

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:

Prepared on: September 9, 2004
Department Name: Planning & Development
Department No.: 053
Agenda Date: September 21, 2004
Placement: Administrative
Estimate Time: N/A
Continued Item: Yes
If Yes, date from: December 2, 2003
Document File Name: G:\group\energy\wp\policy\cref
\04\contract\SeaBirds.BOS

TO: Board of Supervisors

FROM: Val Alexeeff, Director
Planning & Development

STAFF CONTACT: Kathy McNeal Pfeifer, 568-2507

SUBJECT: Coastal Resource Enhancement Fund (CREF) – Grant Contract

Recommendation(s):

That the Board of Supervisors executes the attached CREF contract (BC-05-075) with the Santa Barbara Wildlife Care Network to purchase various equipment for the purpose of capturing and rehabilitating injured or oiled seabirds, in the amount of \$1,037 for the period of September 21, 2004 to November 1, 2004.

Alignment with Board Strategic Plan:

The recommendation aligns with Goal No. 5. A High Quality of Life for All Residents.

Executive Summary and Discussion:

In December of 2003, the Board of Supervisors awarded the Santa Barbara Wildlife Care Network a \$1,037 CREF grant to purchase four poled nets (to capture injured or oiled seabirds) and a small 8' x 6' storage shed (to store equipment used specifically to care for seabirds). The Santa Barbara Wildlife Care Network matches the CREF grant with \$100 worth of in-kind services to assemble and install the shed.

Mandates and Service Levels:

Mitigation of impacts to coastal resources from offshore oil and gas development is required as a condition of permits on five projects. Mitigation is provided through the Coastal Resource Enhancement Fund. There are no changes in service level as a result of this agreement.

Fiscal and Facilities Impacts:

No fiscal and facilities impacts. The Coastal Resource Enhancement Fund is funded by mitigation fees paid by developers of offshore oil and gas reserves. Staff costs to prepare this agreement have been offset by interest accrued to the Coastal Resource Enhancement Fund. The \$1,037 for the Wildlife Care Network's equipment project is expended from Fund #0063, Department #053, Program #5090, Account #7863, Project #0416. The CREF program is part of the mitigation program within the Energy Division Cost Center on page D-300 in the Planning & Development Department's section of the County's Budget F04/05.

Special Instructions:

Clerk of the Board will forward a copy of the agreement to Kathy McNeal Pfeifer of the Planning and Development Department, Energy Division, who will mail a copy of the agreement to the grantee and request the Auditor Controller to pay the award.

Concurrence:

County Counsel
Auditor-Controller
Risk Manager

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CONTRACT NO. ____

**AGREEMENT BETWEEN THE COUNTY OF SANTA BARBARA
AND SANTA BARBARA WILDLIFE CARE NETWORK**

This agreement is made on this _____ day of _____, 2004, by and between the Santa Barbara Wildlife Care Network, a non-profit, charitable corporation registered under Section 501.c.3 of the U.S. Internal Revenue Code (hereinafter referred to as "GRANTEE"), and the County of Santa Barbara, a political subdivision of the State of California (hereinafter referred to as "COUNTY"), wherein COUNTY agrees to grant certain funds to GRANTEE for the purposes and on the conditions specified herein.

RECITALS

WHEREAS, environmental impact reports prepared for oil development projects offshore Santa Barbara County have identified adverse, residual impacts to the local coastal resources not otherwise mitigable;

WHEREAS, COUNTY established and administers the Coastal Resource Enhancement Fund (hereinafter referred to as "CREF") that is financially supported by offshore oil and gas developers to mitigate these impacts; and

WHEREAS, the County Board of Supervisors conducted a public hearing for the 2004 CREF funding cycle and found GRANTEE's proposal to fulfill the intent and purpose of CREF by enhancing environmentally sensitive coastal resources.

GRANT TERMS AND CONDITIONS

Now, therefore, in consideration of the mutual promises hereinafter set forth, it is agreed as follows:

(1) Obligations to be Performed Under this Agreement. Within the Time of Performance specified in paragraph 3, GRANTEE shall perform all of the obligations described in this Agreement and set forth in the project description, which is attached hereto as Attachment A (hereinafter referred to as "PROJECT").

GRANTEE agrees to furnish all labor, materials, equipment, required licenses, permits, fees, and other appropriate legal authorization from all applicable federal, state, and local jurisdictions necessary to perform and complete the PROJECT. The parties acknowledge that no COUNTY commitment with regard to PROJECT approval can be or is hereby given in advance.

(2) Grant Funding. COUNTY shall award to GRANTEE an amount not to exceed \$1, 037 from CREF (Fund #0063, Dept. #053, Program #5090, Account #7863, Project #0416) 10 days after execution of this Agreement, to complete PROJECT.

(3) Time of Performance. Purchase of PROJECT shall be completed on or before November 1, 2004. However, COUNTY's Director of Planning & Development Department (hereinafter referred to as "DIRECTOR") may extend the time of performance by up to one year for good cause.

(4) Project Amendments. GRANTEE shall obtain prior written approval of the DIRECTOR for any changes proposed by GRANTEE in the PROJECT as described herein. Such changes include any change to the project description, any reduction in the overall project budget, or any change in line-item budget item of 10 percent or more. If the DIRECTOR finds that GRANTEE has proposed a change that represents a significant departure from the project originally considered and approved by the Board, then Board approval shall be required for such project changes.

(5) Project Cost Increases. If, for any reason, PROJECT costs exceed or are expected to exceed those represented by GRANTEE for receipt of this grant, and such increases cannot be covered by GRANTEE from its own or matching funds, GRANTEE shall notify COUNTY within 10 days of discovering the potential cost exceedance. If GRANTEE cannot secure the necessary resources within 30 days of notifying COUNTY, at the end of those 30 days, GRANTEE shall return to COUNTY all unspent monies of this grant (including monies encumbered by contracts). COUNTY shall hold the grant until GRANTEE secures all necessary resources to complete this PROJECT. Failure to secure said resources prior to termination of this Agreement shall result in forfeiture of grant by GRANTEE.

(6) Project Cost Savings. GRANTEE shall return any unspent funds granted under this agreement to COUNTY within 60 days of completing PROJECT construction, and COUNTY shall return any unspent funds to CREF for reallocation by COUNTY in future funding cycle(s). If, for any reason, GRANTEE finds it cannot complete PROJECT, GRANTEE shall report that finding to COUNTY immediately and return any unspent funds granted under this agreement (including monies encumbered by subsequent contracts) to CREF within 14 days of that finding.

(7) Acknowledgement. GRANTEE shall publicly identify in its newsletter that PROJECT was "...financed by COUNTY's Coastal Resource Enhancement Fund, a partial mitigation of impacts from the following offshore oil and gas projects: Point Arguello, Point Pedernales, Santa Ynez Unit, and Gaviota Terminal."

(8) Non-Partnership. This Agreement is not intended by the parties to constitute or create a joint venture, pooling arrangement, or formal business organization of any kind. The rights and obligations of the parties shall be only those expressly set forth herein.

(9) Status of GRANTEE. GRANTEE and GRANTEE's subcontractors shall perform all services under this Agreement as independent parties and not as employees, officers or agents of the COUNTY.

(10) Indemnification. GRANTEE shall defend, indemnify, and save harmless the COUNTY and its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission on the part of GRANTEE or its agents or employees. GRANTEE shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with the Agreement.

(11) Final Report. Within 45 days of completion of PROJECT, GRANTEE agrees to provide to COUNTY a final report, which shall include:

- (a) a brief summary of PROJECT's objectives and how these objectives were accomplished,
- (b) an itemized list and support documentation of all expenses incurred to complete PROJECT, and
- (c) photos of the purchased equipment.

(12) Records. GRANTEE shall maintain complete financial records that clearly reflect the expenditures of this grant and matching funds in accordance with generally accepted accounting principles and that evidence proper audit trails reflecting the true cost of the services rendered and costs incurred for the project. GRANTEE shall maintain all such records for a minimum of four years after PROJECT completion. GRANTEE agrees that COUNTY's designated representative may, at any time during normal working hours and up to four years after PROJECT completion, review or audit all records regarding performance of this contract. GRANTEE shall submit to COUNTY copies of findings of any audits which GRANTEE commissions.

(13) Termination.

(a) COUNTY may, in its sole discretion, terminate this Agreement for convenience by giving thirty (30) days prior written notice to GRANTEE. GRANTEE shall not incur any unnecessary expenses or costs which are reimbursable under this Agreement during this period except those absolutely necessary to close out all activities related to the Agreement. COUNTY will not compensate any other charges incurred by GRANTEE during this period unless approved in writing by the DIRECTOR.

(b) COUNTY may terminate this Agreement for cause should GRANTEE default in the performance of this Agreement or materially breach any of its provisions. Such termination shall be by written notice and shall be effective upon receipt by GRANTEE.

(14) Remedies Not Exclusive. No remedy herein conferred upon or reserved to either party is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

(15) Waivers. The waiver by either party to this Agreement of any term, covenant, or condition of this Agreement or of any provision, ordinance, or law, shall not be deemed to be a continuing waiver of such term, covenant, condition, or law, or of any subsequent breach or violation of the same, or of any other term, covenant, ordinance of law. A (hereinafter referred to as "PROJECT").

(16) Grant Agreement Integrated. In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled superseded or changed by any oral agreements, course of conduct, waiver or estoppel.

(17) Assignment. This Agreement shall not be assigned by GRANTEE without the prior written consent of the DIRECTOR.

(18) California Law to Apply. This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in southern California, if in federal court.

(19) Nondiscrimination Clause. GRANTEE shall abide by the Unlawful Discrimination Ordinance, Article XIII of Chapter 2 of the Santa Barbara County Code, which is attached hereto as Attachment B and incorporated herein by this reference.

(20) Taxes. GRANTEE shall be responsible for payment of all taxes due as a result of the Agreement. GRANTEE's Federal Tax Identification Number is 77-0201505.

(21) Grant Agreement Integrated. This Agreement represents the entire and integrated Agreement between DISTRICT and GRANTEE and supersedes any and all other negotiations, representations, and/or agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

(22) Point of Contact. The designated contacts for this agreement are:

(a) Kathy McNeal Pfeifer, 568-2507
P&D, Energy Division
30 E. Figueroa Street, Second Floor
Santa Barbara, California 93101
Email: kathypm@co.santa-barbara.ca.us

(b) Firth Wilkinson, 966-6623
Santa Barbara Wildlife Care Network
PO Box 6594
Santa Barbara, CA, 93160

Either party may change its point of contact by providing 30 days written notice to the other party. The DIRECTOR or DEPUTY DIRECTOR may designate a new point of contact for COUNTY.

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This Agreement between the County of Santa Barbara and GRANTEE is executed at Santa Barbara, California, on the above signed date.

ATTEST:

MICHAEL F. BROWN
Clerk of the Board

By _____
Deputy Clerk of the Board

APPROVED:

COUNTY

Joseph Centeno, Chair
County of Santa Barbara
BOARD OF SUPERVISORS

CREF GRANTEE

Firth Wilkinson, Board Officer
Santa Barbara Wildlife Care Network
CREF GRANTEE

APPROVED AS TO FORM:

STEPHEN SHANE STARK
Deputy County Counsel

By _____

**APPROVED AS TO
ACCOUNTING FORM:**

ROBERT GEIS
Auditor-Controller

By _____

**APPROVED AS TO
INSURANCE FORM:**

STEPHEN D. UNDERWOOD
Chief Assistant County Counsel

By: _____

Attachment A
Project Description, Budget, and Schedule

Project Description.

GRANTEE shall purchase four poled nets and employ these nets to capture injured or oiled seabirds. Additionally, GRANTEE shall purchase a small 8' x 6' free-standing, vinyl storage shed, to store equipment used specifically to care for seabirds (e.g., including nets, carriers to transport the seabirds from the beach, towels, food, rehydration fluid, and a heater).

Project Budget

Item/Task	In-Kind Service Match*	CREF Expenditure Amount
Purchase and ship four nets		\$ 666
Purchase and ship shed		\$ 371
Assemble and install shed	\$ 100	
Total costs	\$ 100	\$1,037

* GRANTEE shall assemble and install the shed.

Schedule

Task Description	Completion Date
Purchase equipment	September 1, 2004
Assemble and install shed	September 15, 2004
Prepare and submit final CREF report	November 1, 2004

Attachment B

COUNTY OF SANTA BARBARA UNLAWFUL DISCRIMINATION ORDINANCE

Sec. 2-95. Prohibition of unlawful discrimination in employment practices. The County of Santa Barbara reserves the right to terminate forthwith each and every written contract and agreement (except purchase orders) for goods and/or services entered into by the County of Santa Barbara or by its joint powers, agencies or agents with the consent of the other parties (hereinafter called "contractor") including but not limited to concessions, franchises, construction agreements, leases, whether now in effect or hereinafter made if the county finds that the contractor is discriminating or has discriminated against any employee or applicant for employment in violation of any applicable state or federal laws, rules or regulations which may now or hereafter specifically prohibit such discrimination on such grounds as race, religion, sex, color, national origin, physical handicap when otherwise qualified, Vietnam era veteran/disabled, or age.

Such finding may only be made after contractor has had a full and fair hearing on notice of thirty (30) days before an impartial hearing officer at which hearing contractor may introduce evidence, produce witnesses and have the opportunity to cross-examine witnesses produced by the county. Further, any finding of discrimination must be fully supported by the facts developed at such hearing and set forth in a written opinion; and in addition, contractor may move in the appropriate court of law for damages and/or to compel specific performance of a contractor or agreement if any the above procedures are not afforded to the contractor. If contractor is not found to have engaged in unlawful discriminatory practices, county shall pay all costs and expense of such hearing, including reasonable attorneys' fees to contractor in accordance with current Santa Barbara County Superior Court schedule of attorneys' fees for civil trials. If contractor is found to have engaged in such unlawful discriminatory employment practices, contractor shall pay all such costs, expenses and attorneys' fees.

Whether or not a contract or agreement is still in existence at the time of final determination of such unlawful discrimination, the contractor shall forthwith reimburse county for all damages directly stemming from such discrimination; however, those damages shall not exceed and are not reimbursable in an amount which exceeds amounts paid contractor under the terms of the contract or agreement.

Nothing in this section 2-95 shall directly or by interpretation give a private cause of action to any third party (not a signatory to the contract or agreement) including employees past or present, or applicants for employment to contractor, it being the sole purpose of this clause to administratively assure compliance with the nondiscrimination clauses contained herein.

Employment practices shall include, but are not limited to employment, promotion, demotion, transfer, recruitment and advertising for recruitment, layoff or other termination, rate of pay, employee benefits and all other forms of compensation selection for training and apprenticeship and probationary periods.

Contractor shall permit access at all reasonable time and places to all of its records of employment, advertising, application forms, tests and all other pertinent employment data and records, to the County of Santa Barbara, its officers, employees and agents for the purpose of investigation to ascertain if any unlawful discrimination as described herein has occurred or is being practiced, provided

that such records are relevant to a complaint of an unlawful discriminatory practice which has been forwarded to contractor reasonably prior to the time contractor is asked to make such records available. In addition, all such records shall be deemed "Confidential" by the officers, employees and agent of the county. No records or copies of such records may be removed from the premises of contractor and no disclosure, oral or written of such record, may be made to third parties except as provided within the agreement.

Provided, however, that in the event of a hearing to determine whether or not contractor is engaging in unlawful discrimination in employment practices as defined herein, the board of supervisors of Santa Barbara County may issue subpoenas to require that certified copies of such records be made available to the hearing.

Failure to fully comply with any of the foregoing provisions relating to unlawful discrimination in employment practices shall be deemed to be a material breach of any contract or agreement with the County of Santa Barbara. All persons contracting with or who have contracts for goods or services with the county shall be notified that this chapter applies to their contract or agreement with the County of Santa Barbara. (Ord. No. 2946, SS 1; Ord. No. 2993, SS 1; Ord. No. 3018, SS 1)

Sec. 2-95.5. Exceptions. Notwithstanding any other provisions in this article, any party contracting with the County of Santa Barbara having an affirmative action program which has been approved within thirty-six (36) months from the date of the contract by an agency of the federal government shall be deemed to be in compliance with the provisions of this article upon furnishing documentary evidence of such approval satisfactory to the county affirmative action officer. Loss of such approval shall be immediately reported by such party to the county affirmative action officer.

Sec. 2-96. Purchase orders. Purchase orders shall contain the following clause as grounds for termination of such purchase order.

"If complaint is made that seller is engaging in discriminatory employment practices made unlawful by applicable state and federal laws, rules or regulations, and the State Fair Employment Practice Commission or the Federal Equal Employment Opportunities Commission determines that such unlawful discrimination exists, then the County of Santa Barbara may forthwith terminate this order." (Ord. No. 2946, § 1)

Sec. 2-97. Affirmative action officer. At the discretion of the county affirmative action officer, he or she shall promptly and thoroughly investigate, or cause to be investigated reports and complaints from whatever source, that any party contracting with the County of Santa Barbara is engaging, or during the term of a contract or agreement with the County of Santa Barbara has engaged, in any unlawful discriminatory employment practices as described in Section 2-95 of this Code. If the investigation discloses reason to believe such unlawful discrimination does exist or has existed and the conditions giving rise thereto have not been changed so as to prevent further such unlawful discrimination, and the said party shall not forthwith terminate such unlawful discrimination, take all appropriate steps to prevent a recurrence of such or other unlawful practices, and compensate the person or persons unlawfully discriminated against for any and all loss incurred by reason of such unlawful discrimination, all to the satisfaction of the affirmative action officer, then the affirmative action officer shall cause the matter to be presented for action to the State Fair Employment Practices Commission or the Federal Equal Employment Opportunities Commission, or both, and to any other concerned state or federal agencies or officers.

If and when it has been finally determined by the affirmative action officer, county counsel, or state or federal regulatory agencies that such unlawful discriminatory employment practice has in fact so occurred or are being carried on, then the affirmative action officer shall forthwith present the entire matter to the board of supervisors of the county, together with all damages, costs and expense related thereto and incurred by county, for appropriate action by the board of supervisors in accord with the intent and purposes of this article and of the affirmative action program of the County of Santa Barbara (Ord. No. 2946, § 1).

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