describing in reasonable detail the Services performed during the prior NFWF fiscal year (October 1 – September 30), no later than October 31st of each year during the term of this Contract. Specific reporting requirements for the annual reports are set forth in Exhibit A.

In addition, the Grantee shall submit to NFWF annual financial reports detailing the receipts and expenditures of all Reimbursement received by the Grantee for the Services performed during the prior NFWF fiscal year (October 1 – September 30), no later than October 31st of each year during the term of this Contract.

When the Contractor believes that it has fully and completely performed all the Services, the Contractor shall submit a comprehensive report of its activities hereunder and their corresponding results (the "Final Programmatic Report") and a full accounting of the funds disbursed to it as Reimbursement hereunder (the "Final Financial Report"). (The Final Programmatic Report and Final Financial Report are hereinafter referred to collectively as the "Final Reports.") Specific reporting requirements for the Final Reports are set forth in Exhibit A. The Final Reports shall be provided by the Grantee to NFWF, via the Easygrants System, as soon as practicable after the Contractor reaches a determination that it has fully and completely performed all the Services, and in any event no later than 30 days prior to the end of the term of this Contract as set forth in Section 3. After its receipt of the Final Reports, NFWF shall notify the Grantee in writing when it, in conjunction with the CDFW and CSLC, determines that the Services have been fully and completely performed and that the Final Reports are satisfactory in form and substance.

After receiving notification from NFWF that the Services have been fully and completely performed and that the Final Reports are satisfactory, the Grantee may deliver to NFWF a Payment Request for any amount of the Reimbursement that had previously been withheld (which in accordance with Section 4 may be up to ten percent (10%) of the total Compensation). Within thirty (30) days after receipt of such request, NFWF shall make the final payment of Reimbursement to the Grantee and the Grantee shall thereafter be discharged from the obligations of this Contract, except those which expressly survive the term of this Contract.

Report Due Dates

October 31, 2013	Annual Financial Report
October 31, 2013	Interim Programmatic Report
May 1, 2014	Final Financial Report
May 1, 2014	Final Programmatic Report

6. **Contact Information.**

NFWF Primary: Michelle Olson
National Fish and Wildlife Foundation
Manager, Impact-Directed Environmental Accounts (IDEA)
1133 15th Street NW, Suite 1100
Washington, DC 20005
Telephone: 202-595-2437
Fax: 202-857-0162
E-mail: Michelle.Olson@nfwf.org

NFWF Alternate: Shawn Marchand
National Fish and Wildlife Foundation
Manager, Impact-Directed Environmental Accounts (IDEA)
90 New Montgomery St, Suite 1010
San Francisco, CA 94105
Telephone: 415-243-3102
Fax: 415-778-0998
E-mail: Shawn.Marchand@nfwf.org

Grantee: Todd Thalhamer
CalRecycle
Engineering Support Branch (MS 10A-18)
1001 "T" Street
Sacramento, CA 95814
Telephone: 916-341-6356
Email: todd.thalhamer@calrecycle.ca.gov

Each party agrees to notify the other promptly after any change in named representative, address, telephone, or other contact information.

7. **Incorporation of the Project Proposal.** The Project Proposal, titled Oakland Estuary Enhancement Project (CA) is hereby expressly incorporated into this Contract by this reference.

8. **Assignment; Subcontracting.** The Grantee may not assign this Contract, in whole or in part, to any other individual or other legal entity without the prior written consent of NFWF, acting after consultation with CDFW and CSLC. The Grantee's Contractor may not have subcontracts with respect to performance of the Services without the prior written approval of NFWF, acting after consultation with CDFW and CSLC. Subawards and subcontracts with known parties disclosed in the Project Proposal are deemed to be approved.

9. **Unexpended Funds.** Any funds provided by NFWF and held by the Grantee and not expended or earned for Services actually performed on or before the Contract's termination date will be returned to NFWF within thirty (30) days after such termination date.

10. **Amendments.** This Contract may be amended only by a written amendment, signed by all parties hereto, acting after approval by CDFW and CSLC. Counterpart originals, facsimile copies, and/or portable document format (pdf) versions of signed amendments are acceptable and will be treated as binding originals, but this Contract may not be amended via email. Notwithstanding any provision of this Contract to the contrary, any duly executed amendment of this Contract to extend its term shall be deemed to automatically add or modify, as appropriate, reporting due dates pursuant to Section 5 hereof such that the dates are commensurate with the extended term of this Contract.

11. **Default; Termination.** Failure by the Grantee to comply (as determined by NFWF) with any material term of the Contract, including but not limited to any failure by the Grantee's Contractor to perform the Services in accordance with the budget and schedule set forth in the Project Proposal or to the reasonable satisfaction of NFWF, shall be deemed to be a default of this Contract and shall constitute cause for NFWF to terminate this Contract. Any such termination shall be made by NFWF by written notice to the Grantee and shall entitle NFWF to pursue any legal remedy to which NFWF may be entitled. The Grantee may terminate this Contract by providing thirty (30) days' prior written notice to NFWF. In the event of termination of this Contract prior to completion of the Services, the Grantee shall immediately (unless otherwise directed by NFWF in its notice if NFWF initiated the termination) undertake all reasonable steps to wind down the project comprised by the Services cooperatively with NFWF, including but not limited to the following:

- a. Stop work on any portion of the Services that is incomplete, and refrain from undertaking any further work constituting Services.
- b. Place no further work orders or enter into any further subcontracts for materials, services, facilities, or other aspects of the Services.

- c. Terminate all pending work orders and subcontracts for Services that have not yet commenced.
 - d. With the prior written consent of NFWF, promptly take all other reasonable and feasible steps to minimize and/or mitigate any damages that may be caused by the failure to complete the Services, including but not limited to reasonable settlements of any outstanding claims arising out of termination of work orders and subcontracts related to the Services.
 - e. Deliver or make available to NFWF all data, drawings, specifications, reports, estimates, summaries, and such other information and material as may have been accumulated by the Grantee and/or its Contractor under this Contract, whether completed or in progress.
 - f. Return to NFWF any unobligated or unearned portion of the Compensation.
12. **Additional Support.** By entering into this Contract, NFWF assumes no obligation to provide further funding or support to the Grantee beyond the terms stated in this Contract.
13. **Arbitration and Choice of Law.**
- 13.1 All claims, disputes, and other matters in question arising out of, or relating to this Contract, its interpretation or breach shall be decided through arbitration by a person or persons mutually acceptable to both NFWF and the Contractor. Notice of the demand for arbitration shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. The award rendered by the arbitrator or arbitrators shall be final.
 - 13.2 This Contract shall be subject to and interpreted by the laws of the State of California, without regard to choice of law principles. By entering into this Contract, the Grantee agrees to submit to the jurisdiction of the courts of the State of California.
 - 13.3 The terms of this Section will survive termination of this Contract.
14. **Compliance with Laws; Insurance; Indemnification.**
- 14.1 In conducting its activities relating to the Services and performing its obligations under this Contract, the Grantee shall assure that its Contractor conducts all such activities in compliance with all applicable Federal, State, and local laws, regulations, and ordinances; and to secure all appropriate and necessary public or private permits and consents.

- 14.2 The Grantee shall assure that the Contractor obtains and maintains all appropriate insurance against liability for injury to persons or property from any and all activities undertaken by the Contractor and associated with this Contract in any way and will have NFWF, CDFW and CSLC named as an additional insured on all such policies and provide NFWF with appropriate Certificates of Insurance reflecting such additions within sixty (60) days after this Contract is fully executed.
- 14.3 The Grantee shall assure that the Contractor indemnifies and holds harmless NFWF, CDFW and CSLC, and their officers, directors, agents, representatives, and employees in respect of any and all claims, injuries, losses, diminution in value, damages, liabilities, whether or not currently due, and related expenses (including without limitation, settlement costs and any legal or other expenses for investigating or defending any actions or threatened actions) arising from or in connection with the Services or this Contract, including but not limited to, environmental laws, regulations, orders and decrees of whatever character or nature and damage or injury to persons or property.
- 14.4 To the extent authorized by California Government Code Section 14662.5, the Grantee shall indemnify and hold harmless NFWF, CDFW and CSLC, and their officers, directors, agents, representatives, and employees in respect of any and all claims, injuries, losses, diminution in value, damages, liabilities, whether or not currently due, and related expenses (including without limitation, settlement costs and any legal or other expenses for investigating or defending any actions or threatened actions) arising from or in connection with the Services or this Contract, but only in proportion to and to the extent such claims, injuries, losses, diminution in value, damages, liabilities, and related expenses are caused by or result from the negligent or intentional acts or omissions of Grantee and its respective officers, agents, or employees who are acting within the course and scope of their employment, including but not limited to, environmental laws, regulations, orders and decrees of whatever character or nature and damage or injury to persons or property.
- 14.5 The terms of this Section will survive termination of this Contract.

15. **Publicity.** The Grantee agrees to give appropriate credit to NFWF, CDFW and CSLC for its financial or other support in any and all press releases, publications, annual reports, video credits, dedications, and other public communications regarding this Contract or any of the deliverables associated with the Services and/or this Contract. Specific guidance for promotional materials is set forth in Exhibit A. The Grantee hereby grants NFWF the right and authority to publicize NFWF's financial support for this Contract and the Services in press releases, publications and other public communications.

16. **Disclaimers.** Payments made to the Grantee under this Contract do not by direct reference or implication convey NFWF's endorsement, nor the endorsement of CDFW or CSLC,

of the Services or any deliverables provided pursuant to the Contract. All information submitted for publication or other public releases of information regarding this Contract shall carry the following disclaimer:

"The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the National Fish and Wildlife Foundation, the California Department of Fish and Wildlife, or the California State Lands Commission. Mention of trade names or commercial products does not constitute their endorsement by the National Fish and Wildlife Foundation, the California Department of Fish and Wildlife, or the California State Lands Commission."

17. **Website Links.** The Grantee agrees to permit NFWF, CDFW and CSLC to post a link on any or all of NFWF's, CDFW's and/or CSLC's websites to any websites created by the Grantee in connection with the Services or this Contract.
18. **Evaluation.** The Grantee agrees to cooperate with NFWF by providing timely responses to all reasonable requests for information to assist in evaluating the accomplishments of this Contract for a period of five (5) years after the date on which the Final Reports are provided.
19. **Access to Records.** NFWF, the Comptroller General of the U.S., and the California Attorney General, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Grantee and/or its Contractor that are directly pertinent to this Contract for purposes of making audits, examinations, excerpts or transcription for up to three years from the date of delivery of the Final Reports regarding this Contract.
20. **Severability.** Each provision of this contract is distinct and severable from the others. If one or more provisions is or becomes invalid, unlawful, or unenforceable in whole or in part, the validity, lawfulness and enforceability of the remaining provisions (and of the same provision to the extent enforceable) will not be impaired, and the parties agree to substitute a provision as similar to the offending provision as possible without its being invalid, unlawful or unenforceable.
21. **Binding Obligation.** This Contract has been duly executed by a representative of the Grantee with full authority to execute this Contract and bind the Grantee to the terms hereof. After execution by the representative of the Grantee named on the signature page hereto, this Contract will represent the legal, valid, and binding obligation of the Grantee, enforceable against the Grantee in accordance with its terms.

IN WITNESS WHEREOF, both parties have signed this Contract, intending to be bound legally.

CalRecycle

_____ Date: _____
Mark De Bie
Deputy Director, Waste Permitting, Compliance and Mitigation Division

National Fish and Wildlife Foundation

_____ Date: _____
Timothy J. DiCintio
Vice-President, Impact-Directed Environmental Accounts

Exhibit A



Cosco Busan Recreational Use Grant Program - Project Requirements

All Grantees are to provide to the National Fish and Wildlife Foundation, the items in the Check List below.

1. Proposals:

- a. Grantees will generate Preliminary and Final Proposals for the overall project. These should include a description of the work to be performed with corresponding schedule and budget. Information concerning compliance with permitting requirements (obtained/ pending) and with other applicable environmental laws such as NEPA, CEQA, and ESA should be included. Grantees should note that the California Department of Fish and Wildlife, Office Of Spill Prevention and Response (CDFW-OSPR) and/or the California State Lands Commission (CSLC) may have comments on Proposals. Final Proposals shall incorporate/address all CDFW-OSPR and CSLC comments.
- b. If a project is being done on private lands, a private landowner agreement is also required.
- c. Funds will not be disbursed without a Final Proposal that has been approved by CDFW-OSPR and CSLC. Funds for multi-year projects may be disbursed on an annual basis.



2. Annual Reports:

- a. The Annual Reports for multi-year projects should include a description of project results, compared to those planned in the prior year, and discuss any changes or deviations from the Final Proposal.
- b. Annual Reports must comply with Reporting Requirements (see #4 below).



3. Final Reports:

- a. The Final Project Report should include: (i) a summary of the work completed on the project; (ii) a discussion of performance monitoring data and analysis, as appropriate; and (iii) a final accounting of project expenditures.
- b. The Final Project Report must comply with Reporting Requirements (see #4 below)



4. Reporting Requirements:

- a. Draft Reports shall be provided to NFWF for review and comment prior to finalization. Implementers should provide draft Reports to NFWF for review with sufficient time allowed for CDFW-OSPR and CSLC review and timely submittal of the Annual/Final Report.
- b. Annual/Final Reports shall incorporate/address all CDFW-OSPR and CSLC comments provided on the draft Reports.
- c. Reports shall include photo documentation, if appropriate, including before and after photos and/or other photos demonstrating work in progress or accomplished.
- d. Acknowledgment of funding: Reports should acknowledge funding by the Cosco Busan Recreational Use Grant Program overseen by the CDFW-OSPR and the CSLC.

Include a reference to the Department of Fish and Wildlife and the California State Lands Commission and the CDFW and CSLC Logos (if suitable), and an attribution, such as, "Funding for this restoration project was provided (in part) by the Cosco Busan Recreational Use Grant Program."
- e. Accessibility Requirements for Reports
 - i. Must be submitted in a format suitable for posting in the Cosco Busan Oil Spill Administrative Record maintained on the CDFW-OSPR's webpage (http://www.dfg.ca.gov/ospr/NRDA/cosco_busan_admin.aspx).
 - ii. Must be in a PDF or Word format that is accessible by people with disabilities (Compliance with ADA and Section 508 of the Rehabilitation Act of 1973). See Aids to Making Documents Accessible in paragraph 6 below.

5. Promotional Materials

- a. Recognition in promotional materials shall be the same as that required for reports in paragraph 4.d above.

6. Aids in Making Documents Accessible

a. Accessibility Mandate

Web accessibility refers to the inclusive practice of making websites usable by people of all abilities and disabilities. All U.S. federal agencies were mandated under Section 508 of the U.S. Rehabilitation Act to make their websites accessible to federal employees and to the public. California Government Code 11135, Section D, mandates that all electronic and information technology developed by state governmental agencies is accessible to people with disabilities.

Additional information:

Section 508 policy:

<http://www.adobe.com/accessibility/508standards.html>

State of California: OSHPD Accessibility Policy

http://www.oshpd.ca.gov/General_Info/Accessibility_Policy.html

Accessibility Definition – Wikipedia

http://en.wikipedia.org/wiki/Web_accessibility

b. Adobe Quick Reference Guide

The following link provides helpful suggestions for creating accessible Word documents. Included are suggestions on formatting, headings, alternate text, text boxes, lists, etc. (If these suggestions are applied, we can easily convert Word documents to accessible PDF's.)

Adobe Quick Reference Guide: Preparing Microsoft Word Documents to Create Accessible PDF Files

http://blogs.adobe.com/accessibility/files/accessibility/assets/WordToPDFReferenceCard_v1.pdf