



**COUNTY OF SAN MATEO**  
**Inter-Departmental Correspondence**  
Department of Public Works



**DATE:** June 21, 2011  
**BOARD MEETING DATE:** July 12, 2011  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Majority

**TO:** Honorable Board of Supervisors

**FROM:**  James C. Porter, Director of Public Works

**SUBJECT:** Memoranda of Understanding Regarding the Implementation of the James V. Fitzgerald Area of Special Biological Significance Pollution Reduction Program

**RECOMMENDATION:**

Adopt a Resolution authorizing and directing the County Manager, or his designee, to execute:

1. Memoranda of Understanding for the implementation of the James V. Fitzgerald Area of Special Biological Significance Pollution Reduction Program with the San Francisco Estuary Institute in an amount not to exceed \$490,000; and with the San Mateo County Resource Conservation District in an amount not to exceed \$500,000, each for the term of May 24, 2011 through May 1, 2015; and
2. Non-substantive additions, clarifications and other changes as the County Manager, or his designee, deems necessary or advisable after consultation with County Counsel.

**BACKGROUND:**

In the 1970s, a 5.5-mile stretch of shoreline in San Mateo County, including the James V. Fitzgerald Marine Reserve, was designated as an Area of Special Biological Significance (ASBS), requiring special protection by the State. Since 1983, the California Ocean Plan (Ocean Plan) has prohibited the discharge of pollutants to the ASBS, unless the State Water Resources Control Board (State Water Board) grants an Exception. The Ocean Plan does not allow for stormwater discharges in to the ASBS. In December 2007, the Department submitted an exception application to the State Water Resources Control Board to allow for existing stormwater discharge to continue. The State Water Board is considering adoption of ASBS Special Protections. The proposed Special Protections include provisions for existing stormwater discharges that are essential for flood control and/or slope stability. However, the discharge of non-authorized non-stormwater and trash are prohibited. These Special Protections would

require the implementation of Best Management Practices (BMPs) to manage polluted stormwater discharges; and extensive monitoring programs to achieve the Ocean Plan water quality objectives.

Staffs from Public Works (Department), Planning, Environmental Health, San Francisco Estuary Institute (SFEI), and the San Mateo County Resource Conservation District (RCD) developed the James V. Fitzgerald ASBS Pollution Reduction Program (Pollution Reduction Program). The Pollution Reduction Program will assist in the County's compliance with the stormwater discharge prohibition and anticipated Special Protections. In September 2008, the Department submitted an application for Proposition 84 grant funding from the State Water Board for the Pollution Reduction Program, which was approved in February 2009 in the amount of \$2,300,000.

On May 24, 2011, your Board adopted Resolution No. 071429, authorizing the President of your Board to execute Grant Agreement No. 10-402-550 (Grant Agreement) for the Pollution Reduction Program.

**DISCUSSION:**

The Pollution Reduction Program consists of implementing stormwater BMPs; water quality studies and monitoring programs; and education and outreach efforts. The Department has worked with SFEI and RCD to develop the terms set forth in the Memoranda of Understanding (MOU) which define the responsibilities of each agency, scope of work, and terms and conditions related to the implementation of the Pollution Reduction Program. The Department, SFEI, and RCD will be responsible for performing various elements of the Pollution Reduction Program. SFEI's work will focus on water quality monitoring, analysis, and assessment of BMP effectiveness on County maintained stormwater systems, while the RCD work will focus primarily on best management practices on upland private property. Several elements of the proposed Pollution Reduction Program to be completed by SFEI and RCD must be submitted to the State Water Board within 90 days after the execution of the Grant Agreement.

County Counsel has reviewed and approved the Resolution and MOUs as to form.

Approval of this action contributes to the Shared Vision 2025 outcome of an Environmentally Conscious Community by implementing the Pollution Reduction Program to promote environmental stewardship and protect beneficial uses and biological resources of the James V. Fitzgerald ASBS through community education and outreach and collaborative pollutant management and monitoring.

**FISCAL IMPACT:**

The estimated cost of the Pollution Reduction Program is \$2,635,000. The County's total fiscal obligation to SFEI and RCD under the MOUs shall not exceed \$490,000 and \$500,000, respectively, and will be funded through the grant funds.

There is no impact to the General Fund.

RESOLUTION NO. \_\_\_\_\_

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

\* \* \* \* \*

**RESOLUTION AUTHORIZING AND DIRECTING THE COUNTY MANAGER, OR  
HIS DESIGNEE, TO EXECUTE:**

- 1. MEMORANDA OF UNDERSTANDING FOR THE IMPLEMENTATION OF THE  
JAMES V. FITZGERALD AREA OF SPECIAL BIOLOGICAL SIGNIFICANCE  
POLLUTION REDUCTION PROGRAM WITH THE SAN FRANCISCO  
ESTUARY INSTITUTE IN AN AMOUNT NOT TO EXCEED \$490,000; AND  
WITH THE SAN MATEO COUNTY RESOURCE CONSERVATION DISTRICT  
IN AN AMOUNT NOT TO EXCEED \$500,000, EACH FOR THE TERM OF  
MAY 24, 2011 THROUGH MAY 1, 2015; AND**
- 2. NON-SUBSTANTIVE ADDITIONS, CLARIFICATIONS AND OTHER  
CHANGES AS THE COUNTY MANAGER, OR HIS DESIGNEE, DEEMS  
NECESSARY OR ADVISABLE AFTER CONSULTATION WITH COUNTY  
COUNSEL**

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**RESOLVED**, by the Board of Supervisors of the County of San Mateo, State of California, that

**WHEREAS**, the County of San Mateo applied for grant funds from the State Water Resources Control Board (State Water Board) Proposition 84 Areas of Special Biological Significance (ASBS) Grant Program and was determined by the State Water Board to be eligible for a grant pursuant to applicable State laws and regulations; and

**WHEREAS**, on February 3, 2009 the State Water Board approved Resolution No. 2009-0007 authorizing grant funding for the James V. Fitzgerald ASBS Pollution Reduction Program (Pollution Reduction Program), a project designed to comply with the discharge prohibitions into ASBS contained in the California Ocean Plan; and

**WHEREAS**, on May 24, 2011 the Board adopted Resolution No. 071429 authorizing the President of the Board of Supervisors to execute Grant Agreement No.

10-402-550 (Grant Agreement) with the State Water Board for the Pollution Reduction Program; and

**WHEREAS**, the Pollution Reduction Program consists of implementing pilot and targeted upland Best Management Practices for stormwater discharges and conducting associated studies, water quality monitoring, and education and outreach efforts; and

**WHEREAS**, the County of San Mateo has been designated as the grantee and is responsible for accepting and complying with all of the terms, provisions, conditions, and commitments of the Grant Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made in its application, accompanying documents and communications filed in support of its request for grant funding; and

**WHEREAS**, the County of San Mateo is responsible for complying with and requiring its contractors and subcontractors to comply with all applicable laws, policies and regulations; and

**WHEREAS**, the County of San Mateo is responsible for coordination and implementation of the Pollution Reduction Program and for executing appropriate documentation for the distribution of Proposition 84 ASBS Grant Program funds to project partners in accordance with the terms and conditions set forth in the Grant Agreement; and

**WHEREAS**, the County of San Mateo developed the Pollution Reduction Program in partnership with the San Francisco Estuary Institute (SFEI) and San Mateo

County Resource Conservation District (RCD); and

**WHEREAS**, it is appropriate for the County of San Mateo to enter into Memoranda of Understanding with SFEI and RCD to define the responsibilities, terms, and conditions with respect to the Pollution Reduction Program; and

**NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** as follows:

1. The Board of Supervisors authorizes and directs the County Manager, or his designee, to execute Memoranda of Understanding between the County of San Mateo and the San Francisco Estuary Institute, and the County of San Mateo and the San Mateo County Resource Conservation District regarding implementation of the James V. Fitzgerald Area of Special Biological Significance Pollution Reduction Program.
2. The Board of Supervisors authorizes and directs the County Manager, or his designee, to execute non-substantive additions, clarifications and other changes as the County Manager, or his designee, deems necessary or advisable after consultation with County Counsel.

\* \* \* \* \*

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE COUNTY OF SAN MATEO AND THE SAN FRANCISCO ESTUARY INSTITUTE**  
**REGARDING**  
**IMPLEMENTATION OF THE JAMES V. FITZGERALD AREA OF SPECIAL BIOLOGICAL**  
**SIGNIFICANCE POLLUTION REDUCTION PROGRAM**

This **Memorandum of Understanding** (MOU) is made and entered into this day of June 28, 2011, by and between the **County of San Mateo** (COUNTY) and the **San Francisco Estuary Institute** (SFEI), hereinafter collectively referred to as the "**Parties**".

**RECITALS**

WHEREAS, COUNTY applied for grant funds from the State Water Resources Control Board (SWRCB) Proposition 84 Areas of Special Biological Significance (ASBS) Grant Program and was determined by the SWRCB to be eligible for a grant pursuant to applicable State laws and regulations; and

WHEREAS, on February 3, 2009 the SWRCB approved Resolution No. 2009-0007 authorizing grant funding for the James V. Fitzgerald ASBS Pollution Reduction Program (Project), a project designed to comply with the discharge prohibitions into ASBS contained in the California Ocean Plan; and

WHEREAS, on May 24, 2011 the COUNTY Board of Supervisors adopted Resolution No. 071429 authorizing the President of the COUNTY Board of Supervisors to execute Grant Agreement (Grant Agreement) No. 10-402-550, attached hereto as Exhibit A, with the SWRCB for the Project; and

WHEREAS, Project consists of implementing pilot and targeted upland Best Management Practices (BMPs) and conducting associated studies, water quality monitoring, and education and outreach within the James V. Fitzgerald ASBS watershed; and

WHEREAS, COUNTY has been designated as the grantee and is responsible for accepting and complying with all of the terms, provisions, conditions, and commitments of the Grant Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made in its application, accompanying documents and communications filed in support of its request for grant funding; and

WHEREAS, COUNTY is responsible for complying with and requiring its contractors and subcontractors to comply with all applicable laws, policies and regulations; and

WHEREAS, COUNTY is responsible for coordination and implementation of the Project and for executing subcontract agreements for the distribution of Proposition 84 ASBS Grant Program funds to Project partners in accordance with the terms and conditions set forth herein; and

WHEREAS, COUNTY developed the Project in partnership with SFEI; and

WHEREAS, it is appropriate for the Parties to enter into a MOU defining the responsibilities, scope of work, terms, and conditions with respect to the Project; and

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties hereto agree as follows:

1. Exhibits and Attachments

The terms and conditions of this MOU, all exhibits and attachments, and all documents expressly incorporated by reference, represent the entire MOU of the Parties with respect to the subject matter of this MOU. This written MOU shall supersede any and all prior agreements, oral or written, regarding the subject matter between the COUNTY and SFEI. The terms and conditions of this MOU shall not be altered or modified except by a written amendment to this MOU signed by the Parties.

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

Exhibit A – SWRCB Grant Agreement No. 10-402-550  
Exhibit B – SFEI Scope of Work and Budget  
Exhibit C – Invoicing and Reporting Provisions  
Attachment H – HIPAA Business Associate requirements  
Attachment I – § 504 Compliance

2. Services to be performed by SFEI

In consideration of the payments set forth herein and in Exhibit C, SFEI shall perform services for the COUNTY as specified below and in Exhibit B in accordance with the terms, conditions and specifications included in Exhibits A, B, and C attached hereto and incorporated by reference as though fully set forth herein. Under this MOU, SFEI shall complete the following Project tasks as described in the Grant Agreement (Grant Agreement item number in parenthesis):

(A) Plans and General Compliance Requirements

1. Project Assessment and Evaluation Plan (PAEP) (A-2.1)
2. Monitoring Plan (MP) (A-2.2)
3. Quality Assurance Project Plan (QAPP) (A-2.3)

(B) Project-Specific Requirements

1. Pilot BMPs Monitoring (B-2.2)
  - 1.1 Document BMP efficacy by conducting water quality monitoring at the pilot BMP sites (pre- and post-implementation and/or upstream and downstream) in accordance with the QAPP, MP, and SWRCB's Surface Water Ambient Monitoring Program's (SWAMP) guidelines. (B-2.2.1)
2. Pilot BMPs Analysis (B-2.3)
  - 2.1 Analyze water quality data, including summary statistics, calculation of pollutant loading and removal, and graphs of the water data. (B-2.3.1)
  - 2.2 Assess BMP effectiveness as a function of pollutant removal efficiency, flow/capacity, installation costs, maintenance costs, and environmental conditions and restraints. (B-2.3.2)

- 2.3 Prepare and submit a summary report to the COUNTY including water quality data and results of the analysis, including recommendations for upland storm drain BMP selection. (B-2.3.3)
3. Pathogen Source Tracking Study (B-4)
  - 3.1 Conduct pathogen source tracking indicator bacteria monitoring, in five drainages during dry and wet weather, according to QAPP, MP, and SWAMP guidelines. (B-4.1)
  - 3.2 Analyze the data, prepare a summary report, and submit to the COUNTY. (B-4.2)
4. Education and Outreach (B-5)
  - 4.1 Develop graphics for three (3) ASBS newsletters, one each in May of 2012, 2013, and 2014, and submit to the COUNTY. (B-5.1)
  - 4.2 Develop graphics for an ASBS website and submit to the COUNTY. (B-5.2)
  - 4.3 Develop graphics for a community survey on nonpoint source (NPS) knowledge, perceived mid coast water quality problems, willingness to participate, and ideas for water quality improvements and submit to the COUNTY. (B-5.3)
  - 4.4 Host a low impact development (LID) and retrofit workshop for developers, contractors, landowners, residents, and local government staff to provide resources and tools for reducing runoff and harvesting storm water. Proceedings from the workshop will be available on the ASBS website. Submit workshop agenda and materials to the COUNTY. (B-5.4)
5. Upland Storm Drain BMPs Monitoring (B-6.3)
  - 5.1 Conduct water quality monitoring at the upland BMP sites (pre- and post-implementation and/or upstream and downstream) and document BMP efficacy in accordance with the QAPP, MP, and SWAMP guidelines. (B-6.3.1)
6. Upland Storm Drain BMPs Analysis (B-6.4)
  - 6.1 Analyze water quality data, including summary statistics, calculation of pollutant loading and removal, and graphical displays. (B-6.4.1)
  - 6.2 Assess BMP effectiveness as a function of pollutant removal efficiency, flow/capacity, installation costs, maintenance costs, and environmental conditions and restraints. (B-6.4.2)
  - 6.3 Prepare and submit a summary report to the COUNTY including water quality data and results of the analysis. (B-6.4.3)
7. Project Assessment and Future Planning (B-7)
  - 7.1 Assess the Project according to criteria and metrics developed in the PAEP. (B-7.1)
  - 7.2 Conduct future planning, including development of a plan for continuation of the Project, including future BMP implementation based on pollution load reduction forecasts generated from models developed by SFEI as part of the Critical Coastal Area Pilot Project – Phase 2 SWRCB grant agreement and calibrated with data from this Project. (B-7.2)
  - 7.3 Prepare a Project assessment and future planning report and submit to the COUNTY. (B-7.3)

### 3. Payments

In consideration of the services provided by SFEI in accordance with all terms, conditions and specifications set forth herein and in Exhibits A and B, the COUNTY shall make payment to SFEI in the manner specified herein and in Exhibit C. The COUNTY reserves the right to withhold payment if the COUNTY determines that the quantity or quality of the work performed is unacceptable. In no event shall the COUNTY's total fiscal obligation to SFEI under this MOU exceed FOUR HUNDRED NINETY THOUSAND DOLLARS (\$490,000).



4. Term and Termination

Subject to compliance with all terms and conditions, the term of this MOU shall be from June 28, 2011 through May 1, 2015. However, all work shall be completed by March 31, 2015 as specified in Exhibit A.

This MOU may be terminated by SFEI, the COUNTY Manager, or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

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

5. Availability of Funds

The COUNTY may terminate this MOU or a portion of the services referenced in the attachments and exhibits based upon unavailability of Federal, State, or COUNTY funds, by providing written notice to SFEI as soon as is reasonably possible after the COUNTY learns of said unavailability of outside funding.

6. Relationship of Parties

SFEI agrees and understands that the work/services performed under this MOU are performed as an independent contractor and not as an employee of the COUNTY and that SFEI acquires none of the rights, privileges, powers, or advantages of COUNTY employees. The COUNTY and SFEI accept and agree to comply with all terms, provisions, conditions, and commitments of this MOU, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments not amended by Exhibit A made by the COUNTY in the application, accompanying documents, and communications filed in support of the request for Proposition 84 grant funding.

7. Hold Harmless

SFEI shall indemnify and save harmless the COUNTY, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including SFEI, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from SFEI's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of the COUNTY, its officers, agents, employees, or servants, resulting from the performance of any work required of SFEI or payments made pursuant to this MOU, provided that this shall not apply to injuries or damage for which the COUNTY has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

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

8. Dispute Resolution

If a dispute arises between the Parties concerning the interpretation or operation of this MOU, any party may request mediation by providing the other party with written notice of such request. No party is obligated to enter mediation. Nevertheless, if the Parties mutually agree to enter mediation, the Parties shall attempt to agree upon a single mediator, and the costs of mediation shall be borne equally by the Parties. Any efforts at mediation shall conclude within ninety (90) days after the written notice, unless the Parties mutually agree to extend the time period for the mediation.

9. Assignability and Subcontracting

SFEI shall not assign any tasks identified in this MOU to a third party or subcontract with a third party to provide services required by SFEI under this MOU without the prior written consent of the COUNTY. Any such assignment or subcontract without the COUNTY's prior written consent shall give the COUNTY the right to automatically and immediately terminate this MOU.

10. Insurance

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

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

Such insurance shall include:

- |  |             |
|--|-------------|
| (i) Comprehensive General Liability .....    | \$1,000,000 |
| (ii) Motor Vehicle Liability Insurance ..... | \$1,000,000 |
| (iii) Professional Liability .....           | \$1,000,000 |

The COUNTY and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the COUNTY, its officers, agents, employees and servants shall

be primary insurance to the full limits of liability of the policy, and that if the COUNTY or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

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

11. Compliance with Laws; Payment of Permits/Licenses

All services to be performed by SFEI pursuant to this MOU shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances and regulations, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Federal Regulations promulgated thereunder, as amended, and will comply with the Business Associate requirements set forth in Attachment H, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment I, which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this MOU and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this MOU. Further, SFEI certifies that SFEI and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the COUNTY Ordinance Code, which regulates the use of disposable food service ware.

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

12. Non-Discrimination and Other Requirements

- (A) *Section 504 applies only to Contractors who are providing services to members of the public.* SFEI shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this MOU.
- (B) *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age, national origin, medical condition, physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this MOU.
- (C) *Equal employment opportunity.* SFEI shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this MOU. SFEI's equal employment policies shall be made available to the COUNTY upon request.
- (D) *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this MOU shall be considered a breach of this MOU and subject SFEI to penalties, to be determined by the COUNTY Manager, including but not limited to:

- (i) termination of this MOU;
- (ii) disqualification of the SFEI from being awarded a COUNTY contract for a period of up to three (3) years;
- (iii) liquidated damages of \$2,500 per violation;
- (iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the COUNTY Manager.

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

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

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

13. Compliance with Contractor Employee Jury Service Ordinance

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

14. Retention of Records, Right to Monitor and Audit

- (A) SFEI shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the COUNTY, a Federal grantor agency, and the State of California.
- (B) **Reporting and Record Keeping:** SFEI shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.
- (C) SFEI agrees to provide to the COUNTY, to any Federal or State department having monitoring or review authority, to the COUNTY's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all

records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this MOU, and to evaluate the quality, appropriateness and timeliness of services performed.

15. Merger Clause

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

16. Controlling Law and Venue

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

17. Public Information Release.

No party will unilaterally publish a joint publication without consulting the other party. This restriction does not apply to popular publication of previously published technical matter. Publication pursuant to this MOU may be produced independently or in collaboration with others; however, in all cases proper credit will be given to the efforts of those parties contributing to the publication. In the event no agreement is reached concerning the manner of publication or interpretation of results, any party may publish data after due notice and submission of the proposed manuscripts to the other parties. In such instances, the party publishing the data will give due credit to the cooperation but assume full responsibility for any statements on which there is a difference of opinion.

18. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when (1) transmitted via facsimile to the telephone number listed below, (2) electronic mail, or (3) either deposited in the United State mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt, for transmittal, charges prepaid, addressed to:

In the case of the COUNTY, to:

James C. Porter, Project Director  
County of San Mateo Department of Public Works  
555 County Center, 5<sup>th</sup> Floor  
Redwood City, CA 94063-1665  
Phone (650) 599-1421  
Fax (650) 361-8220  
e-mail: [jporter@co.sanmateo.ca.us](mailto:jporter@co.sanmateo.ca.us)

In the case of SFEI, to:

Rainer Hoenicke, Executive Director  
San Francisco Estuary Institute  
7770 Pardee Lane, 2nd Floor  
Oakland, CA 94621-1424  
Phone (510) 746-7381  
Fax (510) 746-7300  
e-mail: [rainer@sfei.org](mailto:rainer@sfei.org)

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE ENTERED INTO THIS  
MEMORANDUM OF UNDERSTANDING:

COUNTY OF SAN MATEO

SAN FRANCISCO ESTUARY  
INSTITUTE

By: \_\_\_\_\_  
County Manager/Clerk of the Board of  
Supervisors or Designee

By: \_\_\_\_\_  
Executive Director

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

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

ATTEST:

By: \_\_\_\_\_  
Deputy Clerk of the Board of Supervisors

**Exhibit A — SWRCB Grant Agreement No. 10-402-550**

071429

FOR STATE USE ONLY
DGS REGISTRATION NO.

PROPOSITION 84 AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE (ASBS) GRANT PROGRAM  
GRANT AGREEMENT  
BETWEEN THE  
STATE WATER RESOURCES CONTROL BOARD, hereinafter called "State" or "State Water Board"  
AND

SAN MATEO COUNTY, hereinafter called "Grantee"

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

AGREEMENT NO. 10-402-550

The State and Grantee hereby agree as follows:

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

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

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

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

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

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

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

Direct all inquiries to:

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

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



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

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

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

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

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

Carole Groom  
Grantee Typed/Printed Name

May 24, 2011  
Date

Attest

By: \_\_\_\_\_  
Esteban Almanza, Deputy Director  
State Water Resources Control Board,  
Division of Financial Assistance

\_\_\_\_\_  
Date

Reviewed by:  
Office of Chief Counsel  
Date:

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

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

A. PLANS AND GENERAL COMPLIANCE REQUIREMENTS

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

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

2.1 Project Assessment and Evaluation

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

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

2.2 Monitoring Plan

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

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

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

2.3 Quality Assurance Project Plan

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

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for preparing the QAPP is available at:

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

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

#### 2.4 Data Management

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

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

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

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



**Water Boards**

and the following disclosure statement:

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

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

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## B. PROJECT-SPECIFIC REQUIREMENTS

### 1. Project Management

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

### 2. Pilot BMPs

#### 2.1 Design and Construction

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

#### 2.2 Monitoring

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

#### 2.3 Analysis

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

### 3. Storm Drain Inventory and Assessment

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

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

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## 6.2 Design and Construction of Upland Private BMPs

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

## 6.3 Monitoring of Upland BMPs

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

## 6.4 Analysis of Upland BMPs

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

## 7. Project Assessment and Future Planning

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

TABLE OF ITEMS FOR REVIEW

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

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

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EXHIBIT B  
INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS

A. INVOICING

1. Invoices shall be submitted using the invoice template provided by the State Water Board. The invoice must be itemized based on the line items specified in the Budget. The original invoice shall be submitted to the State Water Board's Grant Manager on a quarterly basis consistent with the reporting schedule in Section G.1 of this exhibit. The address for submittal is:  
  
Ruben Mora, Grant Manager  
State Water Resources Control Board  
Division of Financial Assistance  
1001 I Street, 16<sup>th</sup> Floor  
Sacramento, CA 95814
2. Invoices submitted in any other format than the one provided by the State Water Board will cause an invoice to be disputed. In the event of an invoice dispute, the State Water Board's Grant Manager will notify the Grantee by initiating an "Invoice Dispute Notification" form. Payment will not be made until the dispute is resolved and a corrected invoice submitted. Failure to use the address exactly as provided above may result in return of the invoice to the Grantee. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. The State Water Board Grant Manager has the responsibility for approving invoices.
3. Supporting documentation (e.g., receipts) must be submitted with each invoice to request reimbursement for grant funds as well as to support matching funds invoiced. The amount claimed for the Personnel Services line item and Professional and Consultant Services line item must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Invoice payment shall be made only after receipt of a complete, adequately supported, properly documented and accurately addressed invoice.
4. The Grantee shall not request disbursement for any cost until such cost has been incurred and has been paid by or is due and payable by the Grantee. Although it is agreed that actual payment of such cost by the Grantee is not required as a condition of the grant disbursement, all grant disbursements received by the Grantee shall be paid to contractors and vendors within thirty (30) days from receipt of the funds. In the event that the Grantee fails to disburse grant funds to contractors or vendors within thirty (30) days from receipt of the funds, the Grantee shall immediately return such funds to the State Water Board. Interest shall accrue on such funds from the date of disbursement through the date of mailing of funds to the State Water Board. If the Grantee held such funds in interest-bearing accounts, any interest earned on the funds shall also be due to the State Water Board.
5. Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the Federal Government, or any loss of tax-free status on state bonds, pursuant to any Federal statute or regulation.
6. Notwithstanding any other provision of this Agreement, the Grantee agrees that the State Water Board may retain an amount equal to ten percent (10%) of the grant amount specified in this Agreement until completion of the Project to the reasonable satisfaction of the State Water Board. Any retained amounts due to the Grantee will be promptly disbursed to the Grantee, without interest, upon completion of the Project.
7. The invoice shall contain the following information:
  - a. The date of the invoice;
  - b. The time period covered by the invoice, i.e., the term "from" and "to";
  - c. The total amount due; and

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

**B. PROHIBITION OF INDIRECT COSTS**

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

**C. BUDGET CONTINGENCY CLAUSE**

The maximum amount to be encumbered under this Agreement for the 2010-11 fiscal year ending June 30, 2011, shall not exceed TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000).

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

If this Agreement's funding for any fiscal year is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to the Grantee to reflect the reduced amount.

**D. LINE ITEM BUDGET**

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

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E. BUDGET LINE ITEM FLEXIBILITY

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

F. MATCH FUNDS

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

G. REPORTS

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

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

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

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

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

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

**H. PAYMENT OF PROJECT COSTS**

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

**I. AUDIT DISALLOWANCES**

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

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

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

EXHIBIT C  
GENERAL TERMS & CONDITIONS

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

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



17. **INCOME RESTRICTIONS:** The Grantee agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Grantee under this Agreement shall be paid by the Grantee to the State, to the extent that they are properly allocable to costs for which the Grantee has been reimbursed by the State under this Agreement.
18. **INDEPENDENT ACTOR:** The Grantee, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of the State Water Board.
19. **INSPECTION:** The State Water Board, the Bureau of State Audits, or any authorized representative of the foregoing, shall have suitable access to the Project site at all reasonable times during Project implementation and thereafter for the life of the Project to ascertain compliance with this Agreement and its goals. The Grantee acknowledges that the Project records and location are public records.
20. **INSURANCE:** Throughout the life of the Project, the Grantee shall provide and maintain insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Agreement, if any. This insurance shall be issued by a company or companies admitted to transact business in the State of California. The insurance policy shall contain an endorsement specifying that the policy will not be cancelled or reduced in coverage without thirty (30) days prior written notice to the State Water Board. In the event of any damage to or destruction of the Project or any larger system of which it is a part, the net proceeds of insurance shall be applied to the reconstruction, repair or replacement of the damaged or destroyed parts of the Project or its larger system. The Grantee shall begin such reconstruction, repair, or replacement as expeditiously as possible and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the larger system shall be free of all claims and liens.
21. **NONDISCRIMINATION:**
  - a. During the performance of this Agreement, the Grantee and its consultants and contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
  - b. The Grantee, its consultants, and contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
  - c. The Grantee, its consultants, and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
  - d. The Grantee, its consultants, and contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement, if any.
  - e. The Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement. Failure by the Grantee to carry out these requirements and applicable requirements of 40 C.F.R. part 33 is a breach of a material provision of this Agreement which may result in its termination.
22. **NO THIRD PARTY RIGHTS:** The parties to this grant Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this grant Agreement, or of any duty, covenant, obligation or undertaking established herein.

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23. NOTICE:

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

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

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

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

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or Grantee;
- b. Have not within a three (3)-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and,
- d. Have not within a three (3)-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

26. **PREVAILING WAGES AND LABOR COMPLIANCE:** If applicable, the Grantee agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. The Grantee certifies that it has a Labor Compliance Program (LCP) in place or has contracted with a third party that has been approved by the Director of the Department of Industrial Relations (DIR) to operate an LCP pursuant to Labor Code, section 1771.5 and section 16423 of title 8 of the California Code of Regulations. Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

27. **PROFESSIONALS:** The Grantee agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for. All technical reports required pursuant to this Agreement that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to Business and Professions Code, sections 6735, 7835, and 7835.1. To demonstrate compliance with California Code of Regulations, title 16, sections 415 and 3065, all technical reports must contain a statement of the qualifications of the responsible registered professional(s). As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.

28. **RECORDS:** Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles, the Grantee agrees to:

- a. Establish an official file for the Project which shall adequately document all significant actions relative to the Project;
- b. Establish separate accounts which will adequately and accurately depict all amounts received and expended on this Project, including all grant funds received under this Agreement;
- c. Establish separate accounts which will adequately depict all income received which is attributable to the Project, especially including any income attributable to grant funds disbursed under this Agreement;
- d. Establish an accounting system which will adequately depict final total costs of the Project, including both direct and indirect costs;
- e. Establish such accounts and maintain such records as may be necessary for the state to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and,
- f. If a Force Account is used by the Grantee for any phase of the Project, establish an account that documents all employee hours, and associated tasks charged to the Project per employee.

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

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

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

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EXHIBIT D  
SPECIAL CONDITIONS  
PROPOSITION 84 ASBS GRANT PROGRAM

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

071429

## **Exhibit B — SFEI Scope of Work and Budget**

(A) Plans and General Compliance Requirements

2.1 Project Assessment and Evaluation Plan

SFEI will complete a Project Assessment and Evaluation Plan (PAEP). The PAEP will describe the manner in which the Project will be effective in preventing or reducing pollution and in demonstrating the desired environmental results. The PAEP will detail the methods of measuring and reporting Project benefits. The PAEP will also identify the ASBS discharges and high threat discharges to be reduced or eliminated by the Project.

2.2 Monitoring Plan

SFEI will complete a Monitoring Plan (MP). The MP will describe the baseline water quality or quality of the environment to be addressed; identify the non-point source(s) of pollution to be prevented or reduced by the Project; be consistent with regional monitoring efforts and methods; and provide GPS information for all sampling locations.

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

2.3 Quality Assurance Project Plan

SFEI will complete a Quality Assurance Project Plan (QAPP) in accordance with the State Water Board's Surface Water Ambient Monitoring Program's (SWAMP) QAPP and data reporting requirements, and the USEPA QAPP, EPA AQ/R5, 3/01.

(B) Project-Specific Requirements

2.2 *Pilot BMPs Monitoring*

2.2.1 Document BMP efficacy by conducting water quality monitoring at the pilot BMP sites (pre- and post-implementation and/or upstream and downstream) in accordance with the QAPP, MP, and State Water Board's SWAMP guidelines.

2.3 *Pilot BMPs Analysis*

2.3.1 Analyze water quality data, including summary statistics, calculation of pollutant removal, and generate graphs of the water data.

2.3.2 Assess BMP effectiveness as a function of pollutant removal efficiency, installation costs, maintenance costs, and environmental conditions and restraints.

2.3.3 Prepare and submit a summary report to the COUNTY including water quality data and results of the analysis, including recommendations for upland storm drain BMP selection.

4 *Pathogen Source Tracking Study*

4.1 Conduct pathogen source tracking indicator bacteria monitoring, in five drainages during dry and wet weather according to QAPP, MP, and SWAMP guidelines.

4.2 Analyze the data, prepare and summary report, and submit to the COUNTY.

5 *Education and Outreach*

5.1 Develop graphics for three (3) ASBS newsletters, one each in May of 2012, 2013, and 2014, and submit to the COUNTY.

5.2 Develop graphics for an ASBS website and submit to the COUNTY.

5.3 Develop graphics for a community survey on nonpoint source (NPS) knowledge, perceived mid coast water quality problems, willingness to participate, and ideas for water quality improvements and submit to the COUNTY.

5.4 Host a low impact development (LID) and retrofit workshop for developers, contractors, landowners, residents, and local government staff to provide resources and tools for reducing runoff and harvesting storm water. Proceedings from the workshop will be available on the ASBS website. Submit workshop agenda and materials to the COUNTY.

6.3 *Upland Storm Drain BMPs Monitoring*

6.3.1 Conduct water quality monitoring at the upland BMP sites (pre- and post-implementation and/or upstream and downstream) and document BMP efficacy in accordance with the QAPP, MP, and SWAMP guidelines.

6.4 *Upland Storm Drain BMPs Analysis*

6.4.1 Analyze water quality data, including summary statistics, calculation of pollutant removal, and generate graphical displays.

6.4.2 Assess BMP effectiveness as a function of pollutant removal efficiency, installation costs, maintenance costs, and environmental conditions and restraints.

6.4.3 Prepare and submit a summary report to the COUNTY including water quality data and results of the analysis.

7 *Project Assessment and Future Planning*

7.1 Assess the Project according to criteria and metrics developed in the PAEP.

7.2 Conduct future planning, including development of a plan for continuation of the Project, including future BMP implementation based on pollution reduction forecasts generated from models developed by SFEI as part of the Critical Coastal Area Pilot Project – Phase 2 State Water Board grant agreement and calibrated with data from this Project.

7.3 Prepare a Project assessment and future planning report and submit to the COUNTY.



<u>Item</u>	<u>Budget</u>
<b>(A) <u>Plans and General Compliance Requirements</u></b>	
1.0 Project Management	\$ 42,631.00
2.1 Project Assessment and Evaluation Plan	\$ 20,000.00
2.2 Monitoring Plan	
2.3 Quality Assurance Project Plan	
<b>(B) <u>Project-Specific Requirements</u></b>	
2.2 Pilot BMPs Monitoring	\$ 28,417.00
2.3 Pilot BMPs Analysis	\$ 40,347.00
4 Pathogen Source Tracking Study	\$ 14,639.00
5 Education and Outreach	\$ 16,816.00
6.3 Upland Storm Drain BMPs Monitoring	\$ 23,056.00
6.4 Upland Storm Drain BMPs Analysis	\$ 20,000.00
7 Project Assessment and Future Planning	\$ 43,064.00
	\$ 248,971.00
<b>Expenses</b>	
Lab Analysis	\$ 230,000.00
Equipment rental	\$ 8,000.00
Misc.	\$ 3,029.00
<b>Total</b>	<b>\$490,000</b>

## **EXHIBIT C – Invoicing and Reporting Provisions**

### **1. Invoicing**

SFEI will be paid for performance of the specific tasks and the delivery of products and services as described in Exhibits A and B. In any event, the total payment for services shall not exceed FOUR HUNDRED NINETY THOUSAND DOLLARS (\$490,000). SFEI shall submit quarterly invoices to the COUNTY itemizing services and tasks performed as described below.

- (A) Supporting documentation (e.g., receipts) must be submitted with each invoice to request reimbursement. The amount claimed for staff time must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Invoice payment shall be made only after receipt of a complete, adequately supported, properly documented and accurately addressed invoice.
- (B) SFEI shall request disbursement for any cost after such cost has been incurred and has been paid by or is due and payable by SFEI.
- (C) Notwithstanding any other provision of this MOU, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the Federal Government, or any loss of tax-free status on state bonds, pursuant to any Federal statute or regulation.
- (D) The invoice shall contain the following information:
  - (i) The date of the invoice;
  - (ii) The time period covered by the invoice, i.e., the term “from” and “to”;
  - (iii) The total amount due; and
  - (iv) Original signature and date (in ink) of SFEI authorized representative.
  - (iv) Final invoice shall be clearly marked “FINAL INVOICE” and submitted NO LATER THAN March 1, 2015.
- (E) In the event that COUNTY staff determines that the invoice is inadequate or fails to provide enough information for COUNTY staff to assess SFEI’s compliance with the terms and timing of services under this MOU, the COUNTY will return the invoice to SFEI with an explanation and request for missing information. The COUNTY shall not be obligated to pay SFEI until SFEI submits a corrected invoice, demonstrating satisfactory compliance with the terms and timing of service.
- (F) If the State Budget Act of the current year and/or any subsequent years covered under this MOU does not appropriate sufficient funds for the Proposition 84 ASBS grant program, Exhibit A shall be of no prospective force and effect. This provision shall be construed as a condition precedent to the obligation of the SWRCB to make any payments under Exhibit A. In this event, the State shall have no liability to pay any funds whatsoever to the COUNTY or to furnish any other considerations under the Exhibit A and the COUNTY shall not be obligated to perform any provisions of the Exhibit A nor this MOU.
- (G) If the funding for Exhibit A in any fiscal year is reduced or deleted by the State Budget Act, by Executive Order, or by order of the State Department of Finance, the State shall have the option to either cancel the Exhibit A with no liability occurring to the State, or

offer the COUNTY an amendment to Exhibit A to reflect the reduced amount, in which case the COUNTY shall have the option to cancel this MOU with no liability occurring to the COUNTY or to offer an amendment of this MOU to SFEI.

## 2. Reporting

SFEI shall submit quarterly progress reports to the COUNTY by the first (1st) of March, June, September, and December. The progress reports shall provide a brief description of the work performed, accomplishments during the quarter, milestones achieved, monitoring results (if applicable), and any problems encountered in the performance of the work under this MOU.

The invoice should accompany the progress report. The invoice should reflect charges for the work completed during the reporting period covered by progress report. The invoice cannot be paid prior to submission of a progress report covering the invoice reporting period. SFEI shall use the template provided below.

**Progress Report #** \_\_\_\_\_

**Reporting Period:** \_\_\_\_\_ to \_\_\_\_\_

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

**Prop 84 ASBS Grant  
Agreement No:**

10-402-550

**Project Name:**

James V. Fitzgerald ASBS Pollution Reduction Program

**Agency Name:**

San Francisco Estuary Institute

I certify under penalty of law that this document and any attachment was prepared by me or under my direction in accordance with the terms and conditions of the MOU (and each MOU attachment) between the County of San Mateo and the SFEI regarding implementation of the James V. Fitzgerald ASBS Pollution Reduction Program. Based on my inquiry of the persons or persons who manage the project or those directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. All information submitted in this document and all attachments conform to and are in accordance with the state and federal laws and I so here certify with my signature. I am aware that there are significant penalties for submitting false or misleading information.

**Agency  
Representative:**

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

**Summary of Work Completed To Date** (See sample table below)

**Work Items for Review:** The table should number and list all items included in Exhibit B of the MOU. The Item #s should correspond with the Item #s listed in Exhibit A. The information provided should be cumulative from the start of the project. The table should provide an at-a-glance status of the project work items.

**Due Date:** The due dates in this column should be identical to the due dates in Exhibit B of the MOU. If a date change is made through formal modification or amendment, then the revised date can be inserted once the change has been approved.

**% Of Work Complete:** Cumulative percentage of work complete to date

**Date Submitted:** For items that are submitted more than once (i.e., progress reports), please leave previous submittal dates on the table so that there is a list of dates within the box. If a draft item for review is submitted, write "draft" after the date.

Item #	Description	Due Date	% Of Work Complete	Date Submitted
A.2.1	PAEP	(mm/dd/yy)	( %)	(mm/dd/yy)
A.2.2	Monitoring Plan			
A.2.3	QAPP			
B.2.2.1	Pilot BMP Water Quality Monitoring			
B.2.3.1	Pilot BMP Analysis of Water Quality Data			
B.2.3.2	Assessment of Pilot BMP Effectiveness			
B.2.3.3	Pilot BMP Summary Report			

**List of Items for Review**

*(Include only the items for review, by Item #, as listed on the Table of Items for Review in Exhibit A of the MOU)*

- \_\_\_\_\_
- \_\_\_\_\_

**Progress Report Narrative*****Introduction***

(Provide a brief one or two sentence introduction or summary of the report (e.g., "During the reporting period, project activities focused on completing design of the pipeline segments 1, 3, and 4" or "... focused on monitoring activities and repairing process or system failures or deficiencies" or ... "focused on improving system efficiency," etc.)

***Summary of Activities***

(List each work item described in Exhibit B in every progress report. However, limit narrative descriptions to work performed during the reporting period. Provide, by Item #, a brief description of milestones, successes, and problems or issues encountered during the reporting period.

**Item A.2.1 - PAEP (Cumulative \_\_\_\_% complete)**

*(Describe for each work item, the activities, problems, successes, milestones OR "No work performed this period" OR "Complete")*

Continue with all work items described in Exhibit B.

**Attachment H**  
**Health Insurance Portability and Accountability Act (HIPAA)**  
**Business Associate Requirements**

***Definitions***

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations section 160.103 164.304 and 164.501. (All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.)

- a. *Designated Record Set.* “Designated Record Set” shall have the same meaning as the term “designated record set” in Section 164.501.
- b. *Electronic Protected Health Information.* “Electronic Protected Health Information” (“E PHI”) means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- c. *Individual.* “Individual” shall have the same meaning as the term “individual” in Section 160.103 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- d. *Privacy Rule.* “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.
- e. *Protected Health Information.* “Protected Health Information” shall have the same meaning as the term “protected health information” in Section 160.103 and is limited to the information created or received by Contractor from or on behalf of County.
- f. *Required By Law.* “Required by law” shall have the same meaning as the term “required by law” in Section 164.103.
- g. *Secretary.* “Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- h. *Security Incident.* “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate
- i. *Security Rule.* “Security Rule” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

### ***Obligations and Activities of Contractor***

- a. Contractor agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Contractor agrees to use appropriate safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.
- d. Contractor agrees to report to County any use or disclosure of the Protected Health Information not provided for by this Agreement.
- e. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of County, agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
- f. If Contractor has protected health information in a designated record set, Contractor agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- g. If Contractor has protected health information in a designated record set, Contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- h. Contractor agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, County available to the County or to the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- i. Contractor agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

- j. Contractor agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (i) of this Schedule, to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- k. Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Contractor creates, receives, maintains, or transmits on behalf of County.
- l. Contractor shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- m. Contractor shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- n. Contractor shall report to County any Security Incident within 5 business days of becoming aware of such incident.
- o. Contractor shall make its policies, procedures, and documentation relating to the security and privacy of protected health information, including EPHI, available to the Secretary of the U.S. Department of Health and Human Services and, at County's request, to the County for purposes of the Secretary determining County's compliance with the HIPAA privacy and security regulations.

### ***Permitted Uses and Disclosures by Contractor***

Except as otherwise limited in this Schedule, Contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

### ***Obligations of County***

- a. County shall provide Contractor with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Contractor with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Contractor's permitted or required uses and disclosures.
- c. County shall notify Contractor of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.



### ***Permissible Requests by County***

County shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by County, unless the Contractor will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Contractor.

### **Duties Upon Termination of Agreement**

- a. Upon termination of the Agreement, for any reason, Contractor shall return or destroy all Protected Health Information received from County, or created or received by Contractor on behalf of County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.
- b. In the event that Contractor determines that returning or destroying Protected Health Information is infeasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information.

### ***Miscellaneous***

- a. *Regulatory References.* A reference in this Schedule to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. *Amendment.* The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. *Survival.* The respective rights and obligations of Contractor under this Schedule shall survive the termination of the Agreement.
- d. *Interpretation.* Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. *Reservation of Right to Monitor Activities.* County reserves the right to monitor the security policies and procedures of Contractor

(rev. 8/08)

ATTACHMENT I

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

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Date

\*Exception: DHHS regulations state that:

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

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY RESOURCE**  
**CONSERVATION DISTRICT**  
**REGARDING**  
**IMPLEMENTATION OF THE JAMES V. FITZGERALD AREA OF SPECIAL**  
**BIOLOGICAL SIGNIFICANCE POLLUTION REDUCTION PROGRAM**

This **Memorandum of Understanding** (MOU) is made and entered into this day of June 28, 2011, by and between the **County of San Mateo** (COUNTY) and the **San Mateo County Resource Conservation District** (RCD), hereinafter collectively referred to as the "**Parties**".

**RECITALS**

WHEREAS, COUNTY applied for grant funds from the State Water Resources Control Board (SWRCB) Proposition 84 Areas of Special Biological Significance (ASBS) Grant Program and was determined by the SWRCB to be eligible for a grant pursuant to applicable State laws and regulations; and

WHEREAS, on February 3, 2009 the SWRCB approved Resolution No. 2009-0007 authorizing grant funding for the James V. Fitzgerald ASBS Pollution Reduction Program (Project), a project designed to comply with the discharge prohibitions into ASBS contained in the California Ocean Plan; and

WHEREAS, on May 24, 2011 the COUNTY Board of Supervisors adopted Resolution No. 071429 authorizing the President of the COUNTY Board of Supervisors to execute Grant Agreement (Grant Agreement) No. 10-402-550, attached hereto as Exhibit A, with the SWRCB for the Project; and

WHEREAS, the Project consists of implementing pilot and targeted upland Best Management Practices (BMPs) and conducting associated studies, water quality monitoring, and education and outreach within the James V. Fitzgerald ASBS watershed; and

WHEREAS, COUNTY has been designated as the grantee and is responsible for accepting and complying with all of the terms, provisions, conditions, and commitments of the Grant Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made in its application, accompanying documents and communications filed in support of its request for grant funding; and

WHEREAS, COUNTY is responsible for complying with and requiring its contractors and subcontractors to comply with all applicable laws, policies and regulations; and

WHEREAS, COUNTY is responsible for coordination and implementation of the Project and for executing subcontract agreements for the distribution of Proposition 84 ASBS Grant Program funds to Project partners in accordance with the terms and conditions set forth herein; and

WHEREAS, COUNTY developed the Project in partnership with RCD; and

WHEREAS, it is appropriate for the Parties to enter into a MOU defining the responsibilities, terms, and conditions with respect to the Project; and

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties hereto agree as follows:

The terms and conditions of this MOU, all exhibits and attachments, and all documents expressly incorporated by reference, represent the entire MOU of the Parties with respect to the subject matter of this MOU. This written MOU shall supersede any and all prior agreements, oral or written, regarding the subject matter between the COUNTY and RCD. The terms and conditions of this MOU shall not be altered or modified except by a written amendment to this MOU signed by the Parties.

1. Exhibits and Attachments

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

Exhibit A – SWRCB Grant Agreement No. 10-402-550

Exhibit B – RCD Scope of Work and Budget

Exhibit C – Invoicing and Reporting Provisions

Attachment H – HIPAA Business Associate requirements

Attachment I – § 504 Compliance

2. Services to be performed by RCD

In consideration of the payments set forth herein and in Exhibit C, RCD shall perform services for the COUNTY as specified below and in Exhibit B in accordance with the terms, conditions and specifications included in Exhibits A, B, and C attached hereto and incorporated by reference as though fully set forth herein. Under this MOU, RCD shall complete the following Project tasks as described in Grant Agreement (Grant Agreement item number in parenthesis):

(A) Plans and General Compliance Requirements:

1. Global Positioning System (GPS) Information for Upland Private BMP Sites and Monitoring Locations (A-1)
2. Project Assessment and Evaluation Plan (PAEP) for Upland Private BMPs to be included in Master Document for Project (A-2.1)
3. Monitoring Plan (MP) for Targeted Private BMPs to be included in Master Document for Project (A-2.2)
4. Quality Assurance Project Plan (QAPP) for Upland Private BMPs to be included in Master Document for Project (A-2.3)
5. CEQA/NEPA Documentation (A-3)
6. Land Owner Agreements (A-4)
7. Applicable Permits (A-5)

(B) Project-Specific Requirements:

1. Project Work Plan for Upland Private BMPs (B-1.1)
2. Targeted Upland Private BMPs (B-6)
3. Design and Construction of Upland Private BMPs (B-6.2)
4. Upland Private BMPs Monitoring (B-6.3)
5. Upland Private BMPs Analysis (B-6.4)
6. Project Assessment and Future Planning for Upland Private BMPs to be included in Master Document for Project (B-7)

3. Payments

In consideration of the services provided by RCD in accordance with all terms, conditions and specifications set forth herein and in Exhibits A and B, the COUNTY shall make payment to RCD in the manner specified herein and in Exhibit C. The COUNTY reserves the right to withhold payment if the COUNTY determines that the quantity or quality of the work performed is unacceptable. In no event shall the COUNTY's total fiscal obligation to RCD under this MOU exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000).

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this MOU shall be from June 28, 2011 through May 1, 2015. However, all work shall be completed by March 31, 2015 as specified in Exhibit A.

This MOU may be terminated by RCD, the COUNTY Manager, or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

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

5. Availability of Funds

The COUNTY may terminate this MOU or a portion of the services referenced in the attachments and exhibits based upon unavailability of Federal, State, or COUNTY funds, by providing written notice to RCD as soon as is reasonably possible after the COUNTY learns of said unavailability of outside funding.

6. Relationship of Parties

RCD agrees and understands that the work/services performed under this MOU are performed as an independent contractor and not as an employee of the COUNTY and that RCD acquires none of the rights, privileges, powers, or advantages of COUNTY employees. The COUNTY and RCD accept and agree to comply with all terms, provisions, conditions, and commitments of this MOU, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments not amended by Exhibit A made by the COUNTY in the application, accompanying

documents, and communications filed in support of the request for Proposition 84 grant funding.

7. Hold Harmless

RCD shall indemnify and save harmless the COUNTY, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including RCD, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from RCD's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of the COUNTY, its officers, agents, employees, or servants, resulting from the performance of any work required of RCD or payments made pursuant to this MOU, provided that this shall not apply to injuries or damage for which the COUNTY has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

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

8. Dispute Resolution

If a dispute arises between the Parties concerning the interpretation or operation of this MOU, any party may request mediation by providing the other parties with written notice of such request. No party is obligated to enter mediation. Nevertheless, if the Parties mutually agree to enter mediation, the Parties shall attempt to agree upon a single mediator, and the costs of mediation shall be borne equally by the Parties. Any efforts at mediation shall conclude within ninety (90) days after the written notice, unless the Parties mutually agree to extend the time period for the mediation.

9. Assignability and Subcontracting

RCD shall not assign any tasks identified in this MOU to a third party or subcontract with a third party to provide services required by RCD under this MOU without the prior written consent of the COUNTY. Any such assignment or subcontract without the COUNTY's prior written consent shall give the COUNTY the right to automatically and immediately terminate this MOU.

10. Insurance

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

(A) Worker's Compensation and Employer's Liability Insurance RCD shall have in effect during the entire life of this MOU Workers' Compensation and Employer's

Liability Insurance providing full statutory coverage. In signing this MOU, the RCD certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of the work of this MOU.

- (B) Liability Insurance RCD shall take out and maintain during the life of this MOU such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this MOU from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this MOU, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- |  |             |
|--|-------------|
| (i) Comprehensive General Liability . . . . .    | \$1,000,000 |
| (ii) Motor Vehicle Liability Insurance . . . . . | \$1,000,000 |
| (iii) Professional Liability . . . . .           | \$1,000,000 |

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

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

#### 11. Compliance with Laws; Payment of Permits/Licenses

All services to be performed by RCD pursuant to this MOU shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances and regulations, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Federal Regulations promulgated thereunder, as amended, and will comply with the Business Associate requirements set forth in Attachment H, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment I, which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this MOU and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this MOU. Further,

RCD certifies that RCD and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of COUNTY Ordinance Code, which regulates the use of disposable food service ware.

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

12. Non-Discrimination and Other Requirements

- (A) *Section 504 applies only to Contractors who are providing services to members of the public.* RCD shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this MOU.
- (B) *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age, national origin, medical condition, physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this MOU.
- (C) *Equal employment opportunity.* RCD shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this MOU. RCD's equal employment policies shall be made available to the COUNTY upon request.
- (D) *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this MOU shall be considered a breach of this MOU and subject RCD to penalties, to be determined by the COUNTY Manager, including but not limited to:
  - (i) termination of this MOU;
  - (ii) disqualification of the RCD from being awarded a COUNTY contract for a period of up to three (3) years;
  - (iii) liquidated damages of \$2,500 per violation;
  - (iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the COUNTY Manager.

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

RCD shall report to the COUNTY Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within thirty (30) days of such filing, provided that within such thirty (30) days such entity has not notified RCD that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of



such complaint, and a description of the circumstance. The RCD shall provide the COUNTY with a copy of their response to the Complaint when filed.

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

13. Compliance with Contractor Employee Jury Service Ordinance

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

14. Retention of Records, Right to Monitor and Audit

- (A) RCD shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the COUNTY, a Federal grantor agency, and the State of California.
- (B) Reporting and Record Keeping: RCD shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.
- (C) RCD agrees to provide to the COUNTY, to any Federal or State department having monitoring or review authority, to the COUNTY's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this MOU, and to evaluate the quality, appropriateness and timeliness of services performed.

15. Merger Clause

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

16. Controlling Law and Venue

The validity of this MOU and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this MOU shall be governed by the laws of the State of California. Any dispute arising out of this MOU shall

be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

17. Public Information Release.

No party will unilaterally publish a joint publication without consulting the other parties. This restriction does not apply to popular publication of previously published technical matter. Publication pursuant to this MOU may be produced independently or in collaboration with others; however, in all cases proper credit will be given to the efforts of those parties contributing to the publication. In the event no agreement is reached concerning the manner of publication or interpretation of results, any party may publish data after due notice and submission of the proposed manuscripts to the other parties. In such instances, the party publishing the data will give due credit to the cooperation but assume full responsibility for any statements on which there is a difference of opinion.

18. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when (1) transmitted via facsimile to the telephone number listed below, (2) electronic mail, or (3) either deposited in the United State mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt, for transmittal, charges prepaid, addressed to:

In the case of the COUNTY, to:

James C. Porter, Project Director  
County of San Mateo Department of Public Works  
555 County Center, 5<sup>th</sup> Floor  
Redwood City, CA 94063-1665  
Phone (650) 599-1421  
Fax (650) 361-8220  
e-mail: [jporter@co.sanmateo.ca.us](mailto:jporter@co.sanmateo.ca.us)

In the case of RCD, to:

Kellyx Nelson, Executive Director  
San Mateo County Resource Conservation District  
625 Miramontes Street, Suite 103  
Half Moon Bay, CA 94019  
Phone (650) 712-7765  
Fax (650) 726-0494  
e-mail: [kellyx@sanmateorcd.org](mailto:kellyx@sanmateorcd.org)

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE ENTERED INTO THIS  
MEMORANDUM OF UNDERSTANDING:

COUNTY OF SAN MATEO

San Mateo County Resource  
Conservation District

By: \_\_\_\_\_  
County Manager/Clerk of the Board of  
Supervisors or Designee

By: \_\_\_\_\_  
Executive Director

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

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

ATTEST:

By: \_\_\_\_\_  
Deputy Clerk of the Board of Supervisors

**Exhibit A — SWRCB Grant Agreement No. 10-402-550**

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FOR STATE USE ONLY
DGS REGISTRATION NO.

PROPOSITION 84 AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE (ASBS) GRANT PROGRAM  
GRANT AGREEMENT  
BETWEEN THE  
STATE WATER RESOURCES CONTROL BOARD, hereinafter called "State" or "State Water Board"  
AND

SAN MATEO COUNTY, hereinafter called "Grantee"

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

AGREEMENT NO. 10-402-550

The State and Grantee hereby agree as follows:

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

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

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

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

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

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

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

Direct all inquiries to:

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

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

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

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

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

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

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

Carole Groom  
Grantee Typed/Printed Name

May 24, 2011  
Date

R. Romew  
Attest

By: \_\_\_\_\_  
Esteban Almanza, Deputy Director  
State Water Resources Control Board,  
Division of Financial Assistance

\_\_\_\_\_  
Date

Reviewed by:  
Office of Chief Counsel  
Date:

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

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

A. PLANS AND GENERAL COMPLIANCE REQUIREMENTS

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

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

2.1 Project Assessment and Evaluation

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

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

2.2 Monitoring Plan

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

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

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

2.3 Quality Assurance Project Plan

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

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for preparing the QAPP is available at:

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

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

#### 2.4 Data Management

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

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

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

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



**Water Boards**

and the following disclosure statement:

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

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

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## B. PROJECT-SPECIFIC REQUIREMENTS

### 1. Project Management

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

### 2. Pilot BMPs

#### 2.1 Design and Construction

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

#### 2.2 Monitoring

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

#### 2.3 Analysis

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

### 3. Storm Drain Inventory and Assessment

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

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

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6.2 Design and Construction of Upland Private BMPs

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

6.3 Monitoring of Upland BMPs

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

6.4 Analysis of Upland BMPs

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

7. Project Assessment and Future Planning

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

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TABLE OF ITEMS FOR REVIEW

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

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

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EXHIBIT B  
INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS

A. INVOICING

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

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

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

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

**B. PROHIBITION OF INDIRECT COSTS**

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

**C. BUDGET CONTINGENCY CLAUSE**

The maximum amount to be encumbered under this Agreement for the 2010-11 fiscal year ending June 30, 2011, shall not exceed TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000).

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

If this Agreement's funding for any fiscal year is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to the Grantee to reflect the reduced amount.

**D. LINE ITEM BUDGET**

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

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**E. BUDGET LINE ITEM FLEXIBILITY**

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

**F. MATCH FUNDS**

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

**G. REPORTS**

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

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

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

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

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

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

#### H. PAYMENT OF PROJECT COSTS

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

#### I. AUDIT DISALLOWANCES

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

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

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

EXHIBIT C  
GENERAL TERMS & CONDITIONS

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

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

17. **INCOME RESTRICTIONS:** The Grantee agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Grantee under this Agreement shall be paid by the Grantee to the State, to the extent that they are properly allocable to costs for which the Grantee has been reimbursed by the State under this Agreement.
18. **INDEPENDENT ACTOR:** The Grantee, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of the State Water Board.
19. **INSPECTION:** The State Water Board, the Bureau of State Audits, or any authorized representative of the foregoing, shall have suitable access to the Project site at all reasonable times during Project implementation and thereafter for the life of the Project to ascertain compliance with this Agreement and its goals. The Grantee acknowledges that the Project records and location are public records.
20. **INSURANCE:** Throughout the life of the Project, the Grantee shall provide and maintain insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Agreement, if any. This insurance shall be issued by a company or companies admitted to transact business in the State of California. The insurance policy shall contain an endorsement specifying that the policy will not be cancelled or reduced in coverage without thirty (30) days prior written notice to the State Water Board. In the event of any damage to or destruction of the Project or any larger system of which it is a part, the net proceeds of insurance shall be applied to the reconstruction, repair or replacement of the damaged or destroyed parts of the Project or its larger system. The Grantee shall begin such reconstruction, repair, or replacement as expeditiously as possible and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the larger system shall be free of all claims and liens.
21. **NONDISCRIMINATION:**
  - a. During the performance of this Agreement, the Grantee and its consultants and contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
  - b. The Grantee, its consultants, and contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
  - c. The Grantee, its consultants, and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
  - d. The Grantee, its consultants, and contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement, if any.
  - e. The Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement. Failure by the Grantee to carry out these requirements and applicable requirements of 40 C.F.R. part 33 is a breach of a material provision of this Agreement which may result in its termination.
22. **NO THIRD PARTY RIGHTS:** The parties to this grant Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this grant Agreement, or of any duty, covenant, obligation or undertaking established herein.

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23. NOTICE:

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

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

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

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

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

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

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

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

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EXHIBIT D  
SPECIAL CONDITIONS  
PROPOSITION 84 ASBS GRANT PROGRAM

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

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## **Exhibit B — RCD Scope of Work and Budget**

Since 1939, the San Mateo County Resource Conservation District (SMCRCD) has helped people protect, conserve and restore natural resources through information, education and technical assistance programs in partnership with the USDA Natural Resource Conservation Service (NRCS). SMCRCD is a locally governed special district that acts as a focal point for local conservation efforts, using very diverse means to conserve natural resources through strong voluntary partnerships with land owners and managers, technical advisors, area jurisdictions, government agencies, advocates, and others.

SMCRCD will partner with San Mateo County to implement up to 20 and no less than 10 targeted BMPs on private lands, depending on cost. As per the scope of work detailed below, SMCRCD will identify and prioritize opportunities to implement BMPs, conduct outreach to recruit willing landowner partners, manage the selection process, design BMPs, and oversee construction, monitoring, and documentation.

#### Task 1- Identify and Prioritize BMP Implementation Opportunities.

Identify and prioritize opportunities to implement BMPs on private lands in conjunction with the CCA planning process, SFEI investigations in the project area, findings from the pathogen source tracking component of the grant, and willingness of landowners to partner.

- *Deliverable:* Written plan identifying priorities for BMP implementation.
- *Deliverable:* List of interested landowners for equestrian projects.

#### Task 2- Recruit and Select Projects.

Cultivate interest in BMP implementation through targeted outreach to residential landowners and agricultural operators (it is hoped that livestock and equestrian outreach would be conducted under PIN #14119, proposed by the RCD). Outreach will include letters, flyers, press releases, and email listserves. Develop and distribute an application packet to solicit proposals from landowners who wish to implement BMPs on their property.

- *Deliverables:* Press releases, flyers, and letters to landowners.
- *Deliverable:* Application package for interested landowners.

Create and convene a Selection Committee to review and prioritize projects that will receive funding and technical assistance, and to make recommendations to RCD staff for project selection. Likely committee members will include representatives from the NRCS, RCD Board of Directors, and Fitzgerald CCA Steering Committee. Develop criteria for participation in BMP implementation, including conservation value; equitable distribution of funds; landowner willingness to comply with water quality monitoring, reporting, and associated disclosures; feasibility of BMP installation within the grant timeline; and a list of approved practices.

- *Deliverable:* Document outlining selection criteria.

Obtain signed agreements from landowners acknowledging their willingness to participate in monitoring and reporting as well as their responsibility to maintain installed practices.

- *Deliverable:* Signed landowner agreements.

### Task 3- Design and Implement BMPs.

Develop specific designs or project plans for the specific BMPs recommended for funding to implement at each site. Develop cost estimates for projects. Implement and construct BMP improvements in accordance with approved designs or project plans. Oversee implementation of BMPs by landowners at all implementation sites. Conduct pre-, during and post- photo documentation in accordance with SWRCB guidelines.

- *Deliverable:* Site specific designs and project plans.
- *Deliverable:* Photo documentation of installed BMPs.

### Additional Project Benefits

NRCS and RCD staff will be available past the end of the grant term to assist owners, and anticipates that this project will increase landowner use of their services in the project area.

This project complements the “Reducing Nutrient, Pathogen and Sediment Pollution from Livestock Facilities into ASBSs” proposal (PIN #14119) being proposed by the San Mateo County Resource Conservation District. That project is intended to achieve the cultural change needed for confined animal facilities to voluntarily adopt management measures that improve the healthy functioning of watersheds. Funding of that project would support much of the outreach, technical assistance, site planning and additional BMP implementation needed on livestock/ equestrian facilities, activities that are not significantly funded in this proposal. In turn, their project has been developed to complement the proposed assessment, planning, and prioritizing of pathogen pollution to the Fitzgerald ASBS that is a part of the comprehensive program outlined in this proposal. The San Mateo RCD and NRCS will be serving on both teams, and the RCD serves on the Steering Committee of the Fitzgerald CCA. In these capacities, the RCD will ensure that the projects complement each other, redundancies of efforts are eliminated, and that lessons learned are shared.

### Landowner Participation

SMCRCD has successfully managed similar projects, including Proposition 50 Agricultural Water Quality Grant Agreement # 04-305-552-0 with SWRCB to protect or improve water quality on irrigated agricultural lands. In this project, SMCRCD recruited and developed interest among agricultural producers to implement BMPs, addressed concerns about water quality monitoring and public disclosure requirements, managed a competitive blind selection process, and oversaw implementation of over 30 practices.

A number of landowners and land managers in the project area have successfully completed NRCS Farm Bill contracts, and some others are pending. Since these contracts did not require public disclosure and are protected by confidentiality agreements, names of cooperators cannot be shared. No known landowner in the project area refuses to partner with SMCRCD and the NRCS.

Construction funds will be allocated across three tiers of projects.

Tier 1 projects (up to \$5,000) might include, for example projects that change cultural practices to improve erosion and sediment control, pesticide application in residential areas, cover crops on farms, pasture resting, prescribed grazing, fencing, vegetation management, testing of septic systems, rain harvesting gardens and other stormwater runoff management, and rainwater harvesting structures.

Tier 2 projects (\$5,001 to \$25,000) might include all of the projects in Tier 1 if they are more complex, on a larger scale, or cover more area. Tier 2 might also include simple to moderate technical drainage improvements, retrofit of existing roof runoff catchment features (capture and routing), minimal grading, rural road repair with no stream crossings, ditch maintenance, rock driplines under roofs and other erosion and sediment control BMPs, permeable driveways, and trail maintenance and improvements.

Tier 3 projects (\$25,001- \$70,000) might include all of the projects in Tier 2 if they are more complex, on a larger scale, or cover more area.

Projects will be selected from each tier, ensuring (1) distribution of funds across a number of projects and (2) the ability to incorporate some larger scale or more complex projects. The RCD expects to implement no less than 15 and no more than 25 projects, based on the types of projects that will be selected. The following table presents three typical scenarios for how construction funds might be spent:

<b>Scenario 1</b>			
	<b>avg cost</b>	<b># projects</b>	<b>total</b>
Tier 1	\$2,500	12	\$30,000
Tier 2	\$10,000	7	\$70,000
Tier 3	\$50,000	2	\$100,000
RCD Staff			\$60,480
<b>TOTAL</b>		<b>21</b>	<b>\$260,480</b>
<b>Scenario 2</b>			
	<b>avg cost</b>	<b># projects</b>	<b>total</b>
Tier 1	\$5,000	18	\$90,000
Tier 2	\$20,000	2	\$40,000
Tier 3	\$70,000	1	\$70,000
RCD Staff			\$60,480
<b>TOTAL</b>		<b>21</b>	<b>\$260,480</b>
<b>Scenario 3</b>			
	<b>avg cost</b>	<b># projects</b>	<b>total</b>
Tier 1	\$4,000	9	\$36,000
Tier 2	\$15,000	5	\$75,000
Tier 3	\$30,000	3	\$90,000
RCD Staff			\$60,480
<b>TOTAL</b>		<b>17</b>	<b>\$261,480</b>

## EXHIBIT C – Invoicing and Reporting Provisions

### 1. Invoicing

RCD will be paid for performance of the specific tasks and the delivery of products and services as described in Exhibits A and B. In any event, the total payment for services shall not exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000). RCD shall submit quarterly invoices to the COUNTY itemizing services and tasks performed as described below.

- (A) Supporting documentation (e.g., receipts) must be submitted with each invoice to request reimbursement. The amount claimed for staff time must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Invoice payment shall be made only after receipt of a complete, adequately supported, properly documented and accurately addressed invoice.
- (B) RCD shall request disbursement for any cost after such cost has been incurred and has been paid by or is due and payable by RCD.
- (C) Notwithstanding any other provision of this MOU, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the Federal Government, or any loss of tax-free status on state bonds, pursuant to any Federal statute or regulation.
- (D) The invoice shall contain the following information:
  - (i) The date of the invoice;
  - (ii) The time period covered by the invoice, i.e., the term “from” and “to”;
  - (iii) The total amount due; and
  - (iv) Original signature and date (in ink) of RCD authorized representative.
  - (iv) Final invoice shall be clearly marked “FINAL INVOICE” and submitted NO LATER THAN March 1, 2015.
- (E) In the event that COUNTY staff determines that the invoice is inadequate or fails to provide enough information for COUNTY staff to assess RCD’s compliance with the terms and timing of services under this MOU, the COUNTY will return the invoice to RCD with an explanation and request for missing information. The COUNTY shall not be obligated to pay RCD until RCD submits a corrected invoice, demonstrating satisfactory compliance with the terms and timing of service.
- (F) If the State Budget Act of the current year and/or any subsequent years covered under this MOU does not appropriate sufficient funds for the Proposition 84 ASBS grant program, Exhibit A shall be of no prospective force and effect. This provision shall be construed as a condition precedent to the obligation of the SWRCB to make any payments under Exhibit A. In this event, the State shall have no liability to pay any funds whatsoever to the COUNTY or to furnish any other considerations under the Exhibit A and the COUNTY shall not be obligated to perform any provisions of the Exhibit A nor this MOU.
- (G) If the funding for Exhibit A in any fiscal year is reduced or deleted by the State Budget Act, by Executive Order, or by order of the State Department of Finance, the State shall have the option to either cancel the Exhibit A with no liability occurring to the State, or

offer the COUNTY an amendment to Exhibit A to reflect the reduced amount, in which case the COUNTY shall have the option to cancel this MOU with no liability occurring to the COUNTY or to offer an amendment of this MOU to RCD.

2. Reporting

RCD shall submit quarterly progress reports to the COUNTY by the first (1st) of March, June, September, and December. The progress reports shall provide a brief description of the work performed, accomplishments during the quarter, milestones achieved, monitoring results (if applicable), and any problems encountered in the performance of the work under this MOU.

The invoice should accompany the progress report. The invoice should reflect charges for the work completed during the reporting period covered by progress report. The invoice cannot be paid prior to submission of a progress report covering the invoice reporting period. RCD shall use the template provided below.



Progress Report # \_\_\_\_\_

Reporting Period: \_\_\_\_\_ to \_\_\_\_\_

Submittal Date \_\_\_\_\_

Prop 84 ASBS Grant  
Agreement No:

10-402-550

Project Name:

James V. Fitzgerald ASBS Pollution Reduction Program

Agency Name:

San Mateo County Resource Conservation District

I certify under penalty of law that this document and any attachment was prepared by me or under my direction in accordance with the terms and conditions of the MOU (and each MOU attachment) between the County of San Mateo and the RCD regarding implementation of the James V. Fitzgerald ASBS Pollution Reduction Program. Based on my inquiry of the persons or persons who manage the project or those directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. All information submitted in this document and all attachments conform to and are in accordance with the state and federal laws and I so here certify with my signature. I am aware that there are significant penalties for submitting false or misleading information.

Agency  
Representative:

Printed Name

Signature

### Summary of Work Completed To Date (See sample table below)

**Work Items for Review:** The table should number and list all items included in Exhibit B of the MOU. The Item #s should correspond with the Item #s listed in Exhibit A. The information provided should be cumulative from the start of the project. The table should provide an at-a-glance status of the project work items.

**Due Date:** The due dates in this column should be identical to the due dates in Exhibit B of the MOU. If a date change is made through formal modification or amendment, then the revised date can be inserted once the change has been approved.

**% Of Work Complete:** Cumulative percentage of work complete to date

**Date Submitted:** For items that are submitted more than once (i.e., progress reports), please leave previous submittal dates on the table so that there is a list of dates within the box. If a draft item for review is submitted, write "draft" after the date.

Item #	Description	Due Date	% Of Work Complete	Date Submitted
A.1	GPS Information	(mm/dd/yy)	( %)	(mm/dd/yy)
A.2.1	PAEP			
A.2.2	Monitoring Plan			
A.2.3	QAPP			
A.3	CEQA/NEPA Documentation			
A.4	Land Owner Agreements			
A.5	Applicable Permits			
B.1.1	Assessment of Pilot BMP Effectiveness			
B.2.3.3	Project Work Plan			
B.6	Targeted Upland BMPs			

*(Include only the items for review, by Item #, as listed on the Table of Items for Review in Exhibit A of the MOU)*

- \_\_\_\_\_
- \_\_\_\_\_

## **Progress Report Narrative**

### ***Introduction***

(Provide a brief one or two sentence introduction or summary of the report (e.g., "During the reporting period, project activities focused on completing design of the pipeline segments 1, 3, and 4" or "... focused on monitoring activities and repairing process or system failures or deficiencies" or ... "focused on improving system efficiency," etc.)

### ***Summary of Activities***

(List each work item described in Exhibit B in every progress report. However, limit narrative descriptions to work performed during the reporting period. Provide, by Item #, a brief description of milestones, successes, and problems or issues encountered during the reporting period.

#### **Item A.2.1 - PAEP (Cumulative \_\_\_\_% complete)**

*(Describe for each work item, the activities, problems, successes, milestones OR "No work performed this period" OR "Complete")*

Continue with all work items described in Exhibit B.

**Attachment H**  
**Health Insurance Portability and Accountability Act (HIPAA)**  
**Business Associate Requirements**

***Definitions***

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations section 160.103 164.304 and 164.501. (All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.)

- a. *Designated Record Set.* “Designated Record Set” shall have the same meaning as the term “designated record set” in Section 164.501.
- b. *Electronic Protected Health Information.* “Electronic Protected Health Information” (“E PHI”) means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- c. *Individual.* “Individual” shall have the same meaning as the term “individual” in Section 160.103 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- d. *Privacy Rule.* “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.
- e. *Protected Health Information.* “Protected Health Information” shall have the same meaning as the term “protected health information” in Section 160.103 and is limited to the information created or received by Contractor from or on behalf of County.
- f. *Required By Law.* “Required by law” shall have the same meaning as the term “required by law” in Section 164.103.
- g. *Secretary.* “Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- h. *Security Incident.* “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate
- i. *Security Rule.* “Security Rule” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

### ***Obligations and Activities of Contractor***

- a. Contractor agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Contractor agrees to use appropriate safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.
- d. Contractor agrees to report to County any use or disclosure of the Protected Health Information not provided for by this Agreement.
- e. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of County, agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
- f. If Contractor has protected health information in a designated record set, Contractor agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- g. If Contractor has protected health information in a designated record set, Contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- h. Contractor agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, County available to the County or to the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- i. Contractor agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

- j. Contractor agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (i) of this Schedule, to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- k. Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Contractor creates, receives, maintains, or transmits on behalf of County.
- l. Contractor shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- m. Contractor shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- n. Contractor shall report to County any Security Incident within 5 business days of becoming aware of such incident.
- o. Contractor shall make its policies, procedures, and documentation relating to the security and privacy of protected health information, including EPHI, available to the Secretary of the U.S. Department of Health and Human Services and, at County's request, to the County for purposes of the Secretary determining County's compliance with the HIPAA privacy and security regulations.

### ***Permitted Uses and Disclosures by Contractor***

Except as otherwise limited in this Schedule, Contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

### ***Obligations of County***

- a. County shall provide Contractor with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Contractor with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Contractor's permitted or required uses and disclosures.
- c. County shall notify Contractor of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

### ***Permissible Requests by County***

County shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by County, unless the Contractor will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Contractor.

### **Duties Upon Termination of Agreement**

- a. Upon termination of the Agreement, for any reason, Contractor shall return or destroy all Protected Health Information received from County, or created or received by Contractor on behalf of County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.
- b. In the event that Contractor determines that returning or destroying Protected Health Information is infeasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information.

### ***Miscellaneous***

- a. *Regulatory References.* A reference in this Schedule to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. *Amendment.* The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. *Survival.* The respective rights and obligations of Contractor under this Schedule shall survive the termination of the Agreement.
- d. *Interpretation.* Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. *Reservation of Right to Monitor Activities.* County reserves the right to monitor the security policies and procedures of Contractor

(rev. 8/08)