



Council Meeting: December 7, 2010

SUBJECT: Association of Bay Area Governments (ABAG) Agreement for Local Agency Participation in Bay Area-wide Trash Capture Demonstration Project Grant Contract

REPORT IN BRIEF

The city was issued a new, five-year Municipal Stormwater National Pollutant Discharge Elimination System (NPDES) permit in October 2009. Provision C.10 of the permit requires municipalities to install and maintain a minimum number of full trash capture devices by July 1, 2014 to treat an area equivalent to 30% of the Retail/Wholesale Land that drains to the municipal storm sewer system. For Sunnyvale, this means that 164 acres must be retrofitted with full trash capture devices to meet permit requirements.

Also in October 2009, the San Francisco Estuary Partnership (SFEP) was awarded \$5 million dollars in federal stimulus funds (American Recovery and Reinvestment Act of 2009 (ARRA)) to support the Bay Area Wide Trash Capture Demonstration Project. The Project's purpose is to allow cities to test different types of full trash capture devices, assist in compliance with the municipal stormwater permit requirements, and allow municipalities to share information and experiences with the devices selected. The project is managed by staff of the SFEP, under the auspices of the Association of Bay Area Governments (ABAG).

Adoption of the proposed contract agreement for grant funding through ABAG will provide the city with a portion of the funds needed to install full trash capture devices as required by the new stormwater permit. Staff recommends approval of the proposed contract with ABAG to assist in compliance with the city's stormwater NPDES permit Provision C.10.

EXISTING POLICY

Council Policy Manual 3.4.1: Surface Runoff: "Protect Beneficial Uses of Creeks and South San Francisco Bay" and includes the following goal and policies:

Policy 3.4A.2 Comply with regulatory requirements and participate in processes which may result in modifications to regulatory requirements.

Policy 3.4A.3 Ensure that Best Management Practices (BMPs) are implemented to reduce the discharge of pollutants in stormwater to the maximum extent practicable.

Policy 3.4A.4 Effectively prohibit illicit discharges and improper disposal into the storm drain system.

FISCAL IMPACT

If awarded, the City will receive \$102,000 in grant money to pay for the purchase and installation of full trash capture devices to assist in meeting the permit-required treatment of 164 acres. There is no city matching fund requirement. This will save the city a portion of the capital funds that will be needed to comply with Provision C.10. Other projects will be brought forward for CIP budget approval to cover the rest of the installations needed to meet Provision C.10.

The City will be responsible for the long-term maintenance of the installed units and it is estimated that up to \$15,000/year will be needed to meet manufacturer's recommendations for inspection and cleaning, so as to prevent flooding and minimize by-pass of the treatment devices. Storm drain inlet (SDI) inspection and cleaning costs for one-time per SDI per year are already included in the Public Works, Storm and Sewer Collection System budget. However, the installation of these devices may increase that maintenance frequency per SDI to three to four times per year per unit installed, depending upon its location and quantity of trash/debris accumulation in the size of the SDI being retrofitted.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Delegate authority to the City Manager to sign the ABAG grant contract before December 30, 2010 to provide the city with \$102,000 to assist in the installation of full trash capture devices for compliance with Provision C.10 of the NPDES stormwater permit (MRP).
2. Request additional information and/or modified language for the proposed contract.
3. Do not approve submission of the grant contract to ABAG. Not adopting will require the city to fund the full cost for purchase and installation of full trash capture devices to meet the requirements of Provision C.10 of the NPDES stormwater permit (MRP).

RECOMMENDATION

Staff recommends Alternative No. 1: Delegate authority to the City Manager to sign the ABAG grant contract before December 30, 2010 to provide the city with \$102,000 to assist in the installation of full trash capture devices for compliance with Provision C.10 of the NPDES stormwater permit (MRP).

Acceptance of this funding will partially offset what the city will need to spend in order to comply with Provision C.10 of the stormwater permit, and may provide access to additional funding if other cities elect not to participate in the grant program, as those funds will be redistributed to participating agencies.

Reviewed by:

Marvin A. Rose, Director, Department of Public Works
Prepared by: Lorrie Gervin, Environmental Division Manager
Kristy McCumby-Hyland, Administrative Analyst

Approved by:

Gary M. Luebbers
City Manager

ATTACHMENTS

- A. Agreement for Local Agency Participation in Grant-Funded Bay Area-wide Trash Capture Demonstration Project
- B. Finance Agreement between California State Water Resources Control Board and ABAG

ASSOCIATION OF BAY AREA GOVERNMENTS

Agreement for Local Agency Participation in Grant-Funded
Bay Area-wide Trash Capture Demonstration Project

This agreement is made and entered into effective _____, 2010, by and between the Association of Bay Area Governments (ABAG), a public entity formed under the California Joint Exercise of Powers Act, Government Code Sections 6500, *et seq.* and the City of Sunnyvale (Sunnyvale), a municipal corporation.

Recitals

- A. ABAG and the California State Water Resources Control Board (State Water Board) have entered into Project Finance Agreement No. 09-823-550 (PFA) in the amount of \$5,000,000 (five million dollars) for Clean Water State Revolving Fund Project No. C-06-6441-110, the Bay Area-wide Trash Capture Demonstration Project (Project). Funding is provided by the federal American Recovery and Reinvestment Act of 2009 (ARRA). The PFA and amendments are located at <http://www.bayareatrashtracker.org/content/contract-resources>
- B. The Project is comprised of the following elements: acquisition of trash capture devices (TCDs), provision and/or installation of TCDs in existing storm drainage infrastructure, maintenance of installed TCDs and monitoring of installed TCDs.
- C. Sunnyvale is one of many local government entities that are eligible to participate in the Project (collectively, "Potential Participants") by facilitating installation of the TCDs in its existing storm drainage infrastructure and by maintaining and monitoring installed TCDs, as set forth in the attached Exhibit A, Scope of Work, which is incorporated herein by this reference.
- D. ABAG issued Requests for Proposals for small capacity trash capture devices (small TCDs) and for high flow capacity trash capture devices (large TCDs) (collectively, "TCDs") and assembled a panel of vendors for devices in both categories that can meet minimum trash capture permit requirements when properly installed and maintained.
- E. ABAG has contracted with each vendor on the panel to furnish, and if requested, install small TCDs selected by Participating Entities [as defined in section 2(a)]; and to provide large TCDs; and for ABAG to pay the cost thereof.
- F. ABAG has made an initial determination that each Potential Participant will have access to a portion of the funds available under the PFA (PFA Funds) for the acquisition and installation of TCDs, all as shown in Exhibit A-1.

ABAG and Sunnyvale mutually agree as follows:

1. Initial Allocation and Current Balances. Sunnyvale has access up to \$102,000 (one hundred two thousand, dollars) in PFA Funds to acquire and install TCDs. PFA Funds may only be used to fund or defray the costs of acquiring and/or installing TCDs from the panel of vendors listed in Exhibit A-2 (see section 3). ABAG will calculate the amount of PFA Funds to which Sunnyvale has access on any given day by reducing the initial allocation by the amount encumbered by TCDs on order (see section 3) and amounts paid for accepted TCDs. This information will be posted at <http://www.bayareatrashtracker.org/content/contract-resources> and will be adjusted on an as-needed basis.
2. Reallocations.
 - (a) Sunnyvale acknowledges that the success of the Project depends on maximum use of the PFA Funds and that greater use may be achieved by reallocating access to PFA Funds among the Potential Participants that have executed an "Agreement for Local Agency Participation Grant Funded SF Bay Area Trash Capture Demonstration Project" by January 1, 2011 (Participating Entities). All reallocations will be reflected in the current balance (see section 1).

(b) All of the initial allocations for any Potential Participants that have not executed an "Agreement for Local Agency Participation Grant Funded SF Bay Area Trash Capture Demonstration Project" by January 1, 2011 will be reallocated among Participating Entities by ABAG at its sole discretion after soliciting input from the Project's Technical Advisory Group. Reallocations under this provision will be implemented by written notice from ABAG to each Participating Entity that is given access to the additional PFA Funds. Sunnyvale agrees that any written notice(s) it receives pursuant to this section will automatically amend the allocation in section 1 in accordance with its terms.

(c) ABAG may reallocate access to any unused PFA Funds during the period from January 1, 2011 to March 1, 2011 as follows: ABAG will provide written notice of the proposed reallocation to the affected Participating Entities no less than 30 (thirty) calendar days prior to the date that ABAG intends to implement the reallocation. The affected Participating Entities and ABAG may negotiate a different reallocation and implement it by a writing executed by the authorized representatives of the affected Participating Entities and ABAG. If the affected Participating Entities and ABAG cannot agree on a different reallocation, ABAG may (i) unilaterally implement the reallocation described in the notice on the date set forth therein or (ii) rescind the notice. Sunnyvale agrees that ABAG may unilaterally amend Sunnyvale's allocation in accordance with this subsection (c).

3. Ordering TCDs. ABAG has published a document that lists and describes all available TCDs, which is labeled Exhibit A-2 and is online for downloading at <http://www.bayareatrashtacker.org/content/trash-capture-devices>, and may be amended from time to time by ABAG. To order a TCD, Sunnyvale must submit to ABAG a completed Purchase Order signed by representatives of Sunnyvale and the vendor of the TCD in the form attached to this Agreement as Exhibit A-3. Sunnyvale is responsible for negotiating and reaching agreement with the vendor on the additional information required by the Purchase Order, and such other additional terms and conditions as Sunnyvale and the vendor deem necessary, including without limitation, location of installation, date of delivery or installation, per unit cost, design, engineering and other technical collaboration or assistance. Sunnyvale is responsible for coordinating its ordering of TCDs in a manner that entitles it, alone or in conjunction with others, to discounted prices for TCDs. The Purchase Order is not effective until approved by ABAG. ABAG may unilaterally amend Exhibit A-2 from time to time to reflect changes in TCD availability or specifications or vendor information.
4. Project Sites. Sunnyvale must locate all TCDs acquired under this agreement at locations (Project Sites) that meet the requirements set forth in Exhibits D-1 through D-4, inclusive (Certifications).
5. Accepting TCDs. Upon Sunnyvale's acceptance of a TCD, ABAG will pay the vendor of the TCD. Sunnyvale may accept a TCD only by submitting to ABAG a completed Notice of Acceptance executed by Sunnyvale and the vendor. Payment will be made after ABAG approves the Notice of Acceptance, attached to this Agreement as Exhibit A-4. The Notice of Acceptance Form is available online for downloading at <http://www.bayareatrashtacker.org/content/contract-resources> and may be amended from time to time by ABAG.
6. Deadline for TCD Installation. ABAG will not approve any Notices of Acceptance submitted for any TCD installed after November 1, 2012. Sunnyvale acknowledges and accepts the risks described in section 9 that may result from Sunnyvale's failure to comply with the installation deadline.
7. Vendor Contracts. Sunnyvale's right to order and acquire a TCD is based on its status as a third party beneficiary of ABAG's contract with the vendor of the TCD. The current version of ABAG's contract with each vendor is online at <http://www.bayareatrashtacker.org/content/trash-capture-devices>
8. Transfer of Rights to TCDs. Immediately upon ABAG's approval of the Notice of Acceptance and payment to the vendor for a TCD, all rights to said TCD, including but not limited to title, warranties, and protection from patent infringement claims, are transferred to Sunnyvale.

9. Fabrication and Installation Risk. If for any reason, Sunnyvale and the vendor of the TCD do not submit a Notice of Acceptance, or ABAG disapproves the Notice of Acceptance for a TCD, agrees that if there is any liability to the vendor for amounts owed for the TCD or for any damages, Sunnyvale, and not ABAG, will be solely liable to the vendor for any amounts owed or damages caused thereby.
10. Operation and Maintenance of TCD. Sunnyvale agrees to provide for operation and maintenance of each TCD acquired under this agreement throughout the useful life of the TCD (not to exceed 25 years).
11. Monitoring. See Exhibit A, Scope of Work, for monitoring requirements.
12. Hold Harmless. Contractor shall hold harmless, defend and indemnify ABAG, its directors, officers, agents and employees from and against any and all liability, claims, losses, or damages arising from acts or omissions of Contractor or its officers, agents, employees or subcontractors in rendering services under this agreement, excepting liability, claims, losses or damages based solely on ABAG's acts or omissions. ABAG shall notify Contractor within thirty (30) days after receipt of any claim, demand or action which may be covered by the Contractor's indemnity obligation. Upon Contractor's acceptance of the protection, defense, or indemnification of ABAG, ABAG shall cooperate in all respects with Contractor, and with any attorney employed by Contractor. ABAG designates the General Counsel of ABAG or his or her designee as the person responsible for ensuring full cooperation of ABAG with Contractor's protection, defense and indemnity of ABAG. ABAG waives any right it may have to compel Contractor to retain independent counsel to represent ABAG and specifically agrees to representation by any attorney selected by Contractor, including the Office of the City Attorney of the City of Sunnyvale. This hold harmless, defense and indemnification does not extend to any loss or liability arising out of any claim or action arising out of, or resulting from, or in any way connected with the design of the Trash Capture Device; and/or installation, repair or replacement of the Trash Capture Device to the extent the installation, repair or replacement service was provided by persons or entities procured by ABAG or the State Water Board. To the extent there is an inconsistent provision in this Agreement, this paragraph shall control.
13. Third Party Beneficiary. ABAG acknowledges that Contractor may enforce the terms and conditions of the the agreements between ABAG and various vendors for the supply and installation of Trash Capture Devices as a third party beneficiary of the agreement. Contractor's third party beneficiary interest is not contingent on payment by ABAG for the Trash Capture Devices.
14. Entire Agreement. This agreement and its attachment are entire as to the activities covered by it. This agreement supersedes any and all other agreements either oral or in writing between ABAG and Sunnyvale with respect to the subject matter hereof. ABAG and Sunnyvale acknowledge that no representations, inducements, promises or agreements, orally or otherwise, have been made to any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other contracts, statement, or promise not contained in this agreement shall be valid or binding.
15. Conflict of Interest. Sunnyvale covenants that presently there is no interest, and none shall be acquired, direct or indirect, which conflicts in any manner or degree with its performance as required under this agreement. Sunnyvale further covenants that in the performance of this agreement, no person having any interest shall be employed by it.
16. Notices. Any notices, demands, or elections required or permitted to be given or made hereunder shall be in writing, shall be personally delivered or mailed by certified or registered mail, return receipt requested, addressed to the Authorized Representatives of the respective parties as follows:

ABAG

San Francisco Estuary Partnership
1515 Clay Street, Suite 1400
Oakland, CA 94612
Attn.: Janet Cox, Contract Manager
Phone: (510) 622-2334
Email: jwcox@waterboards.ca.gov

City/County

City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 95113
Attention: Kristy McCumby
Phone: (408) 730-7274

Email: kmccumby@ci.sunnyvale.ca.us

16. Binding on Heirs. This agreement shall be binding upon the heirs, successors, assigns, or transferees, of ABAG or Sunnyvale, as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this agreement other than as provided above.

17. Other Contract Provisions. This Contract shall be subject to the Standard Contract Provisions and Federal ARRA and State Water Resources Control Board Contract Provisions as set forth in Exhibits B and C respectively, which are incorporated herein by this reference.

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

CITY OF SUNNYVALE

Kathleen Franco Simmons
City Clerk

(Tax ID #)

Approved as to form:

David E Kahn, City Attorney

ASSOCIATION OF BAY AREA GOVERNMENTS:

Ezra Rapport
Executive Director

Approved as to legal form and content:

Kenneth K. Moy, Legal Counsel
Association of Bay Area Governments

EXHIBIT A

SCOPE OF WORK

The Bay Area-Wide Trash Capture Demonstration Project is funded by the State Water Resources Control Board Clean Water State Revolving Fund (CWSRF) with funds from the American Reinvestment and Recovery Act (ARRA). The San Francisco Estuary Partnership (SFEP), a project of the Association of Bay Area Governments (ABAG) will administer the project, which will retrofit and/or improve storm drainage infrastructure in order to address trash pollution in San Francisco Bay and local creeks.

The project will demonstrate to municipalities and the public that trash can be managed, and that reductions in the volume of trash enhance the Estuary and its water quality. Municipal staff will gain experience with, and share information about, different types of trash capture devices. The project will facilitate early compliance with the San Francisco Bay Regional Water Quality Control Board's Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit affecting Phase I communities, and anticipated requirements for operators of small municipal separate storm sewer systems (Phase II).

SFEP/ABAG has developed an initial distribution of project resources, posted at <http://www.bayareatrashtacker.org/content/contract-resources>, which allocates a proportion of available funds to all project area municipalities (Exhibit A-1) based on population and regulatory requirement to capture trash. This allocation will be revised to reflect the municipalities that choose to contract with ABAG and join the project.

SFEP/ABAG has solicited proposals from, and is contracting with vendors to provide trash capture devices for installation in municipal storm drain systems throughout the project area, in a range of scales and designs appropriate to different locations and conditions.

All construction must be complete, and all devices installed, by November 1, 2012.

The project completion date (end of project term) is December 1, 2013.

Participating entities that opt to join the project will undertake the following tasks:

1. Contract with the Association of Bay Area Governments to participate in the Bay Area-wide Trash Capture Demonstration Project. This contract includes provisions required by both ARRA and the CWSRF.
2. Review the list of vendors and trash capture devices included in the project (Exhibit A-2); identify high trash-generating locations for installation of devices; and work with vendors' representatives to select and size devices appropriate to those sites. Each individual installation must either be covered by the Project's categorical exemption from requirements of the California Environmental Quality Act (CEQA Guidelines Section 15302(c), Replacement or Reconstruction), or the municipality must submit to ABAG complete CEQA documentation that was been duly filed with the Governor's Office of Planning and Research before September 15, 2009.
3. Complete a purchase order form (example in Exhibit A-3) for each vendor of selected devices, specifying devices and locations; sign the form along with the vendor's representative; and submit to the SFEP project manager. Submit multiple purchase orders if necessary.
4. Either supervise installation of each device by the vendor; install the device with municipal staff labor; or contract separately with an appropriate installer (using municipal funds unless otherwise arranged with ABAG legal staff) to place the device in accordance with specifications.
5. When the device is properly installed and functioning, complete a Notice of Acceptance (Exhibit A-4) and submit the ABAG. When a representative of the city or county signs the Notice of Acceptance, ownership and responsibility for upkeep and maintenance of the device pass from ABAG to the municipality.
6. Display a project placard, to be provided by ABAG, in city/county offices or other appropriate public space
7. Maintenance: Municipal staff will perform or supervise appropriate regular maintenance of each device according to manufacturer's instructions or best practices. Each device will be maintained so as to maximize effectiveness and minimize both flooding and flow of trash through the storm drainage system;

and to filter the one-hour/one-year storm at all times. The municipality will maintain the device in good working order for the useful life of the TCD (not to exceed 25 years), unless otherwise authorized for a shorter term by ABAG and the State Water Resources Control Board Division of Financial Assistance.

8. Monitoring and reporting: Municipal staff will use the online reporting website operated by ABAG/SFEP to record the following:
 - a. Installation/location
 - i. Device inventory number, name, and type
 - ii. Size/capacity of device
 - iii. Installation location
 - iv. Catchbasin dimensions, if applicable
 - v. Outflow pipe diameter
 - vi. Best estimate of catchment area (required for high flow capacity devices, optional for small devices)
 - vii. Major land uses in catchment, estimated percentages (high flow capacity devices); or dominant land use adjacent to catchbasin (small TCDs)
 - b. Maintenance reporting for each maintenance event during the project term:
 - i. Date of maintenance
 - ii. Staffing, time, and equipment required to perform maintenance
 - iii. Estimated percentage full at time of maintenance
 - iv. Optional:
 1. Condition of catchbasin and device
 2. Characteristics of trash removed from device (visual estimate)

EXHIBIT A-1

LIST OF POTENTIAL PARTICIPANTS

Alameda County

Alameda
Albany
Berkeley
Dublin
Emeryville
Fremont
Hayward
Livermore
Newark
Oakland
Piedmont
Pleasanton
San Leandro
Union City
County of Alameda

Contra Costa County

Antioch
Brentwood
Clayton
Concord
Danville
El Cerrito
Hercules
Lafayette
Martinez
Moraga
Oakley
Orinda
Pinole
Pittsburg
Pleasant Hill
Richmond
San Pablo
San Ramon
Walnut Creek
County of Contra Costa

Marin County

Belvedere
Corte Madera
Fairfax
Larkspur
Mill Valley
Novato
Ross
San Anselmo
San Rafael
Sausalito
Tiburon
County of Marin

Napa County

American Canyon
Calistoga
Napa
St Helena
Yountville
County of Napa

San Mateo County

Atherton
Belmont
Brisbane
Burlingame
Colma
Daly City
East Palo Alto
Foster City
Half Moon Bay
Hillsborough
Menlo Park
Millbrae
Pacifica
Portola Valley
Redwood City
San Bruno
San Carlos
San Mateo
South San Francisco
Woodside
County of San Mateo

Santa Clara County

Campbell
Cupertino
Los Altos
Los Altos Hills
Los Gatos
Milpitas
Monte Sereno
Mountain View
Palo Alto
San Jose
Santa Clara
Saratoga
Sunnyvale
County of Santa Clara

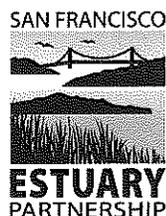
Solano County

Benicia
Fairfield
Suisun City
Vallejo
County of Solano

Sonoma County

Petaluma
Sonoma
County of Sonoma

EXHIBIT A-2



Bay Area-wide Trash Capture Demonstration Project

Vendors and devices approved March 18, 2010

Small devices with San Francisco Bay Water Board certification for full trash capture

Device ID	Vendor	Device Name
AS-1	Advanced Solutions	Stormtek ST3
AS-2	Advanced Solutions	Stormtek ST3-G
BMP-1	Best Management Products, Inc.	SNOOT Oil-Debris Separator (with Trash Screen)
BC-1	Bio Clean Environmental Services, Inc.	Grate Inlet Skimmer Box (square design)
BC-2	Bio Clean Environmental Services, Inc.	High Capacity Round Grate Inlet Skimmer Box
BC-3	Bio Clean Environmental Services, Inc.	Modular Connector Pipe Screen
BC-4	Bio Clean Environmental Services, Inc.	Trash Guard
ECI-1	Ecology Control Industries (American Stormwater)	Debris Dam
G2-1	G2 Construction, Inc.	Collector Pipe Screen
G2-1R	G2 Construction, Inc.	Collector Pipe Screen Removable
GFI-1	Gentile Family Industries (Waterway Solutions)	WAVY GRATE Trash Catcher
KS-1	KriStar Enterprises, Inc.	Flo Gard Plus Catch Basin Filter Insert, combination inlet style – C3 (stainless steel)
KS-2	KriStar Enterprises, Inc.	Flo Gard Plus Catch Basin Filter Inserts, flat grated inlet style, rectangular or round – C3 (stainless steel)
KS-3	KriStar Enterprises, Inc.	FloGard Catch Basin Outlet Screen Insert
REM-1	Revel Environmental Manufacturing, Inc.	Triton Bioflex Drop Inlet Trash Guard
USW-1	United Stormwater, Inc.	Connector Pipe Screen
WCS-1	West Coast Storm, Inc.	Connector Pipe Screen
XP-1	Xeripave, LLP	(pending)

Devices not certified by the Water Board, but eligible for ordering by municipalities where they will be used in combination with full capture devices

Device ID	Vendor	Device Name
ECI-2	Ecology Control Industries (American Stormwater)	Surfgate
G2-2	G2 Construction, Inc.	CamLock Debris Gate
G2-3	G2 Construction, Inc.	FS 10
GFI-2	Gentile Family Industries (Waterway Solutions)	ARS – automatic retractable screen
KS-4	KriStar Enterprises, Inc.	Trash and Debris Guard
USW-2	United Stormwater, Inc.	Clean Screen III
XP-2	Xeripave LLC	Infill existing grate
XP-3	Xeripave LLC	Storm Grate and Lintel
WCS-2	West Coast Storm, Inc.	ARS – automatic retractable screen

High Flow Capacity Devices with Water Board certification

Device ID	Vendor	Device Name
BC-5HF	Bio Clean Environmental Services, Inc.	Nutrient Separating Baffle Box
CCP-1HF	Contech Construction Products	Continuous Deflective Separator (CDS)
FCT-1HF	Fresh Creek Technologies, Inc.	Inline Netting Trash Trap
KS-5HF	KriStar Enterprises, Inc.	CleansAll
KS-6HF	KriStar Enterprises, Inc.	Downstream Defender
KS-7HF	KriStar Enterprises, Inc.	FloGard Dual-Vortex Hydrodynamic Separator
KS-8HF	KriStar Enterprises, Inc.	FloGard Perk Filter
KS-9HF	KriStar Enterprises, Inc.	FloGard Swirl-Flo Screen Separator
KS-10HF	KriStar Enterprises, Inc.	Nettech Gross Pollutant Trap - In Line
RMC-1HF	Roscoe Moss Company	Storm Flo Screen

Devices with Water Board certification to be approved on a case-by-case basis, pending the Water Board's determination that installation qualifies for CEQA Categorical Exemption 15302(c), "Replacement or reconstruction of existing utility systems and/or facilities..."

Device ID	Vendor	Device Name
FCT-2HF	Fresh Creek Technologies, Inc.	End of Pipe Netting Trash Trap
KS-11HF	KriStar Enterprises, Inc.	Nettech Gross Pollutant Trap- End of Line

EXHIBIT A-3

SAMPLE PURCHASE ORDER FORM

**[Do NOT use this paper form. Use the electronic version downloadable from
http://www.bayareatrashtracker.org/content/contract-resources]**

USE ONE FORM PER VENDOR. ATTACH ADDITIONAL SHEETS, SHOWING ALL INSTALLATION
LOCATIONS, AS NECESSARY.

THIS PURCHASE ORDER IS NOT FINAL UNTIL APPROVED BY ABAG

P.O. No. (city/county name + 4-digit number)

Date

Municipality Information		Vendor information	
City/County:		Company name:	
Attention:		Vendor Tax ID:	
Address		Attention:	
		Address	
City	Zip	City	State Zip
Phone	Fax	Phone	Fax
Email		Email	

Order Details (Use one row for each installation. Add rows as necessary)

Line #	Device number	Description / Model	Location*	Delivery Date	Install / Noninstall	Price
1						
2						
						Tax
						Shipping/delivery, if applicable
						TOTAL

* Location must be specific (SW corner 6th St. & Main or GPS coordinates). See online form for specification instructions.

Special Conditions:**

**Attach additional sheets, showing all special conditions, as necessary.

*** All Sunnyvale orders - see next page for required special conditions.

Approved by _____ Date: _____
(Signature of authorized Representative, Participating Entity)

Name (print) _____ Phone _____

Approved by _____ Date: _____
(Signature of device vendor representative)

Name (print) _____ Phone _____

Approved by _____ Date: _____
(ABAG)

OWP # 102147

City of Sunnyvale
- Required Special Conditions -

City of Sunnyvale staff: The following special conditions must be inserted in all orders placed by the City of Sunnyvale unless this requirement is waived in writing by the office of the City Attorney.

1. Vendor acknowledges that the City of Sunnyvale may enforce the terms and conditions of the agreement between Vendor and the Association of Bay Area Governments for the supply and installation of Trash Capture Devices as a third party beneficiary of the agreement. Vendor shall hold harmless and indemnify the City of Sunnyvale, its officers, agents and employees from and against any and all liability, claims, losses, or damages arising from all acts or omissions to act of Vendor or its officers, agents, employees or subcontractors in rendering service under this Purchase Order, excepting liability, claims, losses or damages based solely on the City of Sunnyvale's acts or omissions. Vendor agrees to pay and discharge any judgment or award entered or made against the City of Sunnyvale 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 the Agreement between the City of Sunnyvale and the Association of Bay Area Governments.

2. In the event, ABAG disapproves the Notice of Acceptance for a TCD, the Vendor agrees to assist the City of Sunnyvale to conduct tests and/or other necessary actions to comply with ABAG's conditions for approval of the Notice of Acceptance at no additional cost. If for any reason, ABAG still does not approve the Notice of Acceptance, Vendor agrees to hold the City of Sunnyvale harmless for any amounts owed for the TCD or for any damages, including but not limited to installation costs, caused thereby, except if the failure to submit a Notice of Acceptance or ABAG's disapproval of the Notice of Acceptance for a TCD is solely due to Sunnyvale's acts or omissions.

EXHIBIT A-4

SAMPLE NOTICE OF ACCEPTANCE

**[Do NOT use this form. Use the electronic version downloadable from
<http://www.bayareatrashtacker.org/content/contract-resources>]**

**USE ONE FORM PER VENDOR. ATTACH ADDITIONAL SHEETS, SHOWING ALL INSTALLATION
LOCATIONS, AS NECESSARY.**

Date: _____

This form verifies installation of trash control device(s), as required by the State Water Resources Control Board Clean Water State Revolving Fund Project Finance Agreement with ABAG for the Bay Area-Wide Trash Capture Demonstration Project, Agreement No. 09-823-550.

To: San Francisco Estuary Partnership
Attn.: Janet Cox
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2334

Please be advised that [PARTICIPATING ENTITY NAME] has received the following goods (TCD), pursuant to Purchase Order # _____, dated _____:

Date Installed	Line # (from p.o.)	Project device number	Description / Model	Location	Price
Tax					
Shipping/delivery (if applicable)					
TOTAL					

Authorized representatives of [PARTICIPATING ENTITY NAME] and [VENDOR NAME] have inspected the trash capture devices (TCD) which have been received and installed. [VENDOR NAME] represents the TCD were installed in good condition, with no defects and in conformity with the order.

We accept the TCD(s) noted above and authorize ABAG to pay the vendor the total amount listed above, \$XXX.

Approved by _____ Date: _____
(Signature of authorized Representative, Participating Entity)

Name (print) _____ Phone _____

Approved by _____ Date: _____
(Signature of device vendor representative)

Name (print) _____ Phone _____

Approval to pay by: _____ Date: _____
(Project Manager, SFEP)

Comments/Instructions:

- Payment will be based on this NOA. If Vendor is using its own invoicing system, the invoice must be attached to this NOA for payment.

OWP # 102147

EXHIBIT B
STANDARD CONTRACT PROVISIONS

1. **Definitions:**

“Contractor” as used in Exhibit B is Sunnyvale.

2. **Conflict of Interest.** No employee, officer, or agent of ABAG shall participate in selection, or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- a) The employee, officer or agent;
- b) Any member of his or her immediate family;
- c) His or her partner; or
- d) An organization which employs, or is about to employ, any of the above has a financial or other interest in the firm selected for award.

ABAG's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subcontracts.

3. **Extensions of Time.** The granting of or acceptance of extensions of time to complete performance by Contractor will not operate as a release to Contractor or otherwise modify the terms and conditions of this Contract.

4. **Headings.** The descriptive headings used in this Contract are for convenience only and shall not control or affect the meaning or construction of any of its provisions.

5. **Prohibited Interest.** Contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subcontracts.

6. **Remedies Cumulative.** The remedies conferred by this Contract upon ABAG are not intended to be exclusive, but are cumulative and in addition to all other remedies provided by law.

7. **Severability.** Should any part of this Contract be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Contract, which shall continue in full force and effect; provided that, the remainder of this Contract can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

8. **Insurance Requirements.** Contractor does not maintain insurance covering third party claims arising out of its general operations, and is not required to do so by law. Contractor does appropriate funds specifically for the purpose of satisfying valid third party claims and workers' compensation claims, which may potentially be brought against Contractor. Contractor shall provide ABAG a letter from the Risk Manager verifying its self-insurance status within thirty (30) days of executing this Agreement.

EXHIBIT C
AMERICAN RECOVERY & REINVESTMENT ACT (ARRA) and
CLEAN WATER STATE REVOLVING FUND (CWSRF)
CONTRACT PROVISIONS

ARTICLE I: DEFINITIONS

“Contractor” as used in Exhibits C, C-1, C-2, C-3, and C-4 is Sunnyvale.

“Project” as used in Exhibits C, C-1, C-2, C-3, and C-4 refers to the fabrication and installation of trash capture devices under a Purchase Order.

“System” as used in Exhibits C, C-1, C-2, C-3, and C-4 means all nonpoint source control or estuary enhancement facilities (TCDs), together with all additions, betterments, extensions or improvements to such facilities, properties, structures, or works or any part thereof hereafter acquired and constructed.

ARTICLE II: REPRESENTATIONS AND WARRANTIES

2.1 General Contractor Commitments.

The Contractor 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 Contractor in its application, accompanying documents, and communications filed in support of its request for financial assistance.

2.2 Completion of Project.

The Contractor agrees to expeditiously proceed with and complete construction of the Project in substantial accordance with Exhibit A.

2.3 Project Certification.

ABAG shall prepare a Project Certification that includes information collected by the Contractor in accordance with the Bay Area-wide Trash Capture Demonstration 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 Project Certification shall follow the general format provided by the Bay Area-wide Trash Capture Demonstration Project.

Failure to submit a Project Certification, an affirmative certification, or a corrective action report that meets the above requirements and is satisfactory to the Division within 15 (fifteen) months of the Project Completion date will cause the State Water Board to stop processing any pending or future applications for new financial assistance, withhold payments on any existing financial assistance, and begin administrative proceedings pursuant to sections 13267 and 13268 of the Water Code.

2.4 [not applicable]

2.5 Notice. The Contractor agrees to promptly notify the ABAG Contract Manager in writing of:

(a) Litigation, circulation of a petition to challenge rates, consideration of bankruptcy, dissolution, or disincorporation, or any other thing that could negatively affect or jeopardize the Contractor’s revenues used for operations, maintenance, and repairs of the Project during its useful life.

(b) Any substantial change in scope of the Project. The Contractor 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 ABAG and ABAG has given written approval for such change;

(c) [not applicable]

(d) [not applicable]

(e) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Contractor 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 State Water Resources Control Board, Division of Financial Assistance (Division) has determined what actions should be taken to protect and preserve the resource. The Contractor agrees to implement appropriate actions as directed by the Division;

(f) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Contractor agrees to promptly notify the ABAG Contract Manager. This notification is in addition to the Contractor's obligations under the federal Endangered Species Act;

(g) Any monitoring, demonstration, or other implementation activities such that the State Water Resources Control Board (State Water Board) and/or Regional Water Quality Control Board (Regional Water Board) staff may observe and document such activities;

(h) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state and federal representatives with at least ten (10) working days notice; and,

(i) Completion of Construction of the Project, and actual Project Completion.

2.6 Project Access.

The Contractor agrees to insure that ABAG, the State Water Board, the Governor of the State, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, any member of Congress, the President of the United States, or any authorized representative of the foregoing, will have suitable access to the Project site at all reasonable times during Project construction and thereafter for the life of the Project. The Contractor acknowledges that the Project records and locations are public records.

2.7 Project Completion; Initiation of Operations.

Upon Completion of Construction of the Project, the Contractor agrees to expeditiously initiate Project operations. The Contractor agrees to make all reasonable efforts to meet the Project Completion date established in Exhibit A. Such date shall be binding upon the Contractor unless modified in writing by ABAG upon a showing of good cause by the Contractor. The Contractor shall deliver any request for extension of the Project Completion date no less than ninety (90) days prior to the Project Completion date. ABAG will not unreasonably deny such a timely request, but the Division will deny requests received after this time.

2.8 Continuous Use of Project; Lease or Disposal of Project.

The Contractor 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 the Project without prior written approval of the ABAG and the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all Project Funds together with accrued interest and any penalty assessments which may be due.

2.9 Reports.

(a) [not applicable](b) As Needed Reports. The Contractor agrees to expeditiously provide, during the term of this Agreement, such reports, data, and information as may be reasonably required by ABAG or the Division, including but not limited to material necessary or appropriate for evaluation of the CWSRF Program or to fulfill any reporting requirements of the federal government.

2.10 [not applicable]

2.11 [not applicable]

2.12 [not applicable]

2.13 Signage.

The Contractor shall post project posters inside its city hall and by posting notice on its website until the Completion of Construction date specified in Exhibit A. For both posters and website notices, the Recipient (ABAG) shall ensure the inclusion of the relevant logos and statements required by Section 2.13 of the CWSRF Project Finance Agreement with ABAG for the Bay Area-Wide Trash Capture Demonstration Project, Agreement No. 09-823-550.

ARTICLE III: [not applicable]

ARTICLE IV: MISCELLANEOUS PROVISIONS

4.1 Timeliness.

TIME IS OF THE ESSENCE IN THIS AGREEMENT

4.2 Amendment.

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.

4.3 Assignability.

This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State Water Board in the form of a formal written amendment.

4.4 [not applicable]

4.5 Compliance with Law, Regulations, etc.

(a) The Contractor 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 Contractor agrees that, to the extent applicable, the Contractor will:

- (1) Comply with the provisions of the Categorical Exemption from California Environmental Quality Act requirements (15302(c)) associated with the Bay Area-wide Trash Capture Demonstration Project, for the term of this Agreement;
- (2) Comply with the State Water Board's "Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities," as amended from time to time; and
- (3) Comply with and require its contractors and subcontractors to comply with the list of federal laws certified to by the Contractor.

4.6 Conflict of Interest.

The Contractor certifies that it is in compliance with applicable state and/or federal conflict of interest laws.

4.7 Damages for Breach Affecting ARRA Compliance.

(a) In the event that any breach of any of the provisions of this Agreement by the Contractor that has resulted 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 Water Board or ABAG to reimburse the federal government by reason of any arbitrage profits, the Contractor shall immediately pay the State Water Board or ABAG, as the case may be, in an amount equal to any damages paid by or loss incurred by the state due to such breach.

(b) In the event that any breach of any of the provisions of this Agreement by the Contractor shall result in the failure of Project Funds to be used pursuant to the provisions of ARRA, or if such breach shall result in an obligation on the part of the State Water Board or ABAG to reimburse the federal government, the Contractor shall immediately pay the State Water Board or ABAG, as the case may be, in an amount equal to any damages paid by or loss incurred due to such breach.

4.8 Disputes.

(a) Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Division Deputy Director, or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Contractor 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 Contractor, the Contractor 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 Contractor 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 Contractor shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement.

(b) 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.

(c) The Contractor shall continue with the responsibilities under this Agreement during any dispute.

4.9 Governing Law.

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

4.10 [not applicable]

4.11 Independent Actor.

The Contractor, 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 or ABAG.

4.12 Non-Discrimination Clause.

(a) During the performance of this Agreement, Contractor and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, 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 Contractor, its contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

(c) The Contractor, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

(d) The Contractor, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

(e) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all

subcontracts to perform work under the Agreement.

4.13 No Third Party Rights.

The parties to this Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation or undertaking established herein.

4.14 Operation and Maintenance.

The Contractor agrees to properly staff, operate and maintain all portions of the Project for at least 20 years from the project completion date (see Exhibit A) years or the design life of the devices in accordance with all applicable state and federal laws, rules and regulations. The Contractor certifies that it has in place and will maintain a reserve fund for this purpose. See Exhibit D-1.

4.15 Permits, Subcontracting, Remedies and Debarment.

The Contractor 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. Signed copies of any such permits or licenses shall be submitted to the Division before construction begins.

Any subcontractors, outside associates, or consultants required by the Contractor in connection with the services covered by this Agreement during the performance of this Agreement shall be limited to such individuals or firms as were specifically identified and agreed to during negotiations for this Agreement, or as are specifically authorized by the State Water Board's Project Representative through ABAG. Any substitutions in, or additions to, such subcontractors, associates, or consultants, shall be subject to the prior written approval of the Division.

The Contractor shall not subcontract 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 Contractor shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code, § 4477)

The Contractor 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 agency;
- (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.

4.16 [not applicable]

4.17 Contractor's Responsibility for Work.

The Contractor 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 Contractor shall be responsible for any and all disputes arising out of its contracts for work on the Project. Neither the State Water Board nor ABAG will mediate disputes between the Contractor and any other entity concerning responsibility for performance of work.

4.18 [not applicable]

4.19 Rights in Data.

The Contractor agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State and ABAG shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the State and ABAG reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Contractor upon request. (40 CFR §§ 31.34, 31.36)

4.20 State and ABAG Reviews and Indemnification.

The parties agree that review or approval of Project plans and specifications by ABAG or the State Water Board is for administrative purposes only and does not relieve the Contractor of its responsibility to properly operate and maintain the Project. To the extent permitted by law, the Contractor agrees to indemnify, defend and hold harmless ABAG and the State Water Board against any loss or liability arising out of any claim or action brought against ABAG or the State Water Board 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 System or 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 System or 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 Contractor 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 Contractor agrees to pay and discharge any judgment or award entered or made against ABAG or the State Water Board 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.

4.21 State Water Board and ABAG Action; Costs and Attorney Fees.

The Contractor 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 ABAG or the State Water Board as a result of breach of this Agreement by the Contractor, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by ABAG or the State Water Board shall not preclude ABAG or 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.

4.22 Termination; Immediate Repayment; Interest.

(a) This Agreement will automatically terminate without written notice if the Contractor fails to meet the timelines in Exhibit A to the PFA and the ARRA special conditions of Exhibit C-2. Under such circumstance, the

Contractor shall immediately pay all Project Funds received under this Agreement for purchase of the trash capture device, at the highest legal rate of interest.

(b) Additionally, this Agreement may be terminated by written notice at any time prior to project completion by the Contractor, at the option of the State Water Board through ABAG, upon violation by the Contractor of any material provision of this Agreement after such violation has been called to the attention of the Contractor and after failure of the Contractor to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the Division through ABAG. In the event of such termination, the Contractor agrees, upon demand, to immediately pay to the State Water Board through ABAG an amount equal to the purchase price of the trash capture device.

4.23 Unenforceable Provision.

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

4.24 Useful Life of the Project.

The useful life of the Project, commencing at Project Completion, is at least 20 years or the term of this Agreement, as set forth in Exhibit A hereto, whichever period is longer.

4.25 Venue.

The State Water Board and the Contractor 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.

4.26 Waiver and Rights of the State Water Board.

Any waiver of rights by ABAG or the State Water Board with respect to a default or other matter arising under the Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.

Any rights and remedies of ABAG or the State Water Board provided for in this Agreement are in addition to any other rights and remedies provided by law.

EXHIBIT C-1

SPECIAL ENVIRONMENTAL, FINANCIAL AND OTHER PROGRAM CONDITIONS

- The Contractor shall comply with the Special Environmental, Financial, and Other Program Conditions listed in Exhibit D of the CWSRF Project Finance Agreement with ABAG for the Bay Area-wide Trash Capture Demonstration Project. See Exhibits D-2 and D-3 of this contract.

- Reimbursement of Project expenses will be restricted to TCDs installed at locations where the Contractor has submitted a statement that explains certifications of access to land, operation and maintenance, and no litigation to State Water Board staff. See Exhibit D-4.

EXHIBIT C-2

FEDERAL ARRA SPECIAL CONDITIONS

The Contractor shall comply with the Federal ARRA Conditions in the CWSRF Project Finance Agreement with ABAG for the Bay Area-wide Trash Capture Demonstration Project, Exhibit E posted at <http://www.bayareatrashtracker.org/content/contract-resources>) of with the exception of section 1(f). Section 1(f) shall read:

(f) Reports. In addition to the reports specified in this Agreement, the Contractor may be asked for quarterly reports related to the goals of ARRA, including jobs created or saved. The Contractor agrees to provide such reports, if requested, in an expeditious fashion.

EXHIBIT C-3

ARRA SECTION 1511 CERTIFICATION

The Contractor shall comply with the Section 1511 Certification in the CWSRF Project Finance Agreement with ABAG for the Bay Area-wide Trash Capture Demonstration Project, Exhibit G. The CWSRF Project Finance Agreement is posted at <http://www.bayareatrashtacker.org/content/contract-resources>.

EXHIBIT C-4

DAVIS-BACON ACT COMPLIANCE

The Contractor shall comply with the Davis-Bacon Act requirements listed in Exhibit H (available for viewing from SFEP by request) of the CWSRF Project Finance Agreement with ABAG for the Bay Area-wide Trash Capture Demonstration Project.

The Contractor shall comply with and use the Davis-Bacon wage determinations while working under this contract. The wage determinations can be found at: <http://www.wdol.gov/dba.aspx#3>.

EXHIBIT D-1

OPERATION AND MAINTENANCE CERTIFICATION

The undersigned certifies by his or her signature the following:

Sunnyvale agrees to continue to provide for operations and maintenance (O&M) throughout the useful life of the Project. Sunnyvale provides for operations and maintenance of the Project through its:

General Fund, of which the estimated costs of O&M will be ____ per cent (__%);

or

Other – Storm Sewer Operating Fund (446), of which the estimated annual costs of O&M will be Fifteen Thousand Dollars (\$15,000.00).

This fund is an on-going operation of the City of Sunnyvale.

Signature

Date

Print Name of Signer

Position/Title

EXHIBIT D-2

PROJECT SITE(S) ACCESS CERTIFICATION

The undersigned certifies by his or her signature the following:

The City of Sunnyvale (Contractor) certifies that the State Water Board, the Governor of the State, the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, the President of the United States, or any authorized representative of the foregoing, will have suitable access to all Project sites at all reasonable times during Project construction and thereafter for the life of the Project (not to exceed 25 years). The Contractor acknowledges that the Project records and locations are public records.

Signature

Date

Print Name of Signer

Position/Title

EXHIBIT D-3

NO LITIGATION CERTIFICATION

The undersigned certifies by his or her signature the following:

The City of Sunnyvale (Contractor) is not currently engaged in any pending, threatened, or actual litigation, claims, or assessments with regard to any of the Project Site(s) or the fund identified in Exhibit C-2.

Signature

Date

Print Name of Signer

Position/Title

EXHIBIT D-4

TITLE CERTIFICATION

The undersigned certifies by his or her signature the following:

All of the Project Site(s) is/are located on land owned by the City of Sunnyvale, or land over which the City of Sunnyvale has an easement for access, operation or maintenance, or is in the public right-of-way.

For any Project Site where the City of Sunnyvale has an easement, said easement is valid for the life of the Project (not to exceed 25 years).

All permits necessary for Project have been obtained or will be obtained at the appropriate time.

City of Sunnyvale
Attorney or Legal Counsel

Date

Print Name of Signer



Linda S. Adams,
Secretary for Environmental
Protection

State Water Resources Control Board

Division of Administrative Services
1001 I Street • Sacramento, California 95814 • (916) 341-5057
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5048 • <http://www.waterboards.ca.gov>



Arnold Schwarzenegger
Governor

October 7, 2009

Mr. Henry L. Gardner
Executive Director
Associate of Bay Area Governments
101 Eighth Street
Oakland, CA 94607-4756

Agreement Number: **09-823-550**; Project Number: **C-06-6441-110**

Enclosed is the corrected Finance Agreement for your approval and signature. The Special Condition pertaining to the Signage requirement was added to Exhibit D. This Agreement cannot be considered binding by either party until approved by the State Water Resources Control Board. The State is not obligated to make any payments for services performed prior to final approval of any Agreement.

If the Agency is in agreement with all terms and conditions of the Finance Agreement, please sign and date two (2) signature pages (page 19) of the Agreement and return via U.S. Mail or Overnight Mail to:

U.S. Mail

Ms. Eva Kawada
Program Analyst
State Water Resources Control Board
Division of Financial Assistance
P.O. Box 944212
Sacramento, CA 94244

Overnight Mail

Ms. Eva Kawada
Program Analyst
State Water Resources Control Board
Division of Financial Assistance
1001 I Street, 17th Floor
Sacramento, CA 95814

Expeditious handling of this Agreement is appreciated. For inquiries regarding this Agreement, please contact Ms. Kawada at (916) 341-5715 or ekawada@waterboards.ca.gov.

Once final approval is obtained, we will forward you an executed copy for your records.

Enclosure





Clean Water
State Revolving Fund

ASSOCIATION OF BAY AREA GOVERNMENTS

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



Water Boards

PROJECT FINANCE AGREEMENT

STATE REVOLVING FUND PROJECT NO. C-06-6441-110

AGREEMENT NO. 09-823-550

AMOUNT: \$ 5,000,000

TERM DATES: SEPTEMBER 15, 2009 – NOVEMBER 1, 2032

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This Project Finance Agreement (including all exhibits and attachments hereto, this "Agreement") is dated as of the date set forth on the first page of this Agreement, by and between the State Water Resources Control Board, an administrative and regulatory agency of the State of California (the "State Water Board"), and the Recipient identified on the first page of this Agreement:

WITNESSETH:

WHEREAS, the United States of America, pursuant to Title VI of the federal Water Pollution Control Act (as such has been and may be amended from time to time, the "Clean Water Act") requires each State to establish a water pollution control revolving fund to be administered by an instrumentality of the State as a condition to receipt of capitalization grants under the Clean Water Act; and

WHEREAS, the State of California (the "State") has established a Clean Water State Revolving Fund ("CWSRF") pursuant to Chapter 6.5 of Division 7 of the California Water Code (the "State Act") to be used for purposes of the Clean Water Act; and

WHEREAS, the American Recovery and Reinvestment Act of 2009 (ARRA) provides funding through the CWSRF for the purpose of projects that will preserve and create jobs and promote economic recovery, assist those most impacted by the recession, invest in environmental protection infrastructure that will provide long-term economic benefits; and

WHEREAS, ARRA authorizes subsidization for ARRA funds in the CWSRF over and above that authorized by the Clean Water Act, specifically principal forgiveness and interest rate savings; and

WHEREAS, the State Water Board will lose its ARRA allocation for the CWSRF if time schedule requirements set forth in ARRA are not met; and

WHEREAS, the State Water Board has the responsibility to administer the CWSRF and to provide financial assistance from the CWSRF to recipients for the construction of eligible projects, as provided in the State Act; and

WHEREAS, the State Water Board is responsible under the Clean Water Act and the State Act for determining the eligibility of projects for financial assistance from the CWSRF, determining a reasonable schedule for financing and construction of projects, and for ensuring compliance with the Clean Water Act and the terms and conditions of an applicable project finance agreement; and

WHEREAS, the Recipient has submitted to the State Water Board an application for financial assistance from the CWSRF, for the purpose of financing or refinancing the Project described below, and the State Water Board has reviewed and approved said application; and

WHEREAS, the Recipient has or will incur costs incurred in connection with, the planning, design, acquisition, construction and installation of the project or projects described in Exhibit A hereto (such projects being herein collectively referred to as the "Project"); and

WHEREAS, the Recipient understands that the terms of its obligation to repay this financial assistance depend significantly on compliance with the time schedule set forth in this Agreement; and

WHEREAS, on the basis of the Recipient's application and the representations and warranties set forth herein, the State Water Board proposes to assist in the financing of the costs of the Project and/or to refund outstanding bonds, notes or other debt obligations of the Recipient, if any, issued to finance the Project, and the Recipient desires to participate as a recipient of financial assistance from the CWSRF and evidence its obligation to repay, upon the terms and conditions as hereinafter set forth in this Agreement, all pursuant to the Clean Water Act and ARRA;

NOW, THEREFORE, in consideration of the premises and of the mutual representations, covenants and agreements herein set forth, the State Water Board and the Recipient, each binding itself, its successors and assigns, do mutually promise, covenant and agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions.

Unless otherwise specified, each capitalized term used in this Agreement (including the Exhibits hereto) has the following meaning:

"Additional Payments" means the Additional Payments described in Section 3.1(c) of this Agreement.

"Agreement" means the Project Finance Agreement, dated as of the date set forth on the first page hereof, by and between the State Water Board and the Recipient, including all exhibits and attachments thereto.

"Allowance" means an amount to help defray the planning, design, direct administration, and construction engineering of the Project.

"Authorized Representative" means the duly appointed representative of the Recipient. For all authorized representatives, a certified original of the authorizing resolution that designates the authorized representative, by title, must accompany the first payment request, and any other documents or requests required or allowed under this Agreement.

"Completion of Construction" means the date, as determined by the Division after consultation with the Recipient, that the work of building and erection of the Project is substantially complete.

"Construction" includes, for the purposes of expanded use projects, implementation (but not planning or design).

"CWSRF" means Clean Water State Revolving Fund.

"Division" means the Division of Financial Assistance of the State Water Board, or any other segment of the State Water Board authorized to administer the CWSRF.

"Fiscal Year" means the period of twelve (12) months terminating on June 30 of any year, or any other annual period hereafter selected and designated by the Recipient as its Fiscal Year in accordance with applicable law.

"Force Account" means the use of the Recipient's own employees or equipment for construction of the Project.

"Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project, or, for expanded use projects, any implementation other than planning or design.

"Operations and Maintenance Costs" means, so long as outstanding System Obligations [other than the Obligation] are outstanding, the definition of such term as defined therein, and thereafter, the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with generally accepted accounting principles,

including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles.

"Policy" means the State Water Board's "Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities," as most recently amended, the State Water Board's "Strategy for Implementing State Revolving Fund for Expanded Use Projects," as appropriate, and Board Resolution No. 2009-0027.

"Project" means the Project as described in Exhibit A and in the documents thereby incorporated by reference.

"Project Completion" for the purposes of a wastewater or water recycling project, means the date, as determined by the Division after consultation with the Recipient, that operation of the Project is initiated or is capable of being initiated, whichever comes first. For the purposes of all other projects, "Project Completion" means the date that all tasks in Exhibit A are completed to the reasonable satisfaction of the Division. This date shall be synonymous with the date specified in the "Initiation of Operation" form submitted as part of the Approval of Award package, if any.

"Project Costs" means, for the purposes of a wastewater or water recycling project, the incurred costs of the Recipient which are eligible for financial assistance from the CWSRF under the federal Clean Water Act, which are allowable costs as defined under the Policy and which are reasonable, necessary and allocable by the Recipient to the Project under generally accepted accounting principles, plus capitalized interest. For the purposes of all other projects, "Project Costs" means those costs incurred by the Recipient for the planning, design, and implementation of the project as set forth in Exhibit A; this includes any monitoring, reporting, education and outreach, or direct administrative costs associated with these tasks and deemed necessary by the Division.

"Project Funds" means funds disbursed by the State Water Board to the Recipient for purposes of this Agreement.

"Recipient" means the recipient of Project Funds, as identified on the front page of this Agreement.

"State" means State of California.

"State Water Board" means the State Water Resources Control Board, an administrative and regulatory agency of the State of California.

"System" means for the purposes of a wastewater project, all wastewater collection, transport, treatment, storage and disposal facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other properties, structures or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed. For the purposes of a water recycling project, "System" means all wastewater, water recycling, and/or potable water collection, transport, treatment, storage and/or disposal facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other properties, structures or works hereafter acquired and constructed by the Recipient and determined to be a part of the System,

together with all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed. For the purposes of all other projects, "System" means all nonpoint source control or estuary enhancement facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other properties, structures or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed.

1.2 Exhibits and Appendices Incorporated.

All exhibits and appendices to this Agreement, including any amendments and supplements hereto, are hereby incorporated herein and made a part of this Agreement.

ARTICLE II REPRESENTATIONS AND WARRANTIES

2.1 General Recipient Commitments.

The Recipient 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 Recipient in its application, accompanying documents, and communications filed in support of its request for financial assistance.

2.2 Completion of Project.

The Recipient agrees to expeditiously proceed with and complete construction of the Project in substantial accordance with Exhibit A.

2.3 Project Certification.

For wastewater or water recycling projects, one (1) year after initiation of operation, the Recipient shall certify to the State Water Board whether or not the Project, as of that date, meets applicable design specifications and effluent limitations. If the Recipient cannot certify that the Project meets such specifications and limitations at that time, the Recipient shall submit a corrective action report. The corrective action report shall include an estimate of the nature, scope, and cost of the corrective action, and a time schedule to expeditiously make all needed corrections, at the Recipient's expense, to allow affirmative certification for the Project.

For all other projects, the Recipient shall prepare a Project Certification 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 Project Certification shall follow the general format provided by the Program Manager.

Failure to submit a Project Certification, an affirmative certification, or a corrective action report that meets the above requirements and is satisfactory to the Division within fifteen (15) months of the Project Completion date will cause the State Water Board to stop processing any pending or future applications for new financial assistance, withhold payments on any existing financial assistance, and begin administrative proceedings pursuant to sections 13267 and 13268 of the Water Code.

2.4 Award of Construction Contracts.

- (a) The Recipient agrees to award the prime construction contract no later than the date specified in Exhibit A. Failure to meet this date will have serious consequences, as specified in Exhibit B.
- (b) The Recipient agrees to promptly notify the Division in writing both of the award of the prime construction contract for the Project and of Initiation of Construction of the Project.
- (c) The Recipient agrees to make all reasonable efforts to complete construction in substantial conformance with the terms of the contract by the Completion of Construction date established in Exhibit A. Such date shall be binding upon the Recipient unless modified in writing by the Division upon a showing of good cause by the Recipient. The Recipient shall deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date. The Division will not unreasonably deny such a timely request, but the Division will deny requests received after this time.

2.5 Notice.

The Recipient agrees to promptly notify the Division in writing of:

- (a) Litigation, circulation of a petition to challenge rates, consideration of bankruptcy, dissolution, or disincorporation, or any other thing that could negatively affect or jeopardize the Recipient's revenues used for operations, maintenance, and repairs of the Project during its useful life.
- (b) Any substantial change in scope of the Project. The Recipient 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 Division and the Division has given written approval for such change;
- (c) 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;
- (d) 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 to the Division;
- (e) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Recipient 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 Recipient agrees to implement appropriate actions as directed by the Division;
- (f) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered

during construction of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;

- (g) Any monitoring, demonstration, or other implementation activities such that the State Water Board and/or Regional Water Quality Control Board (Regional Water Board) staff may observe and document such activities;
- (h) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state and federal representatives with at least ten (10) working days notice; and,
- (i) Completion of Construction of the Project, and actual Project Completion.

2.6 Project Access.

The Recipient agrees to insure that the State Water Board, the Governor of the State, the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, the President of the United States, or any authorized representative of the foregoing, will have suitable access to the Project site at all reasonable times during Project construction and thereafter for the life of the Project. The Recipient acknowledges that the Project records and locations are public records.

2.7 Project Completion; Initiation of Operations.

Upon Completion of Construction of the Project, the Recipient agrees to expeditiously initiate Project operations. The Recipient agrees to make all reasonable efforts to meet the Project Completion date established in Exhibit A. Such date shall be binding upon the Recipient unless modified in writing by the Division upon a showing of good cause by the Recipient. The Recipient shall deliver any request for extension of the Project Completion date no less than 90 days prior to the Project Completion date. The Division will not unreasonably deny such a timely request, but the Division will deny requests received after this time.

2.8 Continuous Use of Project; Lease or Disposal of Project.

The Recipient 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 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 Project Funds together with accrued interest and any penalty assessments which may be due.

2.9 Reports.

- (a) Quarterly Reports. The Recipient agrees to expeditiously provide status reports no less frequently than quarterly, starting with the execution of this Agreement. At a minimum the reports will contain the following information: a summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed; a listing of change orders including amount, description of work, and change in contract amount and schedule; any problems encountered, proposed resolution, schedule for resolution, status of previous problem resolutions, and number of jobs created or preserved due to the Project.

- (b) **As Needed Reports.** The Recipient agrees to expeditiously provide, during the term of this Agreement, such reports, data, and information as may be reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the CWSRF Program or to fulfill any reporting requirements of the federal government.

2.10 Federal Disadvantaged Business Enterprise (DBE) Reporting.

The Recipient agrees to report DBE utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334. Reports must be submitted to the Division semiannually within ten (10) calendar days following April 1 and October 1 until such time as the "Notice of Completion" is issued.

2.11 Records.

- (a) Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles the Recipient agrees to:
- (1) Establish an official file for the Project which shall adequately document all significant actions relative to the Project;
 - (2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
 - (3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
 - (4) Establish an accounting system which will accurately depict final total costs of the Project, including both direct and indirect costs;
 - (5) 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
 - (6) If Force Account is used by the Recipient for any phase of the Project, other than for planning, design and construction engineering, and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee.
- (b) The Recipient shall be required to maintain books, records and other material relative to the Project in accordance with generally accepted accounting principles. The Recipient shall also be required to retain such books, records, and other material for each subcontractor who performed work on this project for a minimum of six (6) years after repayment of Project Funds, if any, or six (6) years after Project Completion if no repayment is required. The Recipient shall require that such books, records, and other material be subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the United States Environmental Protection Agency, the Office of Inspector General, or any authorized representatives of the aforementioned, and shall allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar right regarding audit, interviews, and records retention in any subcontract related to the performance of this Agreement.

2.12 Audit.

- (a) The 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 Recipient and at the cost of the Recipient. The audit shall be in the form required by the Division.
- (b) Audit disallowances will be returned to the State Water Board.

2.13 Signage.

The Recipient shall place a sign at least four feet tall by eight feet wide made of ½ inch thick exterior grade plywood or other approved material in a prominent location on the Project site. The sign shall include the following color logos:



(logos available from the Division) and the following disclosure statement:

Funding for this project has been provided in full or in part by the American Recovery and Reinvestment Act of 2009 and the Clean Water State Revolving Fund through an agreement with the State Water Resources Control Board.

The Project sign may include another agency's required promotional information so long as the above logos and disclosure statement are equally prominent on the sign. The sign shall be prepared in a professional manner.

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. (Gov. Code § 7550, 40 CFR § 31.20.)

ARTICLE III FINANCING PROVISIONS

3.1 Amounts Payable by the Recipient.

- (a) Contingent Obligation to Repay Project Funds: The Recipient's obligation to repay Project Funds is forgiven contingent on meeting the requirements of ARRA and Exhibit A. Failure to

meet these requirements for any reason whatsoever, within or outside the control of the Recipient, will result in automatic suspension and termination of this Agreement and immediate repayment of all disbursed Project Funds plus interest at the highest legal rate due immediately whether or not the System or any part thereof is operating or operable or has been completed, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part.

- (b) Where repayment is required, the Recipient as a whole is obligated to make all payments required by this Agreement to the State Water Board, notwithstanding any individual default by its constituents or others in the payment to the Recipient of fees, charges, taxes, assessments, tolls or other charges ("Charges") levied or imposed by the Recipient. The Recipient shall provide for the punctual payment to the State Water Board of all amounts which become due under this Agreement and which are received from constituents or others in the payment to the Recipient. In the event of failure, neglect or refusal of any officer of the Recipient to levy or cause to be levied any Charge to provide payment by the Recipient under this Agreement, to enforce or to collect such Charge, or to pay over to the State Water Board any money collected on account of such Charge necessary to satisfy any amount due under this Agreement, the State Water Board may take such action in a court of competent jurisdiction as it deems necessary to compel the performance of all duties relating to the imposition or levying and collection of any of such Charges and the payment of the money collected therefrom to the State Water Board. Action taken pursuant hereto shall not deprive the State Water Board of, or limit the application of, any other remedy provided by law or by this Agreement.
- (c) Project Costs. The Recipient agrees to pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient shall nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.
- (d) Additional Payments. In addition to any repayment required to be made by the Recipient, the Recipient shall also pay to the State Water Board the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, attorneys, litigation costs, insurance premiums and all other extraordinary costs reasonably incurred by the State Water Board or assignee of the State Water Board.

Additional Payments may be billed to the Recipient by the State Water Board from time to time, together with a statement executed by a duly authorized representative of the State Water Board, stating that the amounts billed pursuant to this section have been incurred by the State Water Board or its assignee for one or more of the above items and a copy of the invoice or statement for the amount so incurred or paid. Amounts so billed shall be paid by the Recipient within thirty (30) days after receipt of the bill by the Recipient.

- (e) The Recipient agrees that it shall not be entitled to interest earned on undisbursed project funds.

3.2 [reserved].

3.3 No Obligation of the State.

Any obligation of the State Water Board herein contained shall not be an obligation, debt or liability of the State and any such obligation shall be payable solely out of the moneys in the CWSRF made available pursuant to this Agreement.

3.4 Disbursement of Project Funds; Availability of Funds.

(a) Except as may be otherwise provided in this Agreement, disbursement of Project Funds will be made as follows:

- (1) Upon execution and delivery of this Agreement, the Recipient may request immediate disbursement of any eligible incurred planning and design allowance as specified in Exhibit B from the Project Funds through submission to the State Water Board of the Disbursement Request Form 260, or any amendment thereto, duly completed and executed.
- (2) The Recipient may request disbursement of eligible construction and equipment costs consistent with budget amounts referenced in Exhibit B. (Note that this Agreement will be amended to incorporate Approval of Award.)
- (3) Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Disbursement Request Form 260, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of status reports due under Section 2.9 above.
- (4) The Recipient agrees that it will not request disbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of disbursement request.
- (5) Recipient shall spend Project Funds within 30 days of receipt. Any interest earned on Project Funds shall be reported to the State Water Board and may be required to be returned to the State Water Board or deducted from future disbursements.
- (6) Recipient shall request its final disbursement no later than six months after Completion of Construction unless prior approval is granted by the Division. If the Recipient fails to do so, then the undisbursed balance of this Agreement will be deobligated.
- (7) 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, policies, or regulations.

(b) The State Water Board's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other agency. If any disbursements due the Recipient under this contract are

deferred because sufficient funds are unavailable, such disbursement will be made to the Recipient when sufficient funds do become available.

3.5 Withholding of Disbursements.

- (a) Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board may retain an amount equal to ten percent (10%) of the financial assistance specified in this Agreement until completion of the Project to the reasonable satisfaction of the State Water Board. Any retained amounts due to the Recipient will be promptly disbursed to the Recipient, without interest, upon Project Completion.
- (b) The State Water Board may withhold all or any portion of the funds provided for by this Agreement in the event that:
 - (1) The Recipient has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
 - (2) The Recipient fails to maintain reasonable progress toward completion of the Project.
- (c) For the purposes of this section, the terms "material violation" or "threat of material violation" include, but are not limited to:
 - (1) Placement on the ballot of an initiative to reduce revenues necessary for operations, maintenance, and repairs to the Project during its useful life;
 - (2) Passage of such an initiative;
 - (3) Successful challenges by ratepayer(s) to the process used by Recipient to set, dedicate, or otherwise secure revenues necessary for operations, maintenance, and repairs to the Project during its useful life; or
 - (4) Any other action or lack of action that may be construed as a material violation or threat thereof.

3.6 Rates, Fees and Charges.

The Recipient agrees, to the extent permitted by law, to fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair and nondiscriminatory and which will be at least sufficient to yield during each Fiscal Year Net Revenues equal to debt service plus operations, maintenance, and capital reserves for such Fiscal Year. The Recipient may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the revenues from such reduced rates, fees and charges will at all times be sufficient to meet the requirements of this section. The Recipient agrees to promptly challenge any initiative that would impair this ongoing responsibility and publicly state its opposition to any rate challenges. The requirements of this paragraph apply to public agency Recipients.

3.7 Accounting Standards and Federal Single Audit Act.

The Recipient agrees to comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient agrees

to be bound by and to comply with, the provisions and requirements of the federal Single Audit Act of 1984 (Pub. L.98-502) Office of Management and Budget (OMB) Circular No. A-133, and updates or revisions, thereto. The Recipient will maintain separate Project accounts in accordance with generally accepted accounting principles. The Recipient shall comply with "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" promulgated by the U.S. General Accounting Office. (40 CFR § 35.3135(l).)

ARTICLE IV MISCELLANEOUS PROVISIONS

4.1 Timeliness.

TIME IS OF THE ESSENCE IN THIS AGREEMENT.

4.2 Amendment.

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.

4.3 Assignability.

This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4.4 Bonding.

Where contractors are used, the Recipient shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient 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 \$20,000.00.

4.5 Compliance with Law, Regulations, etc.

(a) The Recipient 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 Recipient agrees that, to the extent applicable, the Recipient will:

- (1) Comply with the provisions of the adopted environmental mitigation plan for the term of this Agreement;
- (2) Comply with the State Water Board's "Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities", as amended from time to time;
- (3) Comply with and require its contractors and subcontractors on the Project to comply with federal disadvantaged business enterprise (DBE) requirements; and
- (4) Comply with and require its contractors and subcontractors to comply with the list of federal laws certified to by the Recipient.

4.6 Conflict of Interest.

The Recipient certifies that it is in compliance with applicable state and/or federal conflict of interest laws.

4.7 Damages for Breach Affecting Tax Exempt Status or ARRA Compliance:

- (a) In the event that any breach of any of the provisions of this Agreement by the Recipient 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 Recipient shall immediately reimburse the state in an amount equal to any damages paid by or loss incurred by the state due to such breach.
- (b) In the event that any breach of any of the provisions of this Agreement by the Recipient shall result in the failure of Project Funds to be used pursuant to the provisions of ARRA, or if such breach shall result in an obligation on the part of the State to reimburse the federal government, the Recipient shall immediately reimburse the State in an amount equal to any damages paid by or loss incurred by the State due to such breach.

4.8 Disputes.

- (a) Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Division Deputy Director, or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Recipient 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 Recipient, the Recipient 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 Recipient 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 Recipient shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement.
- (b) 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.
- (c) Recipient shall continue with the responsibilities under this Agreement during any dispute.

4.9 Governing Law.

This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

4.10 Income Restrictions.

The Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Recipient under this Agreement shall be paid by the Recipient to the State, to the extent that they are properly allocable to costs for which the Recipient has been reimbursed by the State under this Agreement.

4.11 Independent Actor.

The Recipient, 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.

4.12 Non-Discrimination Clause.

- (a) During the performance of this Agreement, Recipient and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, 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 Recipient, its contractors, and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (c) The Recipient, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- (d) The Recipient, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- (e) The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

4.13 No Third Party Rights.

The parties to this Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation or undertaking established herein.

4.14 Operation and Maintenance; Insurance.

The Recipient agrees to properly staff, operate, maintain, and perform repairs to all portions of the Project during its useful life in accordance with all applicable state and federal laws, rules and regulations. The Recipient certifies that it has in place and will maintain a reserve fund for this purpose.

The Recipient will procure and maintain or cause to be maintained insurance on the System with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System) as are usually covered in connection with systems similar to the System. Such insurance may be maintained by the maintenance of a self-insurance plan so long as any such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund funded in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program.

In the event of any damage to or destruction of the System caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System. The Recipient 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 System shall be free and clear of all claims and liens.

4.15 Permits, Subcontracting, Remedies and Debarment.

The Recipient 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. Signed copies of any such permits or licenses shall be submitted to the Division before construction begins.

Any subcontractors, outside associates, or consultants required by the Recipient 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, or as are specifically authorized by the State Water Board's Project Representative during the performance of this Agreement. Any substitutions in, or additions to, such subcontractors, associates, or consultants, shall be subject to the prior written approval of the Division.

The Recipient shall not subcontract 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 Recipient shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code 4477)

The Recipient 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 agency;
- (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.

4.16 Prevailing Wages & Davis Bacon.

The Recipient agrees to be bound the provisions of the Davis-Bacon Act, as identified in Exhibit H. To the extent non-ARRA Project Funds are made available under this Agreement, the Recipient agrees to be bound by all the provisions of State Labor Code Section 1771 regarding prevailing wages.

4.17 Recipient's Responsibility for Work.

The Recipient 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 Recipient shall be responsible for any and all disputes arising out of its contracts for work on the Project. The State Water Board will not mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.

4.18 Related Litigation.

Under no circumstances may a Recipient use funds from any disbursement under this Agreement to pay costs associated with any litigation the Recipient 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 Recipient agrees to complete the Project funded by this Agreement or to repay all of the disbursed funds plus interest.

4.19 Rights in Data.

The Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Recipient may copyright the same, except that, as to any work which is copyrighted by the Recipient, the State reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Recipient upon request. (40 CFR §§ 31.34, 31.36)

4.20 State Reviews and Indemnification

The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only and does not relieve the Recipient of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Recipient agrees to indemnify, defend and hold harmless the State Water Board against any loss or liability arising out of any claim or action brought against it 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 System or 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 System or 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 Recipient 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 Recipient agrees to pay and discharge any judgment or award entered or made against the State Water Board 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.

4.21 State Water Board Action; Costs and Attorney Fees.

The Recipient 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 Recipient, 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.

4.22 Termination; Immediate Repayment; Interest.

- (a) This Agreement will automatically terminate without written notice if the Recipient fails to meet the timelines in Exhibit A and the ARRA provisions of Exhibit E. Under such circumstance, the Recipient shall immediately repay all Project Funds received under this Agreement, at the highest legal rate of interest.
- (b) Additionally, this Agreement may be terminated by written notice during construction of the Project, or thereafter at any time prior to complete repayment by the Recipient, at the option of the State Water Board, upon violation by the Recipient of any material provision of this Agreement after such violation has been called to the attention of the Recipient and after failure of the Recipient to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the Division. In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the State Water Board all Project Funds, including accrued interest, and all penalty assessments due. 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 the Recipient to the date of full repayment by the Recipient.

4.23 Unenforceable Provision.

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

4.24 Useful Life.

The useful life of the Project, commencing at Project Completion, is at least 20 years, or the term of this Agreement, as set forth in Exhibit B hereto, whichever period is longer.

4.25 Venue.

The State Water Board and the Recipient 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.

4.26 Waiver and Rights of the State Water Board.

Any waiver of rights by the State Water Board with respect to a default or other matter arising under the Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.

Any rights and remedies of the State Water Board provided for in this Agreement are in addition to any other rights and remedies provided by law.

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

ASSOCIATION OF BAY AREA GOVERNMENTS:

By: _____
Name: Henry L. Gardner
Title: Executive Director
Date: _____

STATE WATER RESOURCES CONTROL BOARD

By: _____
Name: Barbara L. Evoy
Title: Deputy Director, Division of Financial Assistance
Date: _____

EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS

1. The Recipient agrees to initiate construction no later than **November 30, 2009**.

TIME IS OF THE ESSENCE. Failure to meet this date will result in automatic termination of this agreement with immediate repayment due.

2. Completion of Construction date is hereby established as **November 1, 2012**.
3. The Project Completion date shall be **December 1, 2013**.
4. The Project, commonly known as **Bay Area-Wide Trash Capture Demonstration Project**, will **retrofit Bay Area storm drainage infrastructure by installing trash capture devices, in order to address trash impairment of San Francisco Bay and local creeks. The project will facilitate early compliance with the San Francisco Bay Regional Water Quality Control Board's Municipal Regional Stormwater Permit (pending) affecting Phase I communities, and anticipated requirements for operators of small municipal separate storm sewer systems (Phase II)**, as more particularly described in the financial assistance application of the Agency and the accepted plans and specifications for the Project, if any.
5. 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. The Recipient shall not implement monitoring and performance assessment and/or evaluation actions prior to PAEP approval by the Project Manager. Guidance for preparing the PAEP is available at http://www.waterboards.ca.gov/water_issues/programs/grants_loans/paep/index.shtml

6. Project Planning and Design

The Recipient shall:

- Submit PAEP to the Division.
- Obtain and submit copies of landowner agreements and certifications of access to the Division.
- Enter into subcontract with municipal partners who can agree to ARRA terms and conditions.
- Prepare and submit final plans and specifications for installation of trash capture devices in accordance with Recipient standards and submit to the Division.
- Research vendors of trash capture devices, solicit bids, and award a contract. Provide a copy of the construction contract to the Division.

7. Construction

Recipient shall:

- Prepare and submit bid documentation to the Division.
- Ensure the installation of trash capture devices in accordance with final plans and specifications and provide photo-documentation of installed equipment to the Division. Guidance for preparing the photo-documentation is available at:

http://www.waterboards.ca.gov/water_issues/programs/swamp/docs/cwt/guidance/4214sop.doc

EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS

- Ensure the performance of a final inspection of the trash capture devices to guarantee compliance to design plans and specifications and provide inspection notes to the Division.

8. Technology transfer

The Recipient shall:

- Develop a listserv the Division and participants may use to communicate with each other. Submit a copy of the first listserv email to the Division.
- Provide for the development of an online forum/website for permittee monitoring of trash captured in installed devices and at trash collection points downstream of trash capture devices, compatible with Rapid Trash Assessment protocols and/or other developed assessment methods required in the permit. Submit the website link to the Division.
- Design, fabricate, and provide signage that municipalities can use to inform residents about this project, its funding source, and the importance of controlling trash. Submit photo-documentation of signage to the Division.
- Prepare and distribute press release(s) that municipalities may tailor for local news outlets, describing local participation in the program, the benefits to water quality and aesthetics of trash capture, and need to reduce littering. Submit copies of media press releases to the Division.
- In collaboration with partner cities, design and provide to municipalities project-related public outreach resources and materials. Submit copies of outreach photos and materials to the Division. Guidance for preparing the photo-documentation is available at: http://www.waterboards.ca.gov/water_issues/programs/swamp/docs/cwt/guidance/4214sop.doc
- Ensure cities and counties have proper knowledge in the installation and maintenance of equipment.
- Provide training to municipal staff, including presentations by municipalities with experience with trash capture devices and vendor information and demonstrations. Submit training session sign-in sheets to the Division.

9. Trash monitoring

The Recipient shall:

- Work with those under permit regulations to monitor using the required monitoring methods and documents under the permit. Submit post-construction monitoring data to the Division.

10. Reports

The Recipient shall submit:

- Progress Reports
- Annual Project Assessment and Evaluation Plan Report
- Annual Executive Summary Report
- Natural Resource Projects Inventory Project Survey Form
- Draft Project Certification
- Final Project Certification

EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS

TABLE OF ITEMS FOR REVIEW

DESCRIPTION	CRITICAL DUE DATE	ESTIMATED DUE DATE
PLANNING AND DESIGN		
Project Assessment and Evaluation Plan (PAEP)		December 2009
Landowner Agreement(s) and Certification of Access		Before payment for work at each site location
Final Plans and Specifications		Quarterly, as applicable
Project Construction Contract Award for initial construction/installation	November 30, 2009	
CONSTRUCTION		
Newspaper Advertisement		Quarterly, as applicable
Bids Received		Quarterly, as applicable
Photos of Construction Work		Quarterly, as applicable
Final Inspection Notes		Quarterly, as applicable
TECHNOLOGY TRANSFER		
Copy of First Listserv Email		December 2011
Website link		December 2011
Photo Documentation of Interpretive Signage		Quarterly, as applicable
Media Press Releases		Quarterly, as applicable
Outreach Photos and Materials		September 2010, and quarterly as applicable
Training Session Sign-in Sheets		Quarterly, as applicable
MONITORING		
Post-construction monitoring data		Annually
INVOICING		
		Quarterly
PROJECT REPORTING		
Progress Reports by the twentieth (20 th) of the month following the end of the calendar quarter (March, June, September, and December)		Quarterly
Annual Assessment and Evaluation Plan Report		Annually
Natural Resource Projects Inventory (NRPI) Project Survey Form		Before final invoice
Draft Project Certification	November 1, 2013	
Final Project Certification	December 1, 2013	

EXHIBIT B – PROJECT FINANCING AMOUNT

1. **Estimated Reasonable Cost.** The estimated reasonable cost of the total Project, including associated planning and design costs is **Five million dollars and no cents (\$5,000,000):**
2. **Project Funding.** Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds in the amount of **Five million dollars and no cents (\$5,000,000).**
3. **Contingent Principal Forgiveness.** Contingent on the Recipient's performance of its obligations under Exhibits A and E, the State Water Board agrees to forgive all of the principal due under this Agreement. If, for any reason whatsoever within or outside the Recipient's control, or any combination thereof, the Recipient fails to satisfy the conditions under these exhibits, the Recipient will be considered to have breached this Agreement, no principal will be forgiven, and the Recipient agrees to repay all Project Funds IMMEDIATELY at the highest legal rate of interest.
4. The term of this agreement is from **September 15, 2009 to November 1, 2032.**
5. Budget costs are as follows:

ARRA FINANCING

Allowances:

Personnel Services	\$604,800
Direct Project Expenses	\$75,000
Professional / Consulting	\$4,320,200

TOTAL **\$5,000,000**

6. **Line Item Adjustment(s).** Subject to the prior review and approval of the State Water Board's Grant Manager, adjustments between existing line item(s) may be used to defray allowable direct costs up to fifteen percent (15%) of the total ARRA financing amount including any amendment(s) thereto. Line item adjustments in excess of fifteen percent (15%) shall require a formal Agreement amendment.

EXHIBIT C - CWSRF PAYMENT SCHEDULE

Not Applicable.

EXHIBIT D — SPECIAL ENVIRONMENTAL, FINANCIAL, AND OTHER PROGRAM CONDITIONS

D.1 Special Other Program Conditions:

- After execution of the CWSRF Finance Agreement, the Recipient will be required to submit annually a Report to the Division staff on the monitoring and performance of the Project consistent with guidelines in the Project Assessment and Evaluation Plan. The Recipient will be required to submit an annual report to Division until one year past the completion of construction, as defined in the Finance Agreement.
- After the execution of the CWSRF Finance Agreement, the Division will issue a Plans and Specifications approval detailing the final eligibility of project components.
- The Recipient agrees that implementation of the Project will be in compliance with the National Pollutant Discharge Elimination System Permit issued by the San Francisco Bay Regional Water Quality Control Board.
- The Recipient will obtain an access permit from each city and enter into an agreement with each city to perform the work. The Recipient will also submit certifications of access to the land for the useful life of the Project (not to exceed 25 years), explanation of title to the property, operation and maintenance of the Project (not to exceed 25 years), and no litigation certifications for review by State Water Board staff review and approval. Reimbursement of Project expenses will be restricted to locations where the Recipient has submitted a statement that explains certifications of access to land, operation and maintenance, and no litigation to State Water Board staff.
- The exterior signage requirement of section 2.13 of this Agreement shall be deemed satisfied by posting project posters inside the relevant city hall for each project location and by posting notice on the relevant city and Recipient websites until the Completion of Construction date specified in Exhibit A. For both posters and website notices, the Recipient shall ensure the inclusion of the relevant logos and statements required by section 2.13 of this Agreement.

EXHIBIT E — FEDERAL ARRA CONDITIONS

1. ARRA Special Conditions

- (a) ARRA Requirements. The Recipient understands and acknowledges that financing pursuant to this Agreement is provided according to the American Recovery and Reinvestment Act of 2009 (ARRA). The Recipient agrees to perform its obligations under this Agreement in compliance with the letter and the spirit of ARRA.

The Recipient understands and agrees that failure to comply with ARRA will automatically terminate this Agreement and repayment of any and all Project Funds disbursed to the Recipient will be due and payable immediately.

- (b) Timeline Absolute. The Recipient understands that, for any reason whatsoever, foreseeable or unforeseeable, negligent, intentional, or due to any factor outside the Recipient's control, should the Recipient fail to start construction prior to the date specified in Exhibit A, this Agreement will automatically terminate and repayment of any and all Project Funds disbursed to the Recipient will be due and payable immediately.
- (c) Buy American. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board, the Recipient shall not use Project Funds to purchase iron, steel, and manufactured goods produced outside of the United States. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board, the Recipient hereby certifies that all iron, steel, and manufactured goods used in the Project were produced in the United States.
- (d) Waste, Fraud, & Abuse. The Recipient shall prevent fraud, waste, and the abuse of Project Funds.
- (e) Whistleblower Rights Notice. The Recipient shall post notice of the rights and remedies provided to state and local government and contractor whistleblowers as set forth in Section 1553 of ARRA and shall ensure that its contractors and subcontractors post such notices.
- (f) Reports. In addition to the reports specified in this Agreement, the Recipient may be asked for weekly reports related to the goals of ARRA, including jobs created or saved. The Recipient agrees to provide such reports in an expeditious fashion.
- (g) Land or Easement Acquisition. The Recipient shall not use Project Funds for the purchase of land, easements, or interests in land.
- (h) Davis Bacon. The Recipient agrees that all laborers and mechanics shall be paid not less than federal prevailing wages. (State prevailing wage requirements found elsewhere in this Agreement may be higher.)
2. Implementation of Recommendations. Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board may make necessary amendments to this Agreement upon the request of the USEPA or the recommendation of the Recovery Accountability and Transparency Board as set forth in Section 1523 of ARRA.

EXHIBIT F

Not Applicable.

EXHIBIT G – SECTION 1511 CERTIFICATION

By entering into this Agreement, the authorized representative of the State Water Board and the authorized representative of the Recipient hereby certify, and/or affirm previous certification(s), that this Project has received the full review and vetting required by law and that such representative accepts responsibility that the Project is an appropriate use of taxpayer dollars. Subject to the provisions of this Agreement, the following general description is provided in order to comply with Section 1511 of ARRA:

1. Project description: Project, commonly known as **Bay Area-Wide Trash Capture Demonstration Project, will retrofit Bay Area storm drainage infrastructure by installing trash capture devices, in order to address trash impairment of San Francisco Bay and local creeks. The project will facilitate early compliance with the San Francisco Bay Regional Water Quality Control Board's Municipal Regional Stormwater Permit (pending) affecting Phase I communities, and anticipated requirements for operators of small municipal separate storm sewer systems (Phase II)**
2. Estimated total cost of the Project: **Five million dollars and no cents (\$5,000,000.00)**
3. Type of assistance: **Full principal forgiveness**
4. Estimated amount of ARRA funds to be used: **Five million dollars and no cents (\$5,000,000.00)**

EXHIBIT H – DAVIS BACON

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Davis-Bacon prevailing wage requirements apply to the construction, alteration, and repair activity of infrastructure, including all construction, alteration and repair activity involving waste water or drinking water treatment plants is subject to DB. If the Recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the Recipient must discuss the situation with the State Water Board before authorizing work on that site.

2. Obtaining Wage Determinations.

- (a) The Recipient shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.
 - (i) While the solicitation remains open, the Recipient shall monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The Recipient shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Recipient may request a finding from the State Water Board that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State Water Board will provide a report of its findings to the Recipient.
 - (ii) If the Recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State Water Board, at the request of the Recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Recipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- (b) If the Recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the Recipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.
- (c) The Recipient shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- (d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a Recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the Recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

EXHIBIT H – DAVIS BACON

3. Contract and Subcontract provisions.

- (a) The Recipient shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses:

(1) Minimum wages.

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

The Recipient may obtain wage determinations from the U.S. Department of Labor's web site, www.wdol.gov.

- (ii)(A) **The Recipient**, on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA award official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the **Recipient** agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the **Recipient** to the State Water Board. The State Water Board will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the State Water Board or will notify the State Water Board within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the **Recipient** do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), USEPA will refer the questions, including the views of all interested parties and the recommendation of the State Water Board, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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(2) Withholding.

The **Recipient**, shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the **Recipient**, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State Water Board or EPA. As to each payroll copy received, the **Recipient** shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information

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may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the **Recipient** for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the **Recipient**.

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds.

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Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and Trainees

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in

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accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act Requirements.

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract Termination: Debarment.

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the

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contractor (or any of its subcontractors) and the **Recipient**, State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of Eligibility.

- (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. **Contract Provision for Contracts in Excess of \$100,000.**

(a) **Contract Work Hours and Safety Standards Act.** The **Recipient** shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

- (1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.
- (3) **Withholding for unpaid wages and liquidated damages.** The **Recipient**, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any

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liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.
- (b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the **Recipient** shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the **Recipient** shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

- (a) The **Recipient** shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The **Recipient** must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- (b) The **Recipient** shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the **Recipient** must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. The **Recipient** must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. The **Recipient** shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- (c) The **Recipient** shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The **Recipient** shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the **Recipient** must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date of the contract or subcontract. The **Recipient** must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition,

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during the examinations the **Recipient** shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

- (d) The **Recipient** shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S. Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.
- (e) The **Recipient** must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

EXHIBIT I – GREEN BUSINESS CASE

Not Applicable.