

**AGREEMENT FOR DESIGN AND CONSTRUCTION SERVICES  
BETWEEN THE COUNTY OF SAN MATEO AND  
GO NATIVE, INC.**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and Go Native, Inc., hereinafter called "Contractor";

**W I T N E S S E T H:**

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of providing design and construction services for the James V. Fitzgerald Area of Special Biological Significance Pollution Reduction Program Storm Drain Best Management Practices Project.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:**

**1. Exhibits and Attachments**

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A – Services

Exhibit B – Payments and rates

Exhibit C – General Obligation of Contractor

Exhibit D – State Water Resources Control Board Grant Agreement No. 10-402-550

Attachment I – §504 Compliance

Attachment IP – Intellectual Property

**2. Services to be performed by Contractor**

In consideration of the payments set forth herein and in Exhibit “B,” Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit “A”, Exhibit “C”, and Exhibit “D.”

### **3. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A", Exhibit "C", and Exhibit "D", County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed Two Hundred Fifty Thousand Dollars and No/100s [\$250,000.00].

### **4. Term and Termination**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from April 9, 2013 through March 31, 2015 to coincide with the expiration date of the State Water Resources Control Board Grant Agreement No. 10-402-550 (Exhibit "D").

This Agreement may be terminated by Contractor, the Director of Department of Public Works and Parks or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

### **5. Availability of Funds**

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding.

### **6. Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

### **7. Hold Harmless**

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties or claims of damages resulting from Contractor's failure to comply with applicable laws, or (D) any other loss or cost resulting from the Contractor's negligent or reckless acts or

omissions or willful misconduct in connection with the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which the County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

**8. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

**9. Insurance**

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.
- (2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

|   |             |
|---|-------------|
| (a) Comprehensive General Liability .....   | \$1,000,000 |
| (b) Motor Vehicle Liability Insurance ..... | \$1,000,000 |
| (c) Professional Liability .....            | \$1,000,000 |

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

#### **10. Compliance with laws; payment of Permits/Licenses**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. Further, Contractor certifies that the Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

#### **11. Non-Discrimination and Other Requirements**

A. *Section 504 applies only to Contractor who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a

disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.

- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
  - i) termination of this Agreement;
  - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
  - iii) liquidated damages of \$2,500 per violation;
  - iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

**12. Compliance with Contractor Employee Jury Service Ordinance**

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

**13. Retention of Records, Right to Monitor and Audit**

(a) CONTRACTOR shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.

(c) CONTRACTOR agrees to provide to COUNTY, to any Federal or State department having monitoring or review authority, to COUNTY's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

**14. Merger Clause**

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

**15. Controlling Law and Venue**

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

**16. Notices**

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United States mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt for transmittal, charges prepaid, addressed to:

**In the case of County, to:**

James C. Porter, Director  
County of San Mateo  
Department of Public Works and Parks  
555 County Center, 5<sup>th</sup> Floor  
Redwood City, CA 94063  
Telephone: (650) 363-4100  
Facsimile: (650) 361-8220

**In the case of Contractor, to:**

Go Native, Inc.  
PO Box 370103  
Montara, CA 94037  
Telephone: (650) 728-2286  
Facsimile: (650) 728-3067

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO


By: \_\_\_\_\_  
President, Board of Supervisors, San Mateo County

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Clerk of Said Board

Go Native, Inc.

  
Contractor's Signature

Date: 3/25/13

Long Form Agreement/Non Business Associate v 8/19/08



## Exhibit “A”

In consideration of the payments set forth in Exhibit “B”, Contractor shall provide the following services at the request of the Director of Public Works and Parks or the Director’s designee:

1. Contractor shall provide design and construction services including, but not limited to, vegetated swale BMP conceptual design, implementation, and maintenance to assist the County of San Mateo Department of Public Works and Parks (Department) in completing the second phase of the James V. Fitzgerald Pollution Reduction Program. Services shall include design and installation of vegetative swale BMPs at 10 to 20 locations within the Fitzgerald ASBS watershed.
2. Following final BMP site selection by the Department, Department will request the Contractor to prepare and submit a detailed Scope of Services, a not-to-exceed fee, and a timetable for completing the proposed work. Once approved, the Department will issue a Task Order authorizing the Contractor to begin work. Contractor agrees to complete the Scope of Services for an amount equal to or less than the not-to-exceed fee and within the time limits set forth in approved timetable.
3. The Scope of Services shall include, but not be limited to, the following four tasks:

### **Task 1 – Project Management**

The Contractor shall provide effective project management to ensure that the project is implemented on time and within budget. Project management tasks shall include project coordination, scheduling, budget tracking, and timely invoicing. The Contractor shall coordinate closely with the lead Department staff during all phases of the project and shall participate in office and/or field meetings with Department staff, as deemed necessary.

### **Task 2 – BMP Conceptual Design**

Prior to completing the conceptual design of the vegetated swale BMPs, the Contractor shall review all available topographic survey data, hydrology data, any associated environmental permits, and relevant design guidance documents (i.e., Municipal Regional Permit, San Mateo County Sustainable Green Streets and Parking Lots Design Guidebook). The available data and documents will be provided to the Contractor by the Department or are available online at [www.flowstobay.org](http://www.flowstobay.org). The Contractor shall conduct any necessary preliminary studies or testing (i.e., infiltration testing, soil testing, additional hydraulic calculations) to ensure that the vegetated swales are properly designed. The Contractor shall then develop draft and final conceptual design plans for each project site. The conceptual design plans must include, at a minimum, a generalized site layout, swale typical cross-sections, and profiles showing design elevations. The submittal should also include plant lists and/or planting plans and specifications for erosion control and construction materials.

### **Task 3 – BMP Implementation and Construction**

Following Department approval of the conceptual design plans, the Contractor shall implement and construct the vegetated swale BMPs as designed. The work shall include clearing and grubbing, utility location and marking, excavation, grading, disposal of material, BMP installation and/or planting, and installation of erosion control materials and if warranted, barriers for the protection of the installed BMPs from vehicle parking. Prior to the start of construction, the Contractor shall submit a schedule for construction and a traffic control plan. The Contractor is responsible for all traffic control during construction. The Contractor shall not commence construction without a written Notice to Proceed from the Department. The Contractor shall coordinate with Department staff for required biological monitoring during construction. All work shall be conducted in accordance with the conditions specified in the associated environmental permits. All recommended construction BMPs and conservation measures shall be implemented and maintained by the Contractor. The Contractor is responsible for providing all labor, materials, tools, equipment, and incidentals necessary for completing the work.

### **Task 4 – BMP Maintenance**

The Contractor shall be responsible for maintenance of the vegetated swale BMPs throughout the remainder of the grant funded portion of the Fitzgerald Program (March 31, 2015). Maintenance shall include, but not be limited to, watering, weeding, additional planting, and sediment removal. Prior to the end of the contract, the Contractor shall provide the County with written recommendations for long-term maintenance.

## Exhibit "B"

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

1. County shall pay Contractor upon receipt in Accounting Section of the Department of Public Works and Parks of a written itemized invoice identifying the specific work completed, County project number (if applicable), number of hours involved and breakdown of charges. The total not-to-exceed amount will be stipulated in the Task Order(s). Costs for services for completion of each site location included in the Task Order(s) shall be authorized in writing prior to proceeding with the work. Billing rates for services provided under this Agreement shall be based upon the Contractor's most recent fee schedule and by reference made a part of this Agreement. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable.
2. The Contractor hereby agrees to pay not less than the prevailing rates of wages and be responsible for compliance with all the provisions of the California Labor Code, Article 2-Wages, Chapter 1, Part 7, Division 2, Section 1170 et seq. A copy of the prevailing wage scale established by the Department of Industrial Relations is on file in the office of the Director of Public Works and Parks, and available at [www.dir.ca.gov/DLSR](http://www.dir.ca.gov/DLSR) or by phone at 415-703-4774. California Labor Code Section 1776(a) requires each contractor and subcontractor to keep accurate payroll records of trades workers on all public works projects and to submit copies of certified payroll records upon request.
3. The County's total fiscal obligation under this Agreement, shall not exceed \$250,000 unless said amount is authorized to be increased by the County Board of Supervisors by written amendment to this agreement. Specific assignments that may be assigned to the Contractor shall have individual not-to-exceed amounts. The sum of individual task order not-to-exceed fees for multiple projects that may be assigned to the Contractor shall not exceed the total \$250,000 not-to-exceed amount for this Agreement without prior written approval by the County Board of Supervisors.

## Exhibit "C"

### **1. Contractor Personnel**

Contractor represents that it is qualified to furnish the services described under this Agreement. Contractor further declares that one or more members or employees of its firm and that of its sub Contractors, if so required by the State, if any, are licensed by the State of California to perform their services and that these services will be performed by them or under their direct supervision. Contractor shall furnish to County for approval, upon execution of this Agreement, a list of all firms or corporations to be employed as sub Contractors.

Nothing in this Agreement abrogates the professional responsibilities of the Contractor and/or sub Contractors with respect to design defects, errors, omissions, or malpractice.

### **2. Corrections and/or Revisions**

Contractor shall make and provide to the County all necessary corrections and/or revisions to the project design and document when it is determined by the Director of Public Works and Parks or his designated representative, that such changes are necessary for the project and are due to oversights, omissions or errors of Contractor.

### **3. General Obligations of County**

County shall be responsible for providing any available data required by the Contractor as stipulated in any approved Task Order.

County shall examine documents submitted by Contractor and shall render comments and direction pertaining thereto promptly (up to two weeks or otherwise upon written agreement by County and Contractor), as stipulated in approved Task Orders.

### **4. Payment Upon Suspension, Abandonment of Project, or Termination of Agreement**

If any Task Order is suspended for more than thirty (30) calendar days, or abandoned in all or part, Contractor shall be paid for services performed prior to receipt of thirty (30) days written notice from County of such suspension or abandonment, together with reimbursable expenses then due. In the event that the County abandons any Final Task Order, the County may specifically authorize additional work necessary to properly close out the project.

If this Agreement or any Task Order is suspended or terminated due to fault of Contractor, County shall be obligated to compensate Contractor only for that portion of Contractor's services that were satisfactorily performed.

### **5. Performance of Services if Contractor is not Diligent in Performing Work**

In the event Contractor is not diligent in pursuing the designated services as specified in each Task Order, the Director of Public Works and Parks or the respective designated representative

may, at his option, seven (7) days after written notice to Contractor, perform any such required engineering services or retain a different Contractor to do the same, and the cost associated with having said work completed by means other than the Contractor will be retained from any sums not yet paid to the Contractor.

## **6. Authorization to Proceed**

Contractor shall commence work upon receipt of the Task Order.

### **6.1 Time of Completion of Each Task**

Contractor agrees to perform the professional services for the Task Order within the time limits set forth in the project schedule required by this Agreement. Any change in the scope of services as outlined in the Task Order will require a revised time table.

County agrees to exercise due diligence in performing its tasks to implement the Contractor's time schedule.

## **7. County's Review and Approval**

Between each phase of work and at critical progress points there shall be a review and approval period by County and other agencies. County shall reject Contractor's submittal if changes and/or comments transmitted to Contractor by County during previous review were not addressed by Contractor in current submittal.

## **8. Changes in Work**

The Director of Public Works and Parks or the respective designated representative may order changes in scope or character of work in writing which are mutually acceptable, either decreasing or increasing the amount of Contractor's services. In the event that such changes are ordered, Contractor shall be entitled to compensation of all work previously directed by County and performed by Contractor prior to receipt of notice of change. Increased compensation for changes shall be determined in accordance with Section 6.1 above. Compensation shall first have been agreed to in writing by County.

In the event that changes are ordered pursuant to this Section, the schedule for progress and completion and compensation as provided with respective Task Order shall be adjusted by negotiation between Contractor and County.

## **9. Interest of Contractor/Contractor Independent of County**

In accepting this Agreement, Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. Contractor further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed throughout the term of this Agreement. Contractor certifies that no one who

has or will have any financial interest under this Agreement is an officer or employee of the County.

In the performance of the engineering services necessary for compliance with this Agreement, Contractor, and any of its sub Contractors or employees, shall be, and is at all times considered, an Independent Contractor, and is not an agent or employee of the County. Contractor has, and shall retain, the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting him in the performance of his engineering services hereunder to include any and all sub Contractors employed for the project described herein. Contractor shall be solely responsible for all matters relating to payment of his employees, including compliance with social security, withholding, and all other regulations governing such matters, and shall be solely responsible for his own acts and those of his subordinates and employees.

#### **10. General Provisions**

- (a) The Contractor acknowledges that time is of the essence for all projects defined in approved Task Order(s) and agrees to complete all work within the time frame as stipulated within said Task Order(s). Time extensions shall only be approved with prior written approval of the County and failure to complete services according to a mutually agreed upon schedule may be grounds for contract termination.
- (b) The Contractor upon becoming aware of factors which would result in delays shall be responsible for alerting County to potential delays well in advance in order that possible mitigation measures may be evaluated. Contractor shall detail the nature and reasons for potential delays and shall provide the County with possible mitigation measures for consideration.
- (c) On matters pertaining to Task Orders to be performed and the time taken by Contractor to perform such services, the decision of the Director of Public Works and Parks or the respective designated representative will be final after discussions between County and Contractor.
- (d) The Contractor warrants that he/she has not employed or retained any company or persons, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

## **11. Ownership of Documents**

Consistent with Attachment IP, all tracings, sketches, plans, specifications, estimates, maps, design calculations, quantity calculations, supporting documents, studies, survey notes, and other documents prepared by Contractor or sub Contractors under the terms of this Agreement shall be delivered to and become the property of the County without restriction or limitation on their use. However, should County re-use or utilize data or drawings not for their intended use then County shall be solely liable and indemnify Contractor against such use. Computer files used by Contractor to produce the final set of plans and specifications shall also be delivered in AutoCAD, Access, Excel and Word electronic form on compact disks or other media acceptable to the County at no additional cost and become the property of the County.

## **12. Jobsite Safety and Environmental Protection**

Neither the professional activities of the Contractor nor the presence of the Contractor or his or her employees and sub Contractors at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety or environmental protection precautions required by any regulatory agencies. The Contractor and his or her personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Contractor agrees that the General Contractor is solely responsible for jobsite safety, and environmental protection, and warrants that this intent shall be made evident in the County's Agreement with the General Contractor. The Contractor also agrees that the County, the Contractor and any other County Contractors that may be providing services at the construction site shall be indemnified and shall be made additional insured's under the General Contractor's general liability insurance policy.

Exhibit “D”

State Water Resources Control Board Grant Agreement No. 10-402-550



PROPOSITION 84 AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE (ASBS) GRANT PROGRAM  
GRANT AGREEMENT

BETWEEN THE  
STATE WATER RESOURCES CONTROL BOARD, hereinafter called "State" or "State Water Board"  
AND

SAN MATEO COUNTY, hereinafter called "Grantee"

JAMES V. FITZGERALD ASBS POLLUTION REDUCTION PROGRAM, hereinafter called "Project"

AGREEMENT NO. 10-402-550

The State and Grantee hereby agree as follows:

PROVISION(S). The following provision(s) authorize the State Water Board to enter into this type of Grant Agreement:

Public Resources Code § 75060 (Proposition 84 Clean Beaches Initiative)

PURPOSE. The State shall provide a grant to and for the benefit of Grantee for the purpose of implementing the James V. Fitzgerald ASBS Pollution Reduction Program, including implementation of targeted Best Management Practices (BMPs) and an education/outreach campaign.

GRANT AMOUNT. The maximum amount payable under this Agreement shall not exceed \$2,300,000. Global Positioning System (GPS) locations for any monitoring must be identified for this Project prior to any disbursements.

TERM OF AGREEMENT. The term of the Agreement shall begin on MAY 24, 2011, and continue through final payment plus thirty-five (35) years unless otherwise terminated or amended as provided in the Agreement. HOWEVER, ALL WORK SHALL BE COMPLETED BY MARCH 31, 2015. ABSOLUTELY NO FUNDS MAY BE REQUESTED AFTER MAY 1, 2015.

PROJECT REPRESENTATIVES. The Project Representatives during the term of this Agreement will be:

| State Water Board                              | Grantee: San Mateo County                         |
|--|---|
| Name: Ruben Mora, Grant Manager                | Name: James C. Porter, Project Director           |
| Address: 1001 I Street, 16 <sup>th</sup> Floor | Address: 555 County Center, 5 <sup>th</sup> Floor |
| City, Zip: Sacramento 95814                    | City, Zip: Redwood City 94063                     |
| Phone: (916) 341-5387                          | Phone: (650) 599-1421                             |
| Fax: (916) 341-5707                            | Fax: (650) 361-8220                               |
| e-mail: rmora@waterboards.ca.gov               | e-mail: jporter@co.sanmateo.ca.us                 |

Direct all inquiries to:

| State Water Board                              | Grantee: San Mateo County                         |
|--|---|
| Section: Division of Financial Assistance      | Section: Department of Public Works               |
| Attention: Melissa Miller, Program Analyst     | Name: Julie Casagrande, Grant Contact             |
| Address: 1001 I Street, 17 <sup>th</sup> Floor | Address: 555 County Center, 5 <sup>th</sup> Floor |
| City, Zip: Sacramento 95814                    | City, Zip: Redwood City 94063                     |
| Phone: (916) 993-3872                          | Phone: (650) 599-1457                             |
| Fax: (916) 341-5296                            | Fax: (650) 361-8220                               |
| e-mail: mmiller@waterboards.ca.gov             | e-mail: jcasagrande@co.sanmateo.ca.us             |

Either party may change its Project Representative upon written notice to the other party.

STANDARD PROVISIONS. The following exhibits are attached and made a part of this Agreement by this reference:

- Exhibit A SCOPE OF WORK
- Exhibit B INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS
- Exhibit C GENERAL TERMS & CONDITIONS
- Exhibit D SPECIAL CONDITIONS – PROPOSITION 84 ASBS GRANT PROGRAM

GRANTEE REPRESENTATIONS. The Grantee accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by the Grantee in its application, accompanying documents, and communications filed in support of its request for grant funding. Grantee shall comply with and require its contractors and subcontractors to comply with all applicable laws, policies and regulations.

IN WITNESS THEREOF, the parties have executed this Agreement on the dates set forth below.

By: Carole Groom  
President, Board of Supervisors,  
County of San Mateo

CAROLE GROOM  
Grantee Typed/Printed Name

May 24, 2011  
Date

R. B. M.  
Attest

By: Esteban Almanza  
Esteban Almanza, Deputy Director  
State Water Resources Control Board  
Division of Financial Assistance  
6/23/11  
Date

Reviewed by: BH Paul  
Office of Chief Counsel  
Date: 6/22/2011

Certificate of Delivery  
(Government Code Section 25103)  
I certify that a copy of the original document filed in  
the Office of the Clerk of the Board of Supervisors of  
San Mateo County has been delivered to the  
President of the Board of Supervisors.  
R. B. M.  
Deputy Clerk of the Board of Supervisors

EXHIBIT A  
SCOPE OF WORK – WORK TO BE PERFORMED BY THE GRANTEE

A. PLANS AND GENERAL COMPLIANCE REQUIREMENTS

1. In order for the State Water Board and Regional Water Quality Control Board (Regional Water Board) staff to verify work was adequately performed or conducted, GPS information for project site and monitoring locations must be identified for this Project prior to any disbursements. Submittal requirements for GPS data are available at:  
[http://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/grant\\_info/index.shtml#plans](http://www.waterboards.ca.gov/water_issues/programs/grants_loans/grant_info/index.shtml#plans).
2. The Grantee shall prepare and submit a Monitoring and Reporting Plan (MRP) that does all of the following: 1) identifies the nonpoint source(s) of pollution to be prevented or reduced by the Project; 2) describes the baseline water quality or quality of the environment to be addressed; 3) describes the manner in which the Project will be effective in preventing or reducing pollution and in demonstrating the desired environmental results; and 4) describes the monitoring program, including, but not limited to, the methodology, frequency, and duration of monitoring.

The MRP shall be organized as follows, and may be submitted as separate documents or in one report.

2.1 Project Assessment and Evaluation

The Project Assessment and Evaluation Plan (PAEP) describes the manner in which the Project will be effective in preventing or reducing pollution and in demonstrating the desired environmental results. The PAEP details the methods of measuring and reporting Project benefits. A PAEP will also identify the ASBS discharges and high threat discharges to be reduced or eliminated by the Project. The Grantee shall not implement monitoring and performance assessment and/or evaluation actions prior to PAEP approval by the Grant Manager. Guidance for preparing the PAEP is available at:

[http://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/grant\\_info/index.shtml#plans](http://www.waterboards.ca.gov/water_issues/programs/grants_loans/grant_info/index.shtml#plans).

2.2 Monitoring Plan

All projects must prepare a Monitoring Plan (MP). At a minimum, all MPs must: 1) describe the baseline water quality or quality of the environment to be addressed; 2) identify the non-point source(s) of pollution to be prevented or reduced by the Project; 3) be consistent with regional monitoring efforts and methods; and, 4) provide GPS information for all sampling locations.

The MP must include a description of the monitoring program and objectives, types of constituents to be monitored, methodology, the frequency and duration of monitoring, the sampling location for the monitoring activities, and a discussion of how monitoring is related to existing regional monitoring efforts. The MP must also include a map showing the proposed monitoring sites, along with existing regional monitoring and other critical monitoring efforts.

Any costs related to monitoring data collected prior to and not supported by the approved MP will not be reimbursed. Changes to the MP must be submitted to the Grant Manager for review and a decision regarding approval prior to implementation. Guidance for preparing an MP is available at [http://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/grant\\_info/index.shtml#plans](http://www.waterboards.ca.gov/water_issues/programs/grants_loans/grant_info/index.shtml#plans).

2.3 Quality Assurance Project Plan

If water quality monitoring is undertaken, the Grantee shall also prepare, maintain, and implement a Quality Assurance Project Plan (QAPP) in accordance with the State Water Board's Surface Water Ambient Monitoring Program's (SWAMP) QAPP and data reporting requirements, and the USEPA QAPP, EPA AQ/R5, 3/01. Water quality monitoring data includes physical, chemical, and biological monitoring of any surface water. The QAPP shall be submitted to the State Water Board's Quality Assurance Officer for review and a decision regarding approval. Any costs related to monitoring data collected prior to and not supported by the approved QAPP will not be reimbursed. Guidance

for preparing the QAPP is available at:

[http://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/grant\\_info/index.shtml#plans](http://www.waterboards.ca.gov/water_issues/programs/grants_loans/grant_info/index.shtml#plans).

The Grantee shall upload a pdf version of the final approved document(s) to the Financial Assistance Application Submittal Tool (FAAST) system.

#### 2.4 Data Management

Upon the request of the Grant Manager, the Grantee shall submit all water quality data obtained through implementation of the Monitoring Plan to one of the four Regional Data Centers (Moss Landing Marine Lab, San Francisco Estuary Institute, Southern California Coastal Water Research Project, or University of California, Davis), in an electronic format that can readily be uploaded to the California Environmental Data Exchange Network (CEDEN), such as SWAMP data format templates.

3. All projects are required to comply with the California Environmental Quality Act (CEQA). No work that is subject to the CEQA or National Environmental Policy Act (NEPA) may proceed under this Agreement until documents that satisfy the CEQA/NEPA process are received by the Grant Manager and the State Water Board has given environmental clearance. No work that is subject to an Environmental Impact Report or a Mitigated Negative Declaration may proceed until and unless approved by the Deputy Director of the State Water Board's Division of Financial Assistance (Division). Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. Proceeding with work subject to CEQA and/or NEPA without environmental clearance by the State Water Board shall constitute a breach of a material provision of this Agreement.
4. If landowner agreements are required, signed copies must be submitted to the Grant Manager before works begins.
5. If permits are required, the permits must be obtained and signed copies submitted to the Grant Manager before work begins.
6. State Disclosure Requirements – Include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

"Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

Signage shall be posted in a prominent location at Project site (if applicable) or at the Grantee's headquarters and shall include the State Water Board color logo (available from the Program Analyst):



and the following disclosure statement:

"Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board."

7. The Grantee shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this exhibit. (Gov. Code, § 7550)

## B. PROJECT-SPECIFIC REQUIREMENTS

### 1. Project Management

- 1.1 Finalize and submit the Project Work Plan to the Grant Manager.
- 1.2 Establish and convene a Technical Advisory Committee (TAC), which shall meet and submit meeting notes to the Grant Manager bi-annually.

### 2. Pilot BMPs

#### 2.1 Design and Construction

- 2.1.1 Prepare and submit an implementation schedule to the Grant Manager.
- 2.1.2 Conduct necessary geotechnical, utility, and hydrologic investigations, and report findings to the Grant Manager.
- 2.1.3 Develop design criteria, standards, and plans for installation, construction, and maintenance of selected pollutant reduction devices/practices, and submit approved plans and specifications to the Grant Manager.
- 2.1.4 Submit Notice to Proceed to the Grant Manager.
- 2.1.5 Implement pilot BMPs in accordance with approved plans and specifications at a minimum of ten (10) locations, including high threat storm drain discharges and Green Parking Lot at the James V. Fitzgerald Marine Reserve.

#### 2.2 Monitoring

- 2.2.1 Document BMP efficacy by conducting water quality monitoring at the pilot BMP sites (pre- and post-implementation and/or upstream and downstream) in accordance with the QAPP, MP, and SWAMP guidelines.
- 2.2.2 Conduct pre- and post-construction photo documentation at the pilot BMP sites, and submit to the Grant Manager.

#### 2.3 Analysis

- 2.3.1 Analyze water quality data, including summary statistics, calculation of pollutant loading and removal, and graphs of the water data.
- 2.3.2 Assess BMP effectiveness as a function of pollutant removal efficiency, flow/capacity, installation costs, maintenance costs, and environmental conditions and restraints.
- 2.3.3 Submit a summary report to the Grant Manager showing water quality data, photo documentation, and results of the analysis, including recommendations for upland storm drain BMP selection.

### 3. Storm Drain Inventory and Assessment

- 3.1 Inventory storm water drainage features along county-maintained roads in the unincorporated communities of the mid coast (approximately seventy-five [75] linear miles) using GPS.
- 3.2 Develop geographic information systems (GIS) data.

- 3.3 Conduct an assessment of the storm drain system including the identification of problem areas for erosion, sediment accumulation, litter, and drainage deficiencies for multiple flood recurrence intervals and a feasibility investigation for removing direct ASBS discharges.
- 3.4 Develop a prioritized list for system structure upgrades and storm water BMP implementation sites based on feasibility and pollution reduction potential.
- 3.5 Submit a summary report to the Grant Manager showing recommendations, project descriptions, and cost estimates for structure upgrades and BMP implementation.
4. Pathogen Source Tracking Study
  - 4.1 Conduct pathogen source tracking, including genetic analysis and indicator bacteria monitoring, in five (5) drainages during dry and wet weather, according to QAPP, MP, and SWAMP guidelines.
  - 4.2 Analyze the data to determine the primary sources of pathogen contamination, prepare a summary report, and submit to the Grant Manager.
5. Education and Outreach
  - 5.1 Design and distribute three (3) ASBS newsletters, one each in May of 2012, 2013, and 2014, to mid coast residents and landowners, and submit a copy to the Grant Manager.
  - 5.2 Develop an ASBS website with packaged web content for posting at partner agency web sites, and forward the web link to the Grant Manager.
  - 5.3 Conduct a community survey on nonpoint source (NPS) knowledge, perceived mid coast water quality problems, willingness to participate, and ideas for water quality improvements. Submit survey results to the Grant Manager.
  - 5.4 Host a low impact development (LID) and retrofit workshop for developers, contractors, landowners, residents, and local government staff to provide resources and tools for reducing runoff and harvesting storm water. Proceedings from the workshop will be available on the ASBS website. Submit workshop agenda and materials to the Grant Manager.
  - 5.5 Install interpretive signs at the James V. Fitzgerald Marine Reserve Green Parking Lot and submit photo documentation to the Grant Manager.
6. Targeted Upland BMPs
  - 6.1 Design and Construction of Upland Storm Drain BMPs
    - 6.1.1 Prepare a list of upland storm drain BMPs based on results of the pilot BMPs, storm drain inventory and assessment, and pathogen source tracking study.
    - 6.1.2 Prepare and submit an implementation schedule to the Grant Manager.
    - 6.1.3 Conduct necessary geotechnical, utility, and hydrologic investigations and report findings to the Grant Manager.
    - 6.1.4 Develop design criteria, standards, and plans for installation, construction, and maintenance of selected pollutant reduction devices/practices, and submit approved plans and specifications to the Grant Manager.
    - 6.1.5 Submit Notice to Proceed to the Grant Manager.
    - 6.1.6 Implement upland storm drain BMPs at between ten (10) to twenty (20) sites in accordance with approved plans and specifications.

## 6.2 Design and Construction of Upland Private BMPs

- 6.2.1 Prepare a written plan identifying priorities for BMP implementation, and submit an implementation schedule to the Grant Manager.
- 6.2.2 Recruit and select upland private BMP projects through targeted outreach to residential landowners and agricultural operators. Outreach will include letters, flyers, press releases, e-mail ListServes, and an invitation at the LID workshop.
- 6.2.3 Develop and distribute an application packet to solicit proposals from landowners who wish to implement BMPs on their property.
- 6.2.4 Create and convene a selection committee to review and prioritize projects that will receive funding and technical assistance, and make recommendations to the Resource Conservation District (RCD) staff for project selection.
- 6.2.5 Obtain signed agreements from landowners acknowledging their willingness to participate in monitoring and reporting as well as their responsibility to maintain installed practices.
- 6.2.6 Develop designs, project plans, and cost estimates for the specific BMPs recommended for funding, and submit final designs and plans to the Grant Manager.
- 6.2.7 Submit the Notice to Proceed to the Grant Manager.
- 6.2.8 Implement between ten (10) to twenty (20) upland private BMPs in accordance with approved plans and specifications.

## 6.3 Monitoring of Upland BMPs

- 6.3.1 Conduct water quality monitoring at the upland BMP sites (pre- and post-implementation and/or upstream and downstream) and document BMP efficacy in accordance with the QAPP, MP, and SWAMP guidelines.
- 6.3.2 Conduct pre- and post-construction photo documentation at the upland BMP sites in accordance with State Water Board guidelines, and submit to the Grant Manager.

## 6.4 Analysis of Upland BMPs

- 6.4.1 Analyze water quality data, including summary statistics, calculation of pollutant loading and removal, and graphical displays.
- 6.4.2 Assess BMP effectiveness as a function of pollutant removal efficiency, flow/capacity, installation costs, maintenance costs, and environmental conditions and restraints.
- 6.4.3 Prepare a summary report, to include water quality data, photo documentation, and results of the analysis, and submit to the Grant Manager.

## 7. Project Assessment and Future Planning

- 7.1 Assess the Project according to criteria and metrics developed in the PAEP.
- 7.2 Conduct future planning, including development of a BMP Operation and Maintenance Plan; a plan for continuation of the Pollution Reduction Program, including future BMP implementation, based on pollution load reduction forecasts generated from models developed by San Francisco Estuary Institute (SFEI) as part of the Critical Coastal Area Pilot Project – Phase 2 State Water Board grant agreement, and calibrated with data from the current study; and assessment of county policies based on information gained from this Project.
- 7.3 Prepare a Project assessment and future planning report and submit to the Grant Manager.

TABLE OF ITEMS FOR REVIEW

| Item   | DESCRIPTION   | CRITICAL DUE DATE | ESTIMATED DUE DATE                    |
|--|---|-------------------|---------------------------------------|
| <b>EXHIBIT A – SCOPE OF WORK – WORK TO BE PERFORMED BY THE GRANTEE</b> |   |                   |                                       |
| <b>A.</b>  | <b>PLANS AND GENERAL COMPLIANCE REQUIREMENTS</b>          |                   |                                       |
| 1.   | GPS information for Project site and monitoring locations | Day 90            |                                       |
| 2.1  | Project Assessment and Evaluation Plan (PAEP)             | Day 90            |                                       |
| 2.2  | Monitoring Plan (MP)                                      | Day 90            |                                       |
| 2.3  | Quality Assurance Project Plan (QAPP)                     | Day 90            |                                       |
| 3.   | Copy of final CEQA/NEPA Documentation                     | 9/15/11           |                                       |
| 4.   | Land Owner Agreement(s)                                   |                   | September 2013                        |
| 5.   | Applicable Permits  |                   | As required                           |
| <b>B.</b>  | <b>PROJECT-SPECIFIC REQUIREMENTS</b>                      |                   |                                       |
| 1.   | Project Management  |                   |                                       |
| 1.1  | Project Work Plan   |                   | July 2011                             |
| 1.2  | TAC Meeting Notes   |                   | Bi-annually<br>September and<br>March |
| 2.   | Pilot BMPs  |                   |                                       |
| 2.1.1  | Implementation Schedule                                   |                   | September 2011                        |
| 2.1.2  | Report Findings   |                   | September 2011                        |
| 2.1.3  | Design Plans and Specifications                           |                   | February 2012                         |
| 2.1.4  | Notice to Proceed   |                   | June 2012                             |
| 2.2.2  | Pre- and Post-Construction Photo Documentation            |                   | November 2012                         |
| 2.3.3  | Analysis Summary Report                                   |                   | March 2012                            |
| 3.   | Storm Drain Inventory and Assessment                      |                   |                                       |
| 3.5  | Storm Drain Inventory and Assessment Summary Report       |                   | December 2012                         |
| 4.   | Pathogen Source Tracking Study                            |                   |                                       |
| 4.2  | Pathogen Source Tracking Study Summary Report             |                   | December 2012                         |
| 5.   | Education and Outreach                                    |                   |                                       |
| 5.1  | ASBS Newsletters  |                   | May 2012, 2013,<br>2014               |
| 5.2  | Web Link to ASBS Website                                  |                   | September 2012                        |
| 5.3  | Survey Results  |                   | September 2012                        |
| 5.4  | Agenda and Workshop Materials                             |                   | September 2012                        |
| 5.5  | Photo Documentation of Interpretive Signs and Exhibits    |                   | October 2014                          |
| 6.   | Targeted Upland BMPs                                      |                   |                                       |
| 6.1.2  | Implementation Schedule                                   |                   | March 2013                            |



| Item   | DESCRIPTION   | CRITICAL DUE DATE    | ESTIMATED DUE DATE                  |
|--|---|----------------------|-------------------------------------|
| <b>EXHIBIT A – SCOPE OF WORK – WORK TO BE PERFORMED BY THE GRANTEE</b> |   |                      |                                     |
| 6.1.3  | Report Findings   |                      | March 2013                          |
| 6.1.4  | Design Plans and Specifications   |                      | April 2013                          |
| 6.1.5  | Notice to Proceed   |                      | June 2013                           |
| 6.2.1  | Implementation Schedule   |                      | March 2013                          |
| 6.2.6  | Design Plans and Specifications   |                      | April 2013                          |
| 6.2.7  | Notice to Proceed   |                      | June 2013                           |
| 6.3.2  | Pre- and Post-Construction Photo Documentation  |                      | November 2014                       |
| 6.4.3  | Analysis Summary Report   |                      | December 2014                       |
| 7.   | Project Assessment and Future Planning  |                      |                                     |
| 7.3  | Project Assessment and Future Planning report   |                      | December 2014                       |
|  |   |                      |                                     |
| <b>EXHIBIT B – INVOICING, BUDGET DETAIL, AND REPORTING PROVISIONS</b>  |   |                      |                                     |
| A.   | INVOICING   |                      | Quarterly                           |
| F.   | REPORTS   |                      |                                     |
| 1.   | Progress Reports by the twentieth (20 <sup>th</sup> ) of the month following the end of the calendar quarter (March, June, September, and December) |                      | Quarterly                           |
| 2.   | Annual Progress Summaries   |                      | 9/30/2012<br>9/30/2013<br>9/30/2014 |
| 3.   | Natural Resource Projects Inventory (NRPI) Project Survey Form  | Before final invoice |                                     |
| 4.   | Draft Project Report  | 1/31/2015            |                                     |
| 5.   | Final Project Report  | 3/1/2015             |                                     |
| 6.   | Final Project Summary   | 3/1/2015             |                                     |
| 7.   | Final Project Inspection and Certification  | Before Final Invoice |                                     |

EXHIBIT B  
INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS

A. INVOICING

1. Invoices shall be submitted using the invoice template provided by the State Water Board. The invoice must be itemized based on the line items specified in the Budget. The original invoice shall be submitted to the State Water Board's Grant Manager on a quarterly basis consistent with the reporting schedule in Section G.1 of this exhibit. The address for submittal is:

Ruben Mora, Grant Manager  
State Water Resources Control Board  
Division of Financial Assistance  
1001 I Street, 16<sup>th</sup> Floor  
Sacramento, CA 95814

2. Invoices submitted in any other format than the one provided by the State Water Board will cause an invoice to be disputed. In the event of an invoice dispute, the State Water Board's Grant Manager will notify the Grantee by initiating an "Invoice Dispute Notification" form. Payment will not be made until the dispute is resolved and a corrected invoice submitted. Failure to use the address exactly as provided above may result in return of the invoice to the Grantee. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. The State Water Board Grant Manager has the responsibility for approving invoices.
3. Supporting documentation (e.g., receipts) must be submitted with each invoice to request reimbursement for grant funds as well as to support matching funds invoiced. The amount claimed for the Personnel Services line item and Professional and Consultant Services line item must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Invoice payment shall be made only after receipt of a complete, adequately supported, properly documented and accurately addressed invoice.
4. The Grantee shall not request disbursement for any cost until such cost has been incurred and has been paid by or is due and payable by the Grantee. Although it is agreed that actual payment of such cost by the Grantee is not required as a condition of the grant disbursement, all grant disbursements received by the Grantee shall be paid to contractors and vendors within thirty (30) days from receipt of the funds. In the event that the Grantee fails to disburse grant funds to contractors or vendors within thirty (30) days from receipt of the funds, the Grantee shall immediately return such funds to the State Water Board. Interest shall accrue on such funds from the date of disbursement through the date of mailing of funds to the State Water Board. If the Grantee held such funds in interest-bearing accounts, any interest earned on the funds shall also be due to the State Water Board.
5. Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the Federal Government, or any loss of tax-free status on state bonds, pursuant to any Federal statute or regulation.
6. Notwithstanding any other provision of this Agreement, the Grantee agrees that the State Water Board may retain an amount equal to ten percent (10%) of the grant amount specified in this Agreement until completion of the Project to the reasonable satisfaction of the State Water Board. Any retained amounts due to the Grantee will be promptly disbursed to the Grantee, without interest, upon completion of the Project.
7. The invoice shall contain the following information:
  - a. The date of the invoice;
  - b. The time period covered by the invoice, i.e., the term "from" and "to";
  - c. The total amount due; and

- d. Original signature and date (in ink) of Grantee or its authorized representative.
- e. Final invoice shall be clearly marked "FINAL INVOICE" and submitted NO LATER THAN MAY 1, 2015.

**B. PROHIBITION OF INDIRECT COSTS**

The grant funds for this Agreement are the proceeds from the sale of general obligation bonds. As such, grant funds may not be used for any indirect costs. "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Grantee; accounting and personnel services performed within the Grantee organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining facilities; tuition and conference fees; and, generic overhead or markup. Any invoice submitted including Indirect Costs will cause that invoice, in its entirety, to be disputed and will not be paid until the dispute is resolved. This prohibition applies to the Grantee and any subcontract or subagreement for work on the Project that will be reimbursed with grant funds pursuant to this Agreement.

**C. BUDGET CONTINGENCY CLAUSE**

The maximum amount to be encumbered under this Agreement for the 2010-11 fiscal year ending June 30, 2011, shall not exceed TWO MILLION THREE HUNDRED THOUSAND DOLLARS (\$2,300,000).

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 force and effect. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any payments under this Agreement. In this event, the State shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Agreement and Grantee shall not be obligated to perform any provisions of this Agreement. Nothing in this Agreement shall be construed to provide the Grantee with a right of priority for payment over any other Grantee.

If this Agreement's funding for any fiscal year is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, 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.

**D. LINE ITEM BUDGET**

|  | PROP 84            | MATCH             | TOTAL              |
|--|--------------------|-------------------|--------------------|
| Personnel Services   | \$ 393,700         | \$ 24,875         | \$ 418,575         |
| Operating Expenses   | \$ 17,300          | \$ 0              | \$ 17,300          |
| Permit Fees, Mailing Education Materials, Field and Sampling Equipment   |                    |                   |                    |
| Professional and Consultant Services   | \$1,234,000        | \$ 85,000         | \$1,319,000        |
| Pathogen Source Tracking (Genetic Analysis); Storm Drain Inventory and Assessment; Historical Record Review; San Mateo County RCD (Private/Public Upland BMPs); SFEI (Project Plans, Graphics/Education, Monitoring, Reporting); Green Parking Lot Survey; Plans; Interpretive Signs |                    |                   |                    |
| Construction (Contracted Services)   | \$ 655,000         | \$ 225,125        | \$ 880,125         |
| <b>TOTAL</b>   | <b>\$2,300,000</b> | <b>\$ 335,000</b> | <b>\$2,635,000</b> |

**E. BUDGET LINE ITEM FLEXIBILITY**

1. **Line Item Adjustment(s).** Subject to the prior review and approval of the Grant Manager, adjustments between existing line item(s) may be used to defray allowable direct costs up to fifteen percent (15%) of the total grant amount including any amendment(s) thereto. Line item adjustments in excess of fifteen percent (15%) shall require a formal Agreement amendment. If the Line Item Budget includes an amount for Personnel Services, that amount is based on the hours, classifications, and rates submitted by the Grantee in its application. Any changes to the hours, classifications, and rates must be approved, in advance and in writing, by the Grant Manager.
2. **Procedure to Request an Adjustment.** Grantee may submit a request for an adjustment in writing to the State Water Board. Such adjustment may not increase or decrease the total grant amount allocated per fiscal year. The Grantee shall submit a copy of the original Agreement Budget sheet reflecting the requested changes. Changes shall be noted by striking the original amount(s) followed with revised change(s) in bold and underlined. Budget adjustments deleting a budget line item or adding a new budget line item requires a formal amendment and are not permissible under this provision. The State Water Board may also propose adjustments to the budget.
3. **Remaining Balance.** In the event the Grantee does not submit invoices requesting all of the funds encumbered under this Grant Agreement, any remaining funds revert to the State. The State Water Board will mail a Notice of Project Completion letter to the Grantee stating that the Project file is closed, the final invoice is being processed for payment, and any remaining balance will be disencumbered and unavailable for further use under the Grant Agreement.

**F. MATCH FUNDS**

The Grantee agrees to provide match funds in the amount of THREE HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$335,000.00) for this Project. This amount of match funds is based on the classifications (i.e., Line Item Budget categories), funding sources, and amounts submitted by the Grantee in its application. Any changes in amount or adjustments in classifications or sources must be approved, in advance and in writing, by the Grant Manager.

**G. REPORTS**

1. **PROGRESS REPORT.** Grantee shall submit quarterly progress reports to the State Water Board's Grant Manager by the twentieth (20<sup>th</sup>) of the month following the end of the calendar quarter (March, June, September, and December).
  - a. The progress reports shall provide a brief description of the work performed, accomplishments during the quarter, milestones achieved, monitoring results (if applicable), and any problems encountered in the performance of the work under this Agreement. Grantee shall document all contractor activities and expenditures in progress reports.
  - b. The invoice should accompany the progress report. The invoice should reflect charges for the work completed during the reporting period covered by progress report. The invoice cannot be paid prior to submission of a progress report covering the invoice reporting period.
2. **ANNUAL PROGRESS SUMMARIES.** Prepare and provide an annual progress summary by September 30, 2012, September 30, 2013, and September 30, 2014. The summary must be no more than two (2) pages, and shall include pictures as appropriate. Upload an electronic copy of the Annual Progress Summary in pdf format to the FAAST system. The summary shall include the following:
  - a. A summary of the conditions the Project is meant to alleviate, the Project's objective, the scope of the Project, and a description of the approach used to achieve the Project's objective.
  - b. A summary of the progress made to date, significant milestones achieved, and the current schedule of completing the Project.

- c. An evaluation of the effectiveness of the Project to date in preventing or reducing pollution and alleviating the Project's original conditions.

A template for the Annual Progress Summary is available online at:

[http://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/grant\\_info/index.shtml](http://www.waterboards.ca.gov/water_issues/programs/grants_loans/grant_info/index.shtml)

3. **NRPI SURVEY FORM.** At the completion of this Project, the Grantee shall complete and submit electronically a Natural Resource Project Inventory (NRPI) Project Survey Form found at <http://www.ice.ucdavis.edu/nrpi>. Prior to final payment, the Grantee shall notify the Program Analyst they have uploaded an electronic copy of the form to the NRPI system.
4. **DRAFT PROJECT REPORT.** Prepare and submit to the Grant Manager, for review and comment, a draft Project Report that includes information collected by the recipient in accordance with the Project monitoring and reporting plan, a determination of the effectiveness of the Project in preventing or reducing pollution, and the results of the monitoring program. The draft report shall address the following narrative sections and items.
- a. A summary of the Project, describing Project purpose, scope and goals, activities completed, techniques used and partners involved.
  - b. A report of all monitoring and management practices or management measures implemented, together with their corresponding locations. The report shall be in a format that enables the Grant Manager to find the physical location of each implemented practice or measure and/or monitoring event in a quick and efficient manner. Acceptable formats include, but are not limited to:
    - Map of locations – The map of practices or measures implemented shall consist of dots placed on a USGS 7.5-minute quadrangle map at the implementation location. Lead lines shall be connected to a text box description of the practice or measure. The dots shall have a small enough diameter to enable the Grant Manager to locate the measure or practice within a 50-foot radius.
    - Project coding system – The project coding system shall explain the coding used to describe each implemented practice or measure and include a reference to the corresponding GPS location(s).
  - c. Describe Project performance, including benefits, successes and shortcomings, consistent with the PAEP. Enumerate specific quantifiable environmental changes and results of the Project. As appropriate, include 1) behavioral results such as the amount of management practices or measures implemented, 2) cost of implementing each BMP or management measure, 3) estimates or measurements of the amount of pollutants prevented from reaching surface or ground water, 4) documented changes in water quality based on monitoring, and 5) improved or protected beneficial uses.
- In addition, if the Grantee is responsible for the discharge(s) into the ASBS, the PAEP shall include:
- A description of how the Project addresses high threat discharges, and
  - Estimated dates and schedules for addressing future high threat discharges, if known.
- d. Identify lessons learned in carrying out the Project. Describe what worked and what did not work, and how similar efforts could be utilized within the Project area, as well as in other watersheds.
  - e. Describe the extent of outreach that has been conducted and if there are plans to further promote the results of the Project to achieve additional implementation.
  - f. Describe the Project's funding. Include the projected cost and actual cost of the Project, how much of the grant funds were spent, and how much funding was put into the Project from other sources. Identify funding sources that have been "leveraged" by the Project and plans for funding future activities.
  - g. Identify planned or potential follow-up activities, such as any additional steps necessary to achieve the water quality objectives, Total Maximum Daily Loads (TMDL) or local watershed plans.

- h. Include appropriate photos and graphics.
  - i. A list of items submitted as outlined in the Table of Items for Review.
  - j. Any additional information that is deemed appropriate by the Project Director or Grant Manager.
5. **FINAL PROJECT REPORT.** Prepare a final Project Report that addresses, to the extent feasible, comments made by the Grant Manager on the draft final Project Report. Submit one (1) reproducible master, and an electronic copy of the final. Upload an electronic copy of the final report in pdf format to the FFAST system.
6. **FINAL PROJECT SUMMARY.** Prepare a brief summary of the information contained in the Final Project Report, including before and after pictures, as appropriate. Upload an electronic copy of the Final Project Summary in pdf format to the FFAST system.
7. **FINAL PROJECT INSPECTION AND CERTIFICATION.** Upon completion of the Project, the Grantee shall provide for a final inspection and shall certify that the Project has been completed in accordance with this Agreement, any final plans and specifications submitted to the State Water Board, and any amendments or modifications thereto. If the Project involved the planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, or other professionals, the final inspection and certification shall be conducted by a California Registered Civil Engineer or other appropriate California registered professional. The results of the final inspection and certification shall be provided to the Grant Manager.
8. The Grantee agrees to expeditiously provide, during work on the Project and throughout the term of this Agreement, such reports, data, information, and certifications that may be reasonably required by the State Water Board.

#### H. PAYMENT OF PROJECT COSTS

The Grantee agrees that it will provide for payment of its full share of Project costs and that all costs connected with the Project will be paid by the Grantee on a timely basis.

#### I. AUDIT DISALLOWANCES

The Grantee agrees it shall return any audit disallowances to the State Water Board.

#### J. FRAUD AND MISUSE OF PUBLIC FUNDS

All invoices submitted shall be accurate and signed under penalty of perjury. Any and all costs submitted pursuant to this Agreement shall only be for the tasks set forth herein. The Grantee shall not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any eligible costs for which the Grantee is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is illegal and constitutes fraud. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements of grant funds and/or termination of this Agreement requiring the repayment of all funds disbursed hereunder. Additionally, the Deputy Director of the Division of Financial Assistance may request an audit pursuant to Exhibit C, paragraph 4 and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability. (Civ. Code, §§ 1572-1573; Pen. Code, §§ 470, 489-490.)

EXHIBIT C  
GENERAL TERMS & CONDITIONS

1. **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.
2. **APPROVAL:** The Grantee will not proceed with any work on the Project until authorized in writing by the State Water Board.
3. **ASSIGNMENT:** This grant is not assignable by the Grantee, either in whole or in part, without the written consent of the State Water Board.
4. **AUDIT:** The Grantee agrees the State Water Board, the Bureau of State Audits, the Governor of the State, or the Internal Revenue Service, or any authorized representative of the foregoing shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Division of Financial Assistance (Division), at its option, may call for an audit of financial information relative to the Project, where the Division determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of federal requirements. Where such an audit is called for, the audit shall be performed by a certified public accountant independent of the Grantee and at the cost of the Grantee. The audit shall be in the form required by the Division. The Grantee agrees to maintain such records for a possible audit for a minimum of thirty-five (35) years after final payment, unless a longer period of records retention is stipulated. The 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, the Grantee agrees to include a similar right of the State to audit records and interview staff in any contract related to performance of this Agreement.  
(Gov. Code, § 8546.7; Pub. Contract Code, § 10115 et seq.)
5. **BONDING:** Where contractors are used, the Grantee shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Grantee in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00. (Civ. Code, § 3247 et seq.; Pub. Contract Code, § 7103.)
6. **CEQA/NEPA:**
  - a. No work that is subject to the California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA) may proceed under this Agreement until documents that satisfy the CEQA/NEPA process are received by the Grant Manager and the State Water Board has given environmental clearance. No work that is subject to an Environmental Impact Report or a Mitigated Negative Declaration may proceed until and unless approved by the Deputy Director of the Division. Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. Proceeding with work subject to CEQA and/or NEPA without environmental clearance by the State Water Board shall constitute a breach of a material provision of this Agreement.
  - b. If this Project includes modification of a river or stream channel, it must fully mitigate environmental impacts resulting from the modification. The Grantee must provide documentation that the environmental impacts resulting from such modification will be fully mitigated considering all of the impacts of the modification and any mitigation, environmental enhancement, and environmental benefit resulting from the Project, and whether, on balance, any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the Project.
7. **COMPLIANCE WITH LAW, REGULATIONS, ETC.:** The Grantee agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, the Grantee agrees that, to the extent applicable, the Grantee will comply with the provisions of the adopted environmental mitigation plan for the term of this Agreement, or the useful life of the Project, whichever is longer.

8. **COMPUTER SOFTWARE:** The Grantee certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
9. **CONFLICT OF INTEREST:** The Grantee certifies that it is in compliance with applicable state and/or federal conflict of interest laws.
10. **CONTINUOUS USE OF PROJECT; LEASE OR DISPOSAL OF PROJECT:** The Grantee agrees that, except as provided in the Agreement, it will not abandon, substantially discontinue use of, lease, or dispose of the Project or any significant part or portion thereof during the useful life of any component the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all grant funds or any portion of all remaining grant funds covered by this Agreement together with accrued interest and any penalty assessments which may be due.
11. **DAMAGES FOR BREACH AFFECTING TAX EXEMPT STATUS:** In the event that any breach of any of the provisions of this Agreement by the Grantee shall result in the loss of tax exempt status for any state bonds, or if such breach shall result in an obligation on the part of the State to reimburse the federal government by reason of any arbitrage profits, the Grantee shall immediately reimburse the state in an amount equal to any damages paid by or loss incurred by the State due to such breach.
12. **DATA MANAGEMENT:** This Project includes appropriate data management activities so that Project data can be incorporated into appropriate statewide data systems.
13. **DISPUTES:** The Grantee shall continue with its responsibilities under this Agreement during any dispute. Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Deputy Director of the Division, or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Grantee and to the State Water Board's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Grantee, the Grantee mails or otherwise furnishes a written appeal of the decision to the State Water Board's Executive Director. The decision of the State Water Board's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Grantee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Grantee shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement. This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
14. **FISCAL MANAGEMENT SYSTEMS AND ACCOUNTING STANDARDS:** The Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of state law or this Agreement. The Grantee further agrees that it will maintain separate Project accounts in accordance with generally accepted accounting principles.
15. **GOVERNING LAW:** This grant is governed by and shall be interpreted in accordance with the laws of the State of California.
16. **GRANTEE'S RESPONSIBILITY FOR WORK:** The Grantee shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Grantee shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to payment disputes with contractors and subcontractors. The State will not mediate disputes between the Grantee and any other entity concerning responsibility for performance of work.



17. **INCOME RESTRICTIONS:** The Grantee agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Grantee under this Agreement shall be paid by the Grantee to the State, to the extent that they are properly allocable to costs for which the Grantee has been reimbursed by the State under this Agreement.
18. **INDEPENDENT ACTOR:** The Grantee, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of the State Water Board.
19. **INSPECTION:** The State Water Board, the Bureau of State Audits, or any authorized representative of the foregoing, shall have suitable access to the Project site at all reasonable times during Project implementation and thereafter for the life of the Project to ascertain compliance with this Agreement and its goals. The Grantee acknowledges that the Project records and location are public records.
20. **INSURANCE:** Throughout the life of the Project, the Grantee shall provide and maintain insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Agreement, if any. This insurance shall be issued by a company or companies admitted to transact business in the State of California. The insurance policy shall contain an endorsement specifying that the policy will not be cancelled or reduced in coverage without thirty (30) days prior written notice to the State Water Board. In the event of any damage to or destruction of the Project or any larger system of which it is a part, the net proceeds of insurance shall be applied to the reconstruction, repair or replacement of the damaged or destroyed parts of the Project or its larger system. The Grantee shall begin such reconstruction, repair, or replacement as expeditiously as possible and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the larger system shall be free of all claims and liens.
21. **NONDISCRIMINATION:**
  - a. During the performance of this Agreement, the Grantee and its consultants and contractors 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, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
  - b. The Grantee, its consultants, and contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
  - c. The Grantee, its consultants, and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 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.
  - d. The Grantee, its consultants, and contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement, if any.
  - e. The Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement. Failure by the Grantee to carry out these requirements and applicable requirements of 40 C.F.R. part 33 is a breach of a material provision of this Agreement which may result in its termination.
22. **NO THIRD PARTY RIGHTS:** The parties to this grant Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this grant Agreement, or of any duty, covenant, obligation or undertaking established herein.

23. NOTICE:

- a. The Grantee shall notify the State Water Board prior to conducting construction, monitoring, demonstration, or other implementation activities such that State Water Board and/or Regional Water Board staff may observe and document such activities.
- b. The Grantee shall promptly notify the State Water Board of events or proposed changes that could affect the scope, budget, or work performed under this Agreement. The Grantee agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to the State Water Board, and the State Water Board has given written approval for such change.
- c. Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during implementation of the Project, the Grantee agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Grantee agrees to implement appropriate actions as directed by the Division.
- d. Discovery of any unexpected endangered or threatened species, as defined in the federal or California Endangered Species Acts. Should a federal or state protected species be unexpectedly encountered during implementation of the Project, the Grantee agrees to promptly notify the Division. This notification is in addition to the Grantee's obligations under the federal or state Endangered Species Acts.
- e. The Grantee shall notify the State Water Board at least ten (10) working days prior to any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by State Water Board's representatives.
- f. The Grantee shall promptly notify the State Water Board in writing of completion of work on the Project.
- g. The Grantee shall promptly notify the State Water Board in writing of any cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more and of any circumstance, combination of circumstances, or condition, which is expected to or does delay completion of construction for a period of ninety (90) days or more beyond the estimated date of completion of construction previously provided.

24. OPERATIONS & MAINTENANCE: The Grantee shall maintain and operate the facility and structures constructed or improved as part of the Project throughout the life of the Project, consistent with the purposes for which this Grant was made. The Grantee assumes all operations and maintenance costs of the facilities and structures; the State Water Board shall not be liable for any cost of such maintenance, management or operation. The Grantee may be excused from operations and maintenance only upon the written approval of the Grant Manager. For purposes of this Agreement, "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses. "Maintenance costs" include ordinary repairs and replacements of a recurring nature necessary to prolong the life of capital assets and basic structures, and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures.

25. PERMITS, CONTRACTING, AND DEBARMENT: The Grantee shall procure all permits and licenses necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Any contractors, outside associates, or consultants required by the Grantee in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified and agreed to during negotiations for this Agreement, if any, or as are specifically authorized by the State Water Board's Grant Manager during the performance of this Agreement. Any substitutions in, or additions to, such contractors, associates, or consultants, shall be subject to the prior written approval of the State Water Board's Grant Manager. The Grantee shall not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension." The Grantee shall not contract with any individual or organization on USEPA's List of Violating

Facilities. (40 CFR, Part 31.35; Gov. Code, § 4477) [www.epis.gov](http://www.epis.gov). The Grantee certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or Grantee;
  - b. Have not within a three (3)-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and,
  - d. Have not within a three (3)-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.
26. **PREVAILING WAGES AND LABOR COMPLIANCE:** If applicable, the Grantee agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. The Grantee certifies that it has a Labor Compliance Program (LCP) in place or has contracted with a third party that has been approved by the Director of the Department of Industrial Relations (DIR) to operate an LCP pursuant to Labor Code, section 1771.5 and section 16423 of title 8 of the California Code of Regulations. Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.
27. **PROFESSIONALS:** The Grantee agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for. All technical reports required pursuant to this Agreement that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to Business and Professions Code, sections 6735, 7835, and 7835.1. To demonstrate compliance with California Code of Regulations, title 16, sections 415 and 3065, all technical reports must contain a statement of the qualifications of the responsible registered professional(s). As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.
28. **RECORDS:** Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles, the Grantee agrees to:
- a. Establish an official file for the Project which shall adequately document all significant actions relative to the Project;
  - b. Establish separate accounts which will adequately and accurately depict all amounts received and expended on this Project; including all grant funds received under this Agreement;
  - c. Establish separate accounts which will adequately depict all income received which is attributable to the Project, especially including any income attributable to grant funds disbursed under this Agreement;
  - d. Establish an accounting system which will adequately depict final total costs of the Project, including both direct and indirect costs;
  - e. Establish such accounts and maintain such records as may be necessary for the state to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and,
  - f. If a Force Account is used by the Grantee for any phase of the Project, establish an account that documents all employee hours, and associated tasks charged to the Project per employee.

29. **RELATED LITIGATION:** Under no circumstances may a Grantee use funds from any disbursement under this Grant Agreement to pay costs associated with any litigation the Grantee pursues against the State Water Board or any Regional Water Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Grantee agrees to complete the Project funded by this Agreement or to repay all of the grant funds plus interest.
30. **RIGHTS IN DATA:** The Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, audio and video recordings, notes, and other written or graphic work produced in the performance of this Agreement shall be in the public domain. The Grantee may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Agreement, subject to appropriate acknowledgement of credit to the State Water Board for financial support. The Grantee shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so.
31. **STATE REVIEWS AND INDEMNIFICATION:** The parties agree that review or approval of Project applications, documents, permits, plans and specifications or other Project information by the State Water Board is for administrative purposes only and does not relieve the Grantee of its responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out the Project. To the extent permitted by law, the Grantee agrees to indemnify, defend and hold harmless the State Water Board and the State against any loss or liability arising out of any claim or action brought against the State Water Board and/or the State from and against any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from, or in any way connected with (1) the Project or the conditions, occupancy, use, possession, conduct or management of, work done in or about, or the planning, design, acquisition, installation or construction, of the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the California Hazardous Waste Control Law and California Water Code, section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System; or, (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Grantee for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement. To the fullest extent permitted by law, the Grantee agrees to pay and discharge any judgment or award entered or made against the State Water Board and/or the State with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of this Agreement.
32. **SUPPLEMENTAL ENVIRONMENTAL PROJECTS:** Grant Funds shall not be used for supplemental environmental projects required by Regional Water Boards.
33. **STATE WATER BOARD ACTION, COSTS, AND ATTORNEY FEES:** The Grantee agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State Water Board as a result of breach of this Agreement by the Grantee, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by the State Water Board shall not preclude the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own filing costs and attorney fees.
34. **TERMINATION, IMMEDIATE REPAYMENT, INTEREST:** This Grant Agreement may be terminated by written notice at any time prior to completion of the Project, at the option of the State Water Board, upon violation by the Grantee of any material provision after such violation has been called to the attention of the Grantee and after failure of the Grantee to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the State Water Board. In the event of termination, the Grantee agrees, upon demand, to immediately repay to the State Water Board an amount equal to the amount of grant funds disbursed to the Grantee prior to such termination. In the event of termination, interest shall accrue on all

amounts due at the highest legal rate of interest from the date that notice of termination is mailed to/from the Grantee to the date of full repayment by the Grantee.

35. **TIMELINESS:** Time is of the essence in this Agreement. The Grantee shall proceed with and complete the Project in an expeditious manner.
36. **TRAVEL AND PER DIEM:** Any reimbursement for necessary travel shall be at rates not to exceed those set by the Department of Personnel Administration. These rates may be found at <http://www.dpa.ca.gov/personnel-policies/travel/hr-staff.htm>. Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred by the Grantee. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the Grant Manager.
37. **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 shall continue to have full force and effect and shall not be affected thereby.
38. **USEFUL LIFE OF PROJECT:** For the purpose of this Agreement, the useful life of any constructed portions of this Project begins upon completion of construction and continues until fifty (50) years thereafter for pipelines and structures and twenty (20) years for all else.
39. **VENUE:** The State Water Board and the Grantee hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. The Grantee hereby waives any existing sovereign immunity for the purposes of this Agreement.
40. **WAIVER AND RIGHTS OF THE STATE WATER BOARD:** Any waiver of rights with respect to a default or other matter arising under the Agreement at any time by either party shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State provided for in this Agreement are in addition to any other rights and remedies provided by law.
41. **WATERSHED MANAGEMENT PLAN CONSISTENCY:** Grantee certifies that any watershed protection activity undertaken as part of this Project will be consistent with the applicable, adopted, local watershed management plans and the applicable Water Quality Control Plan (Basin Plan) adopted by a Regional Water Board, where such plans exist.
42. **WITHHOLDING OF GRANT DISBURSEMENTS:** The State Water Board may withhold all or any portion of the grant funds provided for by this Agreement in the event that the Grantee has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or the Grantee fails to maintain reasonable progress toward completion of the Project.

EXHIBIT D  
SPECIAL CONDITIONS  
PROPOSITION 84 ASBS GRANT PROGRAM

1. The Grantee certifies that it is one of the following: a city, county, city and county, district.
2. This Grantee hereby warrants and represents that this Project is capable of contributing to sustained, long-term water quality or environmental restoration or protection benefits for a period of twenty (20) years.
3. The Grantee certifies that this Project is intended to address the causes of degradation, rather than symptoms.
4. This Project is consistent with water quality and resource protection plans prepared, implemented, or adopted by the State Water Board, the applicable Regional Water Board, and the State Coastal Conservancy.
5. Notwithstanding Exhibit A, the Grantee shall submit a monitoring and reporting plan that will do all of the following:
  - a. Identify the nonpoint source or sources of pollution to be prevented or reduced by Project;
  - b. Describe the baseline water quality or quality of the environment to be addressed;
  - c. Describe the manner that Project will prevent or reduce pollution and demonstrate desired environmental results;
  - d. Describe the monitoring program, including, but not limited to, the methodology, and the frequency and duration of monitoring; and,
6. Notwithstanding Exhibit A, upon completion of the Project, the Grantee shall submit a report to the State Water Board that summarizes the completed activities and indicates whether the purposes of the Project have been met. The report shall include information collected by the recipient in accordance with the Project monitoring and reporting plan, including a determination of the effectiveness of the Project in preventing or reducing pollution, and the results of the monitoring program.
7. The Grantee certifies that if a recovery plan for coho salmon, steelhead trout, or other threatened or endangered aquatic species exists, this Project is consistent with such a plan and, if feasible, implements actions in such a plan.
8. The Grantee certifies that any real property or interests in real property acquired for this Project shall be acquired from a willing seller.
9. As part of this Project, the Grantee shall include a monitoring component. The results of this monitoring component shall be submitted as set forth in Exhibit A, paragraphs A.2.2 & A.2.3 of this Agreement.
10. The Grantee certifies that it is providing a match amount of at least 5%. Eligible expenses incurred after November 7, 2006, and prior to the Project completion date, may be applied to the cost match.
11. The Grantee certifies that it has obtained or will obtain all necessary approvals, entitlements, and permits required to implement the Project. Failure to obtain any necessary approval, entitlement, or permit shall constitute a breach of a material provision of this Agreement.

## Attachment I – §504 Compliance

### Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called the "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- ☒ a. Employs fewer than 15 persons.
- ☐ b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

\_\_\_\_\_  
Name of 504 Person - Type or Print

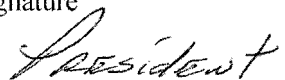
\_\_\_\_\_  
Name of Contractor(s) - Type or Print

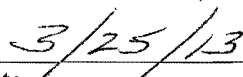
\_\_\_\_\_  
Street Address or P.O. Box

\_\_\_\_\_  
City, State, Zip Code

I certify that the above information is complete and correct to the best of my knowledge.

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Title of Authorized Official

  
\_\_\_\_\_  
Date

\*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."

## **Attachment IP – Intellectual Property Rights**

1. The County of San Mateo (“County”), shall and does own all titles, rights and interests in all Work Products created by Contractor and its subcontractors (collectively “Vendors”) for the County under this Agreement. Contractor may not sell, transfer, or permit the use of any Work Products without the express written consent of the County.
2. “Work Products” are defined as all materials, tangible or not, created in whatever medium pursuant to this Agreement, including without limitation publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of intellectual property.
3. Contractor shall not dispute or contest, directly or indirectly, the County’s exclusive right and title to the Work Products nor the validity of the intellectual property embodied therein. Contractor hereby assigns, and if later required by the County, shall assign to the County all titles, rights and interests in all Work Products. Contractor shall cooperate and cause subcontractors to cooperate in perfecting County’s titles, rights or interests in any Work Product, including prompt execution of documents as presented by the County.
4. To the extent any of the Work Products may be protected by U.S. Copyright laws, Parties agree that the County commissions Vendors to create the copyrightable Work Products, which are intended to be work-made-for-hire for the sole benefit of the County and the copyright of which is vested in the County.
5. In the event that the title, rights, and/or interests in any Work Products are deemed not to be “work-made-for-hire” or not owned by the County, Contractor hereby assigns and shall require all persons performing work pursuant to this Agreement, including its subcontractors, to assign to the County all titles, rights, interests, and/or copyrights in such Work Product. Should such assignment and/or transfer become necessary or if at any time the County requests cooperation of Contractor to perfect the County’s titles, rights or interests in any Work Product, Contractor agrees to promptly execute and to obtain execution of any documents (including assignments) required to perfect the titles, rights, and interests of the County in the Work Products with no additional charges to the County beyond that identified in this Agreement or subsequent change orders. The County, however, shall pay all filing fees required for the assignment, transfer, recording, and/or application.
6. Contractor agrees that before commencement of any subcontract work it will incorporate this Schedule I to contractually bind or otherwise oblige its subcontractors and personnel performing work under this Agreement such that the County’s titles, rights, and interests in Work Products are preserved and protected as intended herein.