

# ASSOCIATION OF BAY AREA GOVERNMENTS

## CONTRACT FOR SERVICES

This contract is made and entered into effective \_\_\_\_\_, by and between the Association of Bay Area Governments (ABAG), a public entity formed under the California Joint Exercise of Powers Act, Government Code Section 6500, et seq. and \_\_\_\_\_, (Contractor).

### 1. Employment of Contractor

ABAG agrees to engage Contractor and Contractor agrees to undertake, carry out, and complete in a satisfactory and proper manner certain work and services set forth in the attached Exhibit A, Scope of Work, which is incorporated herein.

### 2. Time of Performance

Contractor shall begin performance of the services set forth in Exhibit A upon receipt of a signed contract. Such services shall be undertaken in such sequence as to assure their expeditious completion in the light of the purposes of this Contract, but in any event all such services and a final project invoice shall be completed and submitted to ABAG by December 31, 2011.

### 3. Subcontractors

Contractor is fully responsible for all work performed under this Contract including subcontracted work. Subcontract terms and conditions must include all applicable contract terms and conditions as provided herein. Subcontractor agreements require prior approval by ABAG, unless the subcontract is already part of the contract. Any amendments to subcontracts must be approved by ABAG. In obtaining a subcontract, the Contractor must obtain at least three (3) competitive bids, or comply with the provisions of Government Code Section 4525 et seq., as applicable, or provide written justification for nonfulfillment of these requirements. Upon termination of any subcontract, ABAG shall be notified immediately.

### 4. Compensation and Method of Payment

Contractor shall be compensated for all services to be rendered under this Contract in a maximum sum not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Compensation by ABAG to Contractor shall be payable as set forth in attached Exhibit A. Contractor shall submit invoices for payment no more frequently than once monthly and shall be paid in arrears. Invoices shall be submitted in accordance with "Invoicing Procedures" as set forth in Exhibit A. ABAG shall review Contractor's invoices and approve or disapprove them for payment, which shall be made by ABAG as appropriate.

### 5. Availability of Funds

This Contract shall be contingent upon funds being appropriated to ABAG for the purposes of this contract. ABAG shall pay invoices within fourteen (14) days of receiving payment from Clean Water State Revolving Fund (CWSRD). If sufficient funds are not made available, ABAG has the option of immediately voiding this contract by giving written notice of same to Contractor.

### 6. Insurance Requirements

Contractor shall, at its own expense, obtain and maintain in effect at all times during the life of this Contract the insurance coverages set forth in Exhibit B, which is hereby made part of this Contract.

### 7. Findings Confidential

To the extent allowed by law, including but not limited to the California Public Records Act, any reports, information, data, etc. given to, prepared, or assembled by Contractor shall be kept as confidential and shall

not be made available to any individual or organization by Contractor without the prior written approval of ABAG.

8. Entire Agreement

This contract and its attachment are entire as to the services to be rendered under it. This contract supersedes any and all other contracts either oral or in writing between ABAG and Contractor with respect to the subject matter hereof, including the Prior Agreement, and contains all of the covenants and contracts between the parties with respect to such matters. ABAG and Contractor acknowledge that no representations, inducements, promises or agreements, orally or otherwise, have been made to any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other contracts, statement, or promise not contained in this Contract shall be valid or binding.

9. Conflict of Interest

Contractor covenants that presently there is no interest, and none shall be acquired, direct or indirect, which conflicts in any manner or degree with its performance of services as required under this Contract. Contractor further covenants that in the performance of this Contract, no person having any interest shall be employed by it.

10. Notices

Any notices, demands, or elections required or permitted to be given or made hereunder shall be in writing, shall be personally delivered or mailed by certified or registered mail, return receipt requested, addressed to the respective parties as follows:

**ABAG**

San Francisco Estuary Partnership  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
Attn.: Paula Trigueros, Contract Manager  
(510) 622-2499  
Email: ptrigueros@waterboards.ca.gov

and

**Contractor**

11. Binding on Heirs

This contract shall be binding upon the heirs, successors, assigns, or transferees, of ABAG or Contractor, as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Contract other than as provided above.

12. Other Contract Provisions

This Contract shall be subject to the Standard Contract Provisions, Special ARRA Contract Provisions and Travel and Per Diem Expenses as set forth in Exhibits B, and C, respectively, which are incorporated herein by this reference.

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

Dated: \_\_\_\_\_

Contractor:

\_\_\_\_\_  
By:

\_\_\_\_\_  
(Tax ID #)

Dated: \_\_\_\_\_

ASSOCIATION OF BAY AREA GOVERNMENTS:

\_\_\_\_\_  
Henry L. Gardner  
Executive Director

Approved as to legal form and content:

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

Approved as to legal form and content:

## **EXHIBIT A**

### **SCOPE OF WORK**

#### **OVERVIEW**

1. TIME IS OF THE ESSENCE. FAILURE TO MEET THIS DATE WILL RESULT IN AUTOMATIC TERMINATION OF THIS AGREEMENT AND IMMEDIATE REPAYMENT OF ANY FUNDS DISBURSED HEREUNDER.

2. Completion of Construction date is hereby established as December 31, 2011.

3. The Project Completion date is hereby established as January 31, 2013.

4. The Project, commonly known as Taking Action for Clean Water Bay Area Total Maximum Daily Load (TMDL) Implementation, generally consists of implementing water quality improvement actions toward eliminating impairment of waters in the San Francisco Bay region and protecting California coastal waters, as more particularly described in the financial assistance application of the Agency and the accepted plans and specifications for the Project, if any.

5. All projects are required to comply with the California Environmental Quality Act (CEQA). 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 Project 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.

6. Work to be performed by the Recipient

#### **TASKS:**

**TABLE OF ITEMS FOR SUBMITTAL (DELIVERABLES SCHEDULE)**

Item	DESCRIPTION	CRITICAL DUE DATE	ESTIMATED DUE DATE
<b>SCOPE OF SERVICES</b>			
A.	PLANS AND COMPLIANCE REQUIREMENTS (See Exhibit C)		
1.	Non Point Source Pollution Reduction Project Follow-up Survey Form		Annually by Dec. 15, 2009
2.	Copy of final CEQA/NEPA Documentation		
3.	Copies of Applicable Permits		As needed
B.	WORK TO BE PERFORMED		
<b>INVOICING, BUDGET DETAIL, AND REPORTING PROVISIONS</b>			
C.	INVOICING		Quarterly
D.	REPORTS		
1.	Progress Reports by the fifteenth (15 <sup>th</sup> ) of the month following the end of the calendar quarter (March, June, September, and December)		Quarterly
2.	Natural Resource Projects Inventory (NRPI) Project Survey Form		
3.	Draft Project Report		
4.	Final Project Report		

**INVOICING PROCEDURES**

Contractor shall prepare and submit to ABAG, no more frequently than quarterly, a statement of work performed in that period. Each invoice shall specify in detail number of hours worked and billing rate for each employee working on the project under the specific task worked. Supporting documentation for other direct costs (e.g., receipts) must be submitted with each invoice to support request for grant funds as well as to support matching funds. Contractor shall be paid in arrears.

**CONTRACTOR BUDGET**

Task	Budget Amount	
1		
2		
3		
4		

5		
Draft Project Report		
Final Project Report		
<b>Total Contract Not to Exceed</b>		

## EXHIBIT B

### STANDARD CONTRACT PROVISIONS

1. Conflict of Interest. No employee, officer, or agent of ABAG shall participate in selection, or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
  - a) The employee, officer or agent;
  - b) Any member of his or her immediate family;
  - c) His or her partner; or
  - d) An organization which employs, or is about to employ, any of the above has a financial or other interest in the firm selected for award.

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

2. Extensions of Time. The granting of or acceptance of extensions of time to complete performance by Contractor will not operate as a release to Contractor or otherwise modify the terms and conditions of this Contract.
3. Headings. The descriptive headings used in this Contract are for convenience only and shall not control or affect the meaning or construction of any of its provisions.
4. Prohibited Interest. Contractor's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subcontracts.
5. Remedies Cumulative. The remedies conferred by this Contract upon ABAG are not intended to be exclusive, but are cumulative and in addition to all other remedies provided by law.
6. Severability. Should any part of this Contract be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Contract, which shall continue in full force and effect; provided that, the remainder of this Contract can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.
7. Insurance Requirements. Contractor shall procure and maintain for the duration of this Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees. Contractor may satisfy all of the requirements of this Section 7 and of Section 8 by documentation of its membership in a California government agency self-insurance risk pool with coverage at least as broad as the Insurance Requirements set out in this Contract.
  - a. Minimum Scope of Insurance. Coverage shall be at least as broad as:
    - 1) Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
    - 2) Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
    - 3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

- 4) Errors and Omissions Liability insurance appropriate to the Contractor's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability. The District is not required to obtain Errors and Omissions Liability insurance for work and services provided by its own employees or officials.
- b. Minimum Limits of Insurance. Contractor shall maintain limits no less than:
- 1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
  - 2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
  - 3) Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by ABAG. At the option of ABAG, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects ABAG, its officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to ABAG guaranteeing payment of losses and related investigations, claim administration and defense expenses. (Including operations, products and completed operations, as applicable.).
- d. Other Insurance Provisions. The Contractor will cause its self-insurance government agency risk pool, to provide documentation of the following:
- 1) ABAG, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor.
  - 2) For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects ABAG, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by ABAG, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
  - 3) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to ABAG.
  - 4) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
- e. Acceptability of Insurers. Based on Contractor's representation that its self-insurance agency risk pool is solvent and funded at prudent levels, ABAG accepts the coverage provided in lieu of commercial insurance.
- f. Verification of Coverage. Contractor shall furnish ABAG with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by ABAG before work commences. ABAG reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.
8. Project Insurance. Throughout the life of the project, Contractor shall provide and maintain insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Contract, 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 days' prior written notice to ABAG and 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. Contractor 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.

## **EXHIBIT C**

### **FEDERAL ARRA CONTRACT PROVISIONS**

#### **ARTICLE I: DEFINITIONS –**

“Recipient” as used in Exhibits C, C-1, C-2, C-3, C-4 and C-5 is \_\_\_\_\_.

#### **ARTICLE II: REPRESENTATIONS AND WARRANTIES**

##### **2.1 General Recipient Commitments.**

The Recipient accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by the Recipient in its application, accompanying documents, and communications filed in support of its request for financial assistance.

##### **2.2 Completion of Project.**

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

##### **2.3 Project Certification [Project Report].**

The Recipient shall prepare a Project Certification that includes information collected by the Recipient in accordance with the Project monitoring and reporting plan, a determination of the effectiveness of the Project in preventing or reducing pollution, and the results of the monitoring program. The Project Certification shall follow the general format provided by the Program Manager.

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

##### **2.4 Award of Construction Contracts.**

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

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

- (a) Any substantial change in scope of the Project. The Recipient agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to the State Water Board SRF Division and the Division has given written approval for such change;

- (b) 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;
- (c) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more beyond the estimated date of Completion of Construction previously provided to the Division;
- (d) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Recipient agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient agrees to implement appropriate actions as directed by the Division;
- (e) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Recipient agrees to promptly notify the ABAG Contract Manager. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
- (f) Any monitoring, demonstration, or other implementation activities such that the State Water Board and/or Regional Water Quality Control Board (Regional Water Board) staff may observe and document such activities;
- (g) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state and federal representatives with at least ten (10) working days notice; and,
- (h) Completion of Construction of the Project, and actual Project Completion.

#### 2.6 Project Access.

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

#### 2.7 Project Completion; Initiation of Operations.

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

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

The Recipient agrees that, except as provided in the Agreement, it will not abandon, substantially discontinue use of, lease, or dispose of the Project or any significant part or portion thereof during the useful life of the Project without prior written approval of the ABAG and the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all Project Funds together with accrued interest and any penalty assessments which may be due.

#### 2.9 Reports.

(a) Quarterly Reports. The Recipient agrees to expeditiously provide status reports no less frequently than quarterly. At a minimum the reports will contain the following information: a summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed; a listing of change orders including amount, description of work,

and change in contract amount and schedule; any problems encountered, proposed resolution, schedule for resolution, status of previous problem resolutions, and number of jobs created or preserved due to the Project.

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

#### 2.10 Federal Disadvantaged Business Enterprise (DBE) Reporting.

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

#### 2.11 Records.

(a) Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles the Recipient agrees to:

- (1) Establish an official file for the Project which shall adequately document all significant actions relative to the Project;
- (2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
- (3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
- (4) Establish an accounting system which will accurately depict final total costs of the Project, including both direct and indirect costs;
- (5) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
- (6) If a Force Account is used by the Recipient for any phase of the Project, other than for planning, design and construction engineering, and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee.

(b) The Recipient shall be required to maintain books, records and other material relative to the Project in accordance with generally accepted accounting principles. The Recipient shall also be required to retain such books, records, and other material for each subcontractor who performed work on this project for a minimum of six (6) years after repayment of Project Funds, if any, or six (6) years after Project Completion if no repayment is required. The Recipient shall require that such books, records, and other material be subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the USEPA, the Office of Inspector General, or any authorized representatives of the aforementioned, and shall allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar right regarding audit, interviews, and records retention in any subcontract related to the performance of this Agreement.

#### 2.12 Audit.

(a) The Division, at its option, may call for an audit of financial information relative to the Project, where the Division determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of federal requirements. Where such an audit is called for, the audit shall be performed by a certified public accountant independent of the Recipient and at the cost of the Recipient. The audit shall be in the form required by the Division.

(b) Audit disallowances will be returned to the State Water Board.

## 2.13 Signage.

The Recipient shall place a sign at least four (4) feet tall by eight (8) feet wide made of three-fourths (¾) inch thick exterior grade plywood or other approved material in a prominent location on the Project site. The sign shall include the following color logos:



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

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

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

Include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use. (Gov. Code, § 7550, 40 CFR § 31.20.)

## **ARTICLE III: FINANCING PROVISIONS**

### 3.1 Amounts Payable by the Recipient.

(a) Contingent Obligation to Repay Project Funds. The Recipient's obligation to repay Project Funds is forgiven contingent on meeting the requirements of ARRA and Exhibit A. Failure to meet these requirements for any reason whatsoever, within or outside the control of the Recipient, will result in automatic suspension and termination of this Agreement and immediate repayment of all disbursed Project Funds plus interest at the highest legal rate due immediately whether or not the System or any part thereof is operating or operable or has been completed, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part. Where repayment is required, the Recipient as a whole is obligated to make all payments required by this Agreement to the State Water Board through ABAG, notwithstanding any individual default by its constituents or others in the payment to the Recipient of fees, charges, taxes, assessments, tolls or other charges ("Charges") levied or imposed by the Recipient. The Recipient shall provide for the punctual payment to the State Water Board through ABAG of all amounts which become due under this Agreement and which are received from constituents or others in the payment to the Recipient. In the event of failure, neglect or refusal of any officer of the Recipient to levy or cause to be levied any Charge to provide payment by the Recipient under this Agreement, to enforce or to collect such Charge, or to pay over to the State Water Board any money collected on account of such Charge necessary to satisfy any amount due under this Agreement, the State Water Board may take such action in a court of

competent jurisdiction as it deems necessary to compel the performance of all duties relating to the imposition or levying and collection of any of such Charges and the payment of the money collected therefrom to the State Water Board. Action taken pursuant hereto shall not deprive the State Water Board of, or limit the application of, any other remedy provided by law or by this Agreement.

Interest on any funds disbursed to the Recipient shall begin to accrue as of the date of each disbursement.

(b) Project Costs. The Recipient agrees to pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient shall nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.

(c) Additional Payments. In addition to any repayment required to be made by the Recipient, the Recipient shall also pay to the State Water Board through ABAG the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, attorneys, litigation costs, insurance premiums and all other extraordinary costs reasonably incurred by the State Water Board or assignee of the State Water Board.

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

### 3.2 No Obligation of the State.

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

### 3.3 Disbursement of Project Funds; Availability of Funds.

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

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

Construction unless prior approval is granted by the Division. If the Recipient fails to do so, then the undisbursed balance of this Agreement will be deobligated. Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.

(7) The Recipient agrees that it shall not be entitled to any interest on undisbursed Project Funds.

(b) The State Water Board's and ABAG's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, neither the State Water Board nor ABAG shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board and ABAG to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other agency. If any disbursements due the Recipient under this contract are deferred because sufficient funds are unavailable, such disbursement will be made to the Recipient when sufficient funds do become available.

### 3.4 Withholding of Disbursements.

The State Water Board through ABAG may withhold all or any portion of the funds provided for by this Agreement in the event that:

- (a) The Recipient has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
- (b) The Recipient fails to maintain reasonable progress toward completion of the Project.

### 3.5 Withholding Pending Project Completion.

Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board through ABAG may retain an amount equal to ten percent (10%) of the financial assistance specified in this Agreement until completion of the Project to the reasonable satisfaction of the State Water Board. Any retained amounts due to the Recipient will be promptly disbursed to the Recipient, without interest, upon Project Completion.

### 3.6 Accounting Standards and Federal Single Audit Act.

The Recipient agrees to comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient agrees to be bound by and to comply with, the provisions and requirements of the federal Single Audit Act of 1984 (Pub. L. 98-502) Office of Management and Budget (OMB) Circular No. A-133, and updates or revisions thereto. The Recipient will maintain separate Project accounts in accordance with generally accepted accounting principles. The Recipient shall comply with "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" promulgated by the U.S. General Accounting Office. (40 CFR § 35.3135(I)).

## **ARTICLE IV: MISCELLANEOUS PROVISIONS**

### 4.1 Timeliness.

TIME IS OF THE ESSENCE IN THIS AGREEMENT.

### 4.2 Amendment.

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

Agreement is binding on any of the parties.

#### 4.3 Assignability.

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

#### 4.4 Bonding.

Where contractors are used, the Recipient shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$20,000.00.

#### 4.5 Compliance with Law, Regulations, etc.

(a) The Recipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, the Recipient agrees that, to the extent applicable, the Recipient will:

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

#### 4.6 Conflict of Interest.

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

#### 4.7 Damages for Breach Affecting ARRA Compliance.

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

#### 4.8 Disputes.

(a) Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Division Deputy Director, or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Recipient and to the State Water Board's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Recipient, the Recipient mails or otherwise furnishes a written appeal of the decision to the State Water Board's Executive Director. The decision of the State Water Board's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Recipient shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Recipient shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement.

(b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on



any question of law.

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

#### 4.9 Governing Law.

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

#### 4.10 Income Restrictions.

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

#### 4.11 Independent Actor.

The Recipient, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of the State Water Board or ABAG.

#### 4.12 Non-Discrimination Clause.

(a) During the performance of this Agreement, Recipient and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.

(b) The Recipient, its contractors, and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

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

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

(e) The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

#### 4.13 No Third Party Rights.

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

#### 4.14 Operation and Maintenance; Insurance.

The Recipient agrees to properly staff, operate and maintain all portions of the Project during its useful life in accordance with all applicable state and federal laws, rules and regulations.

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

and (ii) the establishment and maintenance of a claims processing and risk management program.

In the event of any damage to or destruction of the System caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System. The Recipient shall begin such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the System shall be free and clear of all claims and liens.

#### 4.15 Permits, Subcontracting, Remedies and Debarment.

The Recipient shall procure all permits and licenses necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Signed copies of any such permits or licenses shall be submitted to the Division before construction begins.

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

The Recipient shall not subcontract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension." The Recipient shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code, § 4477)

The Recipient certifies to the best of its knowledge and belief, that it and its principals:

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

#### 4.16 Prevailing Wages.

The Recipient agrees to be bound the provisions of the Davis-Bacon Act, as identified in Exhibit C-5 and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. The Recipient shall monitor all agreements subject to reimbursement from this Agreement to assure that the prevailing wage provisions of Labor Code section 1771 are being met.

#### 4.17 Recipient's Responsibility for Work.

The Recipient shall be responsible for all work and for persons or entities engaged in work performed

pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Recipient shall be responsible for any and all disputes arising out of its contracts for work on the Project. Neither the State Water Board nor ABAG will mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.

#### 4.18 Related Litigation.

Under no circumstances may a Recipient use funds from any disbursement under this Agreement to pay costs associated with any litigation the Recipient pursues against ABAG, the State Water Board or any Regional Water Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Recipient agrees to complete the Project funded by this Agreement or to repay all of the disbursed funds plus interest.

#### 4.19 Rights in Data.

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

#### 4.20 State and ABAG Reviews and Indemnification.

The parties agree that review or approval of Project plans and specifications by ABAG or the State Water Board is for administrative purposes only and does not relieve the Recipient of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Recipient agrees to indemnify, defend and hold harmless ABAG and the State Water Board against any loss or liability arising out of any claim or action brought against ABAG or the State Water Board from and against any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from, or in any way connected with (1) the System or the Project or the conditions, occupancy, use, possession, conduct or management of, work done in or about, or the planning, design, acquisition, installation or construction, of the System or the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the California Hazardous Waste Control Law and California Water Code section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against ABAG or the State Water Board with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of this Agreement.

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

The Recipient agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to ABAG or the State Water Board as a result of breach of

this Agreement by the Recipient, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by ABAG or the State Water Board shall not preclude ABAG or the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own filing costs and attorney fees.

#### 4.22 Termination; Immediate Repayment; Interest.

(a) This Agreement will automatically terminate without written notice if the Recipient fails to meet the timelines in Exhibit A and the ARRA provisions of Exhibit C. Under such circumstance, the Recipient shall immediately repay all Project Funds received under this Agreement, at the highest legal rate of interest.

(b) Additionally, this Agreement may be terminated by written notice during construction of the Project, or thereafter at any time prior to complete repayment by the Recipient, at the option of the State Water Board through ABAG, upon violation by the Recipient of any material provision of this Agreement after such violation has been called to the attention of the Recipient and after failure of the Recipient to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the Division. In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the State Water Board through ABAG an amount equal to Installment Payments due hereunder, including accrued interest, and all penalty assessments due. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Recipient to the date of full repayment by the Recipient.

#### 4.23 Unenforceable Provision.

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

#### 4.24 Useful Life of the Project.

The useful life of the Project, commencing at Project Completion, is at least equal to the term of this Agreement, as set forth in Exhibit B hereto.

#### 4.25 Venue.

The State Water Board and the Recipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California.

#### 4.26 Waiver and Rights of the State Water Board.

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

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

## **EXHIBIT C-1**

### **CWSRF PAYMENT SCHEDULE**

No payments due, contingent on Recipient's timely performance of its obligations under Exhibits A , C, and C-1 .

If Recipient fails to timely perform its obligations under Exhibits A, C, and C-1 , complete repayment will be due IMMEDIATELY at the highest legal rate of interest.

## EXHIBIT C-2

### SPECIAL CONDITIONS

1. Data Management. This Project includes appropriate data management activities so that Project data can be incorporated into appropriate statewide data systems.
2. Supplemental Environmental Projects. The Recipient shall not use funds disbursed pursuant to this Agreement for supplemental environmental projects required by Regional Water Boards.
3. 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 Recipient. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the Project Manager.
4. Watershed Management Plan Consistency. The Recipient 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. Any such activity occurring in the San Gabriel and Los Angeles watersheds shall be consistent with the San Gabriel and Los Angeles River Watershed and Open Space Plan as adopted by the San Gabriel and Lower Los Angeles Rivers and Mountain Conservancy and the Santa Monica Mountains Conservancy.
5. The Recipient 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>.
6. The Recipient certifies that this is a Project to restore and protect the water quality and environment of coastal waters, estuaries, bays and nearshore waters, or groundwater.
7. The Recipient certifies that, for the purposes of this Project, it has not received, will not apply for, and hereby withdraws outstanding applications for money through the Proposition 13 Coastal Nonpoint Source Program (Water Code § 79148 et seq.) or the Proposition 13 Nonpoint Source Pollution Control Program (Water Code § 79110 et seq.).
8. The Recipient certifies that this Project is intended to produce sustained, long-term water quality or environmental restoration or protection benefits for a period of twenty (20) years.
9. The Recipient certifies that this Project is intended to address the causes of degradation, rather than symptoms.
10. The Recipient in good faith represents that 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 California Coastal Commission.
11. Notwithstanding any other provision of this Agreement, the Recipient 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.

12. Notwithstanding any other provision of this Agreement, upon completion of the Project, the Recipient 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.

13. The Recipient certifies that if a recovery plan for coho, steelhead, 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.

14. Where applicable, the Recipient shall include a monitoring component as part of this Project that allows the integration of data into statewide monitoring effort, including but not limited to the State Water Board's Surface Water Ambient Monitoring Program (SWAMP) or Groundwater Ambient Monitoring and Assessment (GAMA) Program.

15. The Recipient certifies that its Project area falls under the jurisdiction of the California Coastal Commission and/or the San Francisco Bay Conservation and Development Commission.

16. The Recipient certifies that this Project addresses at least one of the State Water Board or Regional Water Boards' priorities as identified in Appendix G to the 2005-06 Consolidated Grants Program Guidelines.

## EXHIBIT C-3

### FEDERAL ARRA SPECIAL CONDITIONS

#### 1. ARRA Special Conditions.

(a) ARRA Requirements. The Recipient understands and acknowledges that financing pursuant to this Agreement is provided according to the American Recovery and Reinvestment Act of 2009 (ARRA). The Recipient agrees to perform its obligations under this Agreement in compliance with the letter and the spirit of ARRA. The Recipient understands and agrees that failure to comply with ARRA will automatically terminate this Agreement and repayment of any and all Project Funds disbursed to the Recipient will be due and payable immediately.

(b) Timeline Absolute. The Recipient understands that, for any reason whatsoever, foreseeable or unforeseeable, negligent, intentional, or due to any factor outside the Recipient's control, should the Recipient fail to start construction prior to the date specified in Exhibit A, this Agreement will automatically terminate and repayment of any and all Project Funds disbursed to the Recipient will be due and payable immediately.

(c) Buy American. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board, the Recipient shall not use Project Funds to purchase iron, steel, and manufactured goods produced outside of the United States. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board, the Recipient hereby certifies that all iron, steel, and manufactured goods used in the Project were produced in the United States.

(d) Waste, Fraud, & Abuse. The Recipient shall prevent fraud, waste, and the abuse of Project Funds.

(e) Whistleblower Rights Notice. The Recipient shall post notice of the rights and remedies provided to state and local government and contractor whistleblowers as set forth in Section 1553 of ARRA. The Recipient shall ensure that its contractors and subcontractors post such notices.

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

(g) Land or Easement Acquisition. The Recipient shall not use Project Funds for the purchase of land, easements, or interests in land.

(h) Davis Bacon. The Recipient agrees that all laborers and mechanics shall be paid not less than federal prevailing wages. (State prevailing wage requirements found elsewhere in this Agreement may be higher.)

#### 2. Implementation of Recommendations.

Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board may make necessary amendments to this Agreement upon the request of the USEPA or the recommendation of the Recovery Accountability and Transparency Board as set forth in Section 1523 of ARRA.



## **EXHIBIT C-4**

### **ARRA SECTION 1511 CERTIFICATION**

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

- Project description: The Project, commonly known as Taking Action for Clean Water Bay Area Total Maximum Daily Load (TMDL) Implementation, generally consists of implementing water quality improvement actions toward eliminating impairment of waters in the San Francisco Bay region and protecting California coastal waters, as more particularly described in the financial assistance application of the Agency and the accepted plans and specifications for the Project, if any.
- Type of assistance: full principal forgiveness.

## EXHIBIT C-5

### DAVIS-BACON ACT COMPLIANCE

(a) The Recipient shall include in full in any of its Project contracts or subcontracts in excess of \$2,000 entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work the following clauses (or any modifications thereof to meet the particular needs of the Recipient, provided, that such modifications are first approved by the United States Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH- 1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if

known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Association of Bay Area Governments shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Association of Bay Area Governments may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or

under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Association of Bay Area Governments if the Association of Bay Area Governments is a party to the contract, but if the Association of Bay Area Governments is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the State Water Resources Control Board, or the United States Environmental Protection Agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the State Water Resources Control Board or the United States Environmental Protection Agency if the agency is a party to the contract, but if such agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the State Water Resources Control Board or the United States Environmental Protection Agency, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be provided under Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sec. 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed

on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State Water Resources Control Board, the State of California, the United States Environmental Protection Agency, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal or state agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR

(4) Apprentices and trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable

classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the State Water Resources Control Board, United States Environmental Protection Agency, federal Office of Management and Budgets, and/or federal Department of Labor may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by

reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Recipient shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any Project contract or subcontract in an amount in excess of \$100,000. These clauses shall be inserted in addition to the clauses required above. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Association of Bay Area Governments shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be

determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained above, in any Project contract or subcontract, the Recipient shall cause or require the contracting officer to insert a clause requiring that any contractor or subcontractor on this Project shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Recipient shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the State Water Resources Control Board, the State of California, the United States Environmental Protection Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.