

Appendix V

Funding Allocation and Contracts

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Final Project Spending by Municipality

Municipality		Allocation Transfers between municipalities	Total amounts invoiced (bond-funded)	Total amounts invoiced (ARRA-funded)	Total Municipal Contributions	Total of Notices of Acceptance		
COUNTY	CITY		\$4,245,620.03	\$4,938.75	\$135,130.04	\$4,380,750.07		
Alameda County		\$96,935 to Alameda County cities						
	AmericanCanyon	214.11 from Napa	\$11,402.11			\$11,402.11		
	Antioch	\$84.42 to Concord 2/28/13, \$2,707.88 to Walnut Creek 2/28/13, \$514.75 to CCC 2/28/13	\$89,815.95			\$89,815.95		
	Belmont	\$1,134.48 to 5 SM cities	\$19,682.52			\$19,682.52		
	Berkeley	\$13,203 from Alameda County/Fremont, \$110.82 from AC total, \$129.06 from program total	\$76,169.04			\$76,169.04		
	Brentwood	\$4.00 to CCC county total	\$46,400.00			\$46,400.00		
	Brisbane	\$4100.00 from Burlingame, \$4,882.08 from SM cities, \$71.15 to 5 SMC cities, \$53.29 from SMC munis	\$17,089.22			\$17,089.22		
	Burlingame	\$4100.00 to Brisbane, \$150.11 to San Mateo County 2/15/13	\$24,257.92			\$24,257.92		
	Campbell	\$3,541.77 from Saratoga, \$2,758.31 from SCC cities, \$0.73 to SCC cities, \$4.19 to county total, \$18.84 from SCC total 1/17/13, \$1,421.82 from monte sereno 2/28/13	\$42,003.82			\$42,003.82		
	Clayton	\$369.38 from Pinole, \$772.72 to CCC county total	\$10,833.66			\$10,833.66		
	Colma	\$150.53 to napa, \$148.63 to San Mateo	\$16,227.84			\$16,227.84		
	Concord	\$272.05 to CCC county total, \$84.42 from Antioch 2/28/13	\$156,186.37			\$156,186.37		
	ContraCostaCounty	\$983.72 to CCC county total, \$260.25 from SanPablo, \$329.98 from SanRamon, \$514.75 from Antioch	\$127,926.88		\$1,678.62	\$129,605.50		
	Cupertino	209.80 from SCC cities, \$4,963.57 from Napa, \$249.32 from LosGatos 2/28/13	\$53,301.69			\$53,301.69		
	Danville		\$34,943.01		\$384.38	\$35,327.39		
ContraCostaCounty	Dublin	\$8,802 from Alameda County/Fremont, \$549.17 to AC total 1/17/13	\$70,054.83	\$4,938.75		\$70,054.83		
	EastPaloAlto	\$4,892.90 from SM cities, \$502.63 to 5 SM cities, \$487.13 from SMC munis	\$28,394.40			\$28,394.40		
	ElCerrito	\$327.47 to CCC county total	\$24,277.53			\$24,277.53		
	Fairfield		\$118,519.00			\$118,519.00		
	Fremont	\$14,143 to Alameda County cities, \$458.93 from AC total, \$32.31 to AC total 1/17/13	\$144,038.62			\$144,038.62		
	HalfMoonBay	\$4,882.08 from SM cities, \$0.03 to 5 SM cities, \$135.31 from SMC munis	\$20,017.36			\$20,017.36		
	Hayward		\$136,357.00			\$136,357.00		
	Lafayette		\$21,036.00			\$21,036.00		
	Livermore	\$191.14 to AC total, \$2,458.52 to AC total 1/17/13	\$77,572.04			\$77,572.04		
	LosAltos	\$6,783.51 from county total	\$29,149.51		\$36,396.49	\$65,546.00		
	LosGatos	\$9,192.96 from Saratoga, \$3,595.37 from SCC cities, \$221.49 to SCC cities, \$191.55 from county total, \$133.36 from SCC total 1/17/13, \$249.32 to Cupertino 2/28/13	\$44,888.09			\$44,888.09		
	Martinez	\$1,213.88 from Pinole, \$9.35 from CCC total	\$34,479.23			\$34,479.23		
	MenloPark	\$13,656.45 to 5 SM cities, \$2,135.30 to San Mateo County 2/15/13	\$9,706.25			\$9,706.25		
	Millbrae	\$71.08 to San Mateo County 2/15/13	\$20,008.92			\$20,008.92		
	Milpitas	\$29.13 to SCC cities	\$78,598.97			\$78,598.97		
ContraCostaCounty	MonteSerenio	\$1,005.13 from Saratoga, \$142.94 from SCC total 1/17/13, \$1,421.82 to Campbell 2/28/13	\$5,985.07			\$5,985.07		
	Moraga	\$2,234.29 to CCC county total	\$19,966.71			\$19,966.71		
	MountainView	\$1854.16 from county total	\$73,515.16		\$10,043.05	\$83,558.21		
	Napa	214.11 to American Canyon, \$4,963.57 to Cupertino, \$4963.57 to Richmond, \$11,647.78 from 3 SM County cities 2/12/13	\$51,446.53			\$51,446.53		
	Newark	\$374.88 to AC total	\$53,332.08			\$53,332.08		
	Oakland	\$47,638 from Alameda County/Fremont	\$290,208.00		\$31,243.88	\$321,451.88		
	Oakley	\$6,379.55 to CCC county total	\$18,034.45			\$18,034.45		
	Pacifica	\$4,503.20 from SM cities, \$42.48 from SMC munis	\$34,887.80		\$44.12	\$34,931.92		
	PaloAlto	\$6,421.72 from county total	\$64,648.72		\$32,295.97	\$96,944.69		
	Piedmont	\$2.90 to AC total, \$228.22 to AC total 1/17/13	\$9,058.88			\$9,058.88		

Final Project Spending by Municipality

Municipality		Allocation Transfers between municipalities	Total amounts invoiced (bond- funded)	Total amounts invoiced (ARRA- funded)	Total Municipal Contributions	Total of Notices of Acceptance		
COUNTY	CITY		\$4,245,620.03	\$4,938.75	\$135,130.04	\$4,380,750.07		
	Pinole	\$6078.19 to Clayton, Martinez, Richmond, San Pablo	\$20,610.81			\$20,610.81		
	Pittsburg	\$4,282.67 from CCC total	\$86,757.67			\$86,757.67		
	PleasantHill	\$35.78 to CCC county total	\$40,101.22			\$40,101.22		
	Pleasanton	\$14,515 from Alameda County/Fremont	\$83,499.00		\$5,224.69	\$88,723.69		
	RedwoodCity	\$3,672.82 to San Mateo County 2/15/13	\$62,336.18			\$62,336.18		
	Richmond	\$3,518.28 from Pinole, \$4,963.57 from Napa, \$6,987.52 from CCC total	\$99,934.37		\$16,316.84	\$116,251.21		
	SanBruno	\$1,328.30 to San Mateo County 2/15/13	\$34,211.70			\$34,211.70		
	SanCarlos	\$2,439.99 to 5 SM cities, \$1,517.31 to Napa	\$25,144.65			\$25,144.65		
	SanJose		\$689,822.00			\$689,822.00		
	SanLeandro	\$13,254 from Alameda County/Fremont, \$0.83 to AC total, \$4,153.65 from AC total 1/17/13	\$127,372.56			\$127,372.56		
SanMateoCounty		\$4,882.08 from SM cities, \$468.22 from SMC munis, \$7,505.94 from SMC cities 2/15/13	\$50,034.24			\$50,034.24		
	SanMateo	\$1186.43 to 4 SM munis 1/17/13, \$9,979.94 to napa	\$58,366.63			\$58,366.63		
	SanPablo	\$976.66 from Pinole, \$185.84 to CCC county total, \$260.25 to CCC 2/28/13	\$30,951.57			\$30,951.57		
	SanRamon	\$93.49 to CCC county total, \$329.98 to CCC 2/28/13	\$56,489.53			\$56,489.53		
	SantaClara	\$6,295.62 to SCC cities	\$100,349.38			\$100,349.38		
SantaClaraCounty		\$15,621.81 to county total, \$295.14 to SCC total 1/17/13, \$893.64 to Sunnyvale 2/12/13	\$51,023.63			\$51,023.63		
	Saratoga	\$3,541.77 to Campbell, \$9,192.96 to Los Gatos, \$1,005.13 to Monte Sereno	\$5,985.07			\$5,985.07		
Sonoma County		\$12,491 to City of Sonoma						
	Sonoma	\$12,941 from Sonoma County	\$21,680.01		\$101.37	\$21,781.38		
	SouthSanFrancisco	\$6,100 to 5 SM cities	\$43,367.00			\$43,367.00		
	Sunnyvale	\$16.50 to SCC cities, \$893.64 from SC county 2/12/13	\$114,380.14			\$114,380.14		
	UnionCity	\$13,666 from Alameda County/Fremont, \$737.39 to AC total 1/17/13	\$64,517.61			\$64,517.61		
	Vallejo Sanitation FCD		\$107,972.00		\$1,400.63	\$109,372.63		
	WalnutCreek	\$2707.88 from Antioch 2/28/13	\$66,291.88			\$66,291.88		



State Water Resources Control Board



Linda S. Adams,
*Secretary for Environmental
Protection*

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

Arnold Schwarzenegger
Governor

October 7, 2009

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

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

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

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

U.S. Mail

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

Overnight Mail

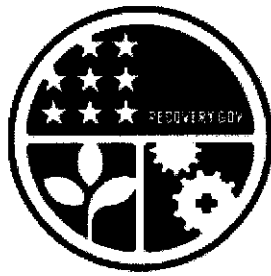
**Ms. Eva Kawada
Program Analyst
State Water Resources Control Board
Division of Financial Assistance
1001 I Street, 17th Floor
Sacramento, CA 95814**

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

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

Enclosure





Clean Water
State Revolving Fund

ASSOCIATION OF BAY AREA GOVERNMENTS

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



Water Boards

PROJECT FINANCE AGREEMENT

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

AGREEMENT NO. 09-823-550

AMOUNT: \$ 5,000,000

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

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Exhibit I	Green Business Case

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE I DEFINITIONS

1.1 Definitions.

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

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

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

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

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

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

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

"CWSRF" means Clean Water State Revolving Fund.

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

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

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

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

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

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

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

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

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

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

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

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

"State" means State of California.

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

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

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

1.2 Exhibits and Appendices Incorporated.

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

ARTICLE II REPRESENTATIONS AND WARRANTIES

2.1 General Recipient Commitments.

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

2.2 Completion of Project.

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

2.3 Project Certification.

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

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

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

2.4 Award of Construction Contracts.

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

2.5 Notice.

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

- (a) Litigation, circulation of a petition to challenge rates, consideration of bankruptcy, dissolution, or disincorporation, or any other thing that could negatively affect or jeopardize the Recipient's revenues used for operations, maintenance, and repairs of the Project during its useful life.
- (b) Any substantial change in scope of the Project. The Recipient agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to the Division and the Division has given written approval for such change;
- (c) Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
- (d) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more beyond the estimated date of Completion of Construction previously provided to the Division;
- (e) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Recipient agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient agrees to implement appropriate actions as directed by the Division;
- (f) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered

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

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

2.6 Project Access.

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

2.7 Project Completion; Initiation of Operations.

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

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

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

2.9 Reports.

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

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

2.10 Federal Disadvantaged Business Enterprise (DBE) Reporting.

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

2.11 Records.

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

2.12 Audit.

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

2.13 Signage.

The Recipient shall place a sign at least four feet tall by eight feet wide made of 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.

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

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

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

3.2 [reserved].

3.3 No Obligation of the State.

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

3.4 Disbursement of Project Funds; Availability of Funds.

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

- (1) Upon execution and delivery of this Agreement, the Recipient may request immediate disbursement of any eligible incurred planning and design allowance as specified in Exhibit B from the Project Funds through submission to the State Water Board of the Disbursement Request Form 260, or any amendment thereto, duly completed and executed.
 - (2) The Recipient may request disbursement of eligible construction and equipment costs consistent with budget amounts referenced in Exhibit B. (Note that this Agreement will be amended to incorporate Approval of Award.)
 - (3) Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Disbursement Request Form 260, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of status reports due under Section 2.9 above.
 - (4) The Recipient agrees that it will not request disbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of disbursement request.
 - (5) Recipient shall spend Project Funds within 30 days of receipt. Any interest earned on Project Funds shall be reported to the State Water Board and may be required to be returned to the State Water Board or deducted from future disbursements.
 - (6) Recipient shall request its final disbursement no later than six months after Completion of Construction unless prior approval is granted by the Division. If the Recipient fails to do so, then the undisbursed balance of this Agreement will be deobligated.
 - (7) Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.
- (b) The State Water Board's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other agency. If any disbursements due the Recipient under this contract are

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

3.5 Withholding of Disbursements.

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

3.6 Rates, Fees and Charges.

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

3.7 Accounting Standards and Federal Single Audit Act.

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

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

ARTICLE IV MISCELLANEOUS PROVISIONS

4.1 Timeliness.

TIME IS OF THE ESSENCE IN THIS AGREEMENT.

4.2 Amendment.

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

4.3 Assignability.

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

4.4 Bonding.

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

4.5 Compliance with Law, Regulations, etc.

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

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

4.6 Conflict of Interest.

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

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

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

4.8 Disputes.

- (a) Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Division Deputy Director, or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Recipient and to the State Water Board's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Recipient, the Recipient mails or otherwise furnishes a written appeal of the decision to the State Water Board's Executive Director. The decision of the State Water Board's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Recipient shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Recipient shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement.
- (b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
- (c) Recipient shall continue with the responsibilities under this Agreement during any dispute.

4.9 Governing Law.

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

4.10 Income Restrictions.

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

4.11 Independent Actor.

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

4.12 Non-Discrimination Clause.

- (a) During the performance of this Agreement, Recipient and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
- (b) The Recipient, its contractors, and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (c) The Recipient, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- (d) The Recipient, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- (e) The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

4.13 No Third Party Rights.

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

4.14 Operation and Maintenance; Insurance.

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

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

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

4.15 Permits, Subcontracting, Remedies and Debarment.

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

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

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

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

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

4.16 Prevailing Wages & Davis Bacon.

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

4.17 Recipient's Responsibility for Work.

The Recipient shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Recipient shall be responsible for any and all disputes arising out of its contracts for work on the Project. The State Water Board will not mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.

4.18 Related Litigation.

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

4.19 Rights in Data.

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

4.20 State Reviews and Indemnification

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

settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of this Agreement.

4.21 State Water Board Action; Costs and Attorney Fees.

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

4.22 Termination; Immediate Repayment; Interest.

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

4.23 Unenforceable Provision.

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

4.24 Useful Life.

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

4.25 Venue.

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

4.26 Waiver and Rights of the State Water Board.

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

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

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

ASSOCIATION OF BAY AREA GOVERNMENTS:

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

STATE WATER RESOURCES CONTROL BOARD

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

EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS

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

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

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

The Recipient shall:

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

7. Construction

Recipient shall:

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

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

EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS

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

8. Technology transfer

The Recipient shall:

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

9. Trash monitoring

The Recipient shall:

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

10. Reports

The Recipient shall submit:

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

EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS**TABLE OF ITEMS FOR REVIEW**

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

EXHIBIT B – PROJECT FINANCING AMOUNT

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

ARRA FINANCING

Allowances:

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

TOTAL	\$5,000,000
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6. Line Item Adjustment(s). Subject to the prior review and approval of the State Water Board's Grant Manager, adjustments between existing line item(s) may be used to defray allowable direct costs up to fifteen percent (15%) of the total ARRA financing amount including any amendment(s) thereto. Line item adjustments in excess of fifteen percent (15%) shall require a formal Agreement amendment.

EXHIBIT C - CWSRF PAYMENT SCHEDULE

Not Applicable.

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

D.1 Special Other Program Conditions:

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

EXHIBIT E — FEDERAL ARRA CONDITIONS

1. ARRA Special Conditions

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

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

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

EXHIBIT F

Not Applicable.

EXHIBIT G – SECTION 1511 CERTIFICATION

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

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

EXHIBIT H – DAVIS BACON

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

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

2. Obtaining Wage Determinations.

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

EXHIBIT H – DAVIS BACON

3. Contract and Subcontract provisions.

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

(1) Minimum wages.

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

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

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

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

EXHIBIT H – DAVIS BACON

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

EXHIBIT H – DAVIS BACON

(2) Withholding.

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

(3) Payrolls and basic records.

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

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

EXHIBIT H – DAVIS BACON

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

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

EXHIBIT H – DAVIS BACON

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

(4) Apprentices and Trainees

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

EXHIBIT H – DAVIS BACON

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

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

(5) Compliance with Copeland Act Requirements.

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

(6) Subcontracts.

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

(7) Contract Termination: Debarment.

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

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

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

(9) Disputes Concerning Labor Standards.

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

EXHIBIT H – DAVIS BACON

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

(10) Certification of Eligibility.

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

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

- (a) **Contract Work Hours and Safety Standards Act.** The **Recipient** shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.
 - (1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - (2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.
 - (3) **Withholding for unpaid wages and liquidated damages.** The **Recipient**, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any

EXHIBIT H – DAVIS BACON

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

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

5. Compliance Verification

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

EXHIBIT H – DAVIS BACON

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

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

EXHIBIT I – GREEN BUSINESS CASE

Not Applicable.



State Water Resources Control Board



Linda S. Adams,
*Secretary for Environmental
Protection*

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

Arnold Schwarzenegger
Governor

April 7, 2010

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

Agreement Number: **09-823-550-1**; Project Number: **C-06-6441-110**

Enclosed is Amendment No. 1 to your Finance Agreement for your approval and signature. The purpose of the amendment is to revise the Budget breakdown in Exhibit B. This Amendment cannot be considered binding by either party until approved by the State Water Resources Control Board. The State is not obligated to make any payments for services performed prior to final approval of any Agreement.

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

U.S. Mail

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

Overnight Mail

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

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

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

Enclosure





ASSOCIATION OF BAY AREA GOVERNMENTS
AND
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

AGREEMENT NO. 09-823-550

AMENDMENT NO. 1

Amount: \$5,000,000

Term Dates: September 15, 2009 – November 1, 2032

The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement, originally executed on October 15, 2009 and incorporated herein:

Changes made in this amendment are shown as follows in the attached Exhibit:

Exhibit A – Scope of Work & Incorporated Documents (3 pages attached)*

Exhibit B – Project Financing Amount (1 page attached)*

* Text additions are displayed in bold and underline. Except as otherwise noted, text deletions are displayed as strike through text (i.e., strike out)

All other terms and conditions shall remain the same.

ASSOCIATION OF BAY AREA GOVERNMENTS:

By: _____

Name: Henry L. Gardner

Title: Executive Director

Date: _____

STATE WATER RESOURCES CONTROL BOARD:

By: _____

Name: Barbara L. Evoy

Title: Deputy Director, Division of Financial Assistance

Date: _____

EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS

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

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

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

The Recipient shall:

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

7. Construction

Recipient shall:

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

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

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

8. Technology transfer

EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS

The Recipient shall:

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

9. Trash monitoring

The Recipient shall:

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

10. Reports

The Recipient shall submit:

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

EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS

TABLE OF ITEMS FOR REVIEW

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

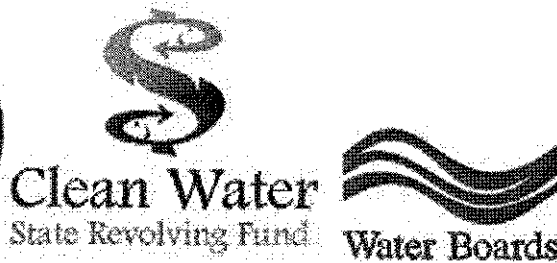
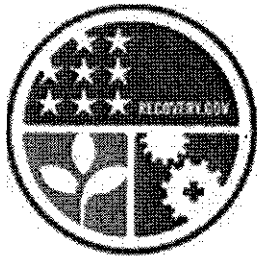
EXHIBIT B – PROJECT FINANCING AMOUNT

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

ARRA FINANCING

<u>Construction</u>	<u>\$4,270,000</u>
Allowances:	<u>\$730,000</u>
— Personnel Services	\$604,800
— Direct Project Expenses	\$75,000
— Professional / Consulting	\$4,320,200
TOTAL	\$5,000,000

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



ASSOCIATION OF BAY AREA GOVERNMENTS
AND
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

PROJECT FINANCE AGREEMENT
STATE REVOLVING FUND PROJECT NO. C-06-6441-110
AGREEMENT NO. 09-823-550

AMENDMENT NO. 12

AMOUNT: \$ 5,000,000
TERM DATES: SEPTEMBER 15, 2009 – NOVEMBER 1, 2032

The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement, originally executed on October 15, 2009, as amended on April 20, 2010, and incorporated herein:

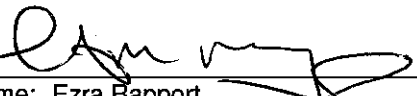
Changes made in this amendment are shown as follows in the attached Exhibit:

Project Finance Agreement (18 pages attached)*
Exhibit A – Scope of Work & Incorporated Documents (3 pages attached)*
Exhibit B – Project Financing Amount (1 page attached)*
Exhibit D – Special Conditions*
Exhibit G – Section 1511 Certification*

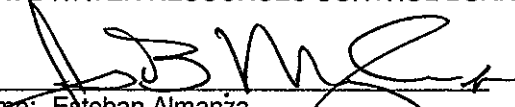
* Text additions are displayed in bold and underline. Except as otherwise noted, text deletions are displayed as strike through text (i.e., strike out)

All other terms and conditions shall remain the same.

ASSOCIATION OF BAY AREA GOVERNMENTS:

By: 
Name: Ezra Rapport
Title: Executive Director
Date: 5/2/11

STATE WATER RESOURCES CONTROL BOARD:

By: 
Name: Esteban Almanza
Title: Deputy Director, Division of Financial Assistance
Date: 5/10/11

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

WITNESSETH:

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

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

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

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

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

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

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

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

WHEREAS, the State Water Board implements the Coastal Nonpoint Source Program with bond funding from Propositions 13 and 50 and has determined that this project is eligible to receive grants from such bond funding; and

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

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

WHEREAS, on the basis of the Recipient's application and the representations and warranties set forth herein, the State Water Board proposes to assist in the financing of the costs of the Project and/or to refund outstanding bonds, notes or other debt obligations of the Recipient, if any, issued to finance the

Project, and the Recipient desires to participate as a recipient of financial assistance from the ~~CWSRF~~ **State Water Board** and evidence its obligation to repay the CWSRF financing, upon the terms and conditions as hereinafter set forth in this Agreement, all pursuant to the Clean Water Act and ARRA; and

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

ARTICLE I DEFINITIONS

1.1 Definitions.

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

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

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

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

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

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

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

"CWSRF" means Clean Water State Revolving Fund.

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

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

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

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

"Operations and Maintenance Costs" means, so long as outstanding System Obligations [other than the Obligation] are outstanding, the definition of such term as defined therein, and thereafter, the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with generally accepted accounting principles, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles.

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

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

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

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

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

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

"State" means State of California.

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

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

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

1.2 Exhibits and Appendices Incorporated.

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

ARTICLE II REPRESENTATIONS AND WARRANTIES

2.1 General Recipient Commitments.

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

2.2 Completion of Project.

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

2.3 Project Certification.

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

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

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

2.4 Award of Construction Contracts.

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

2.5 Notice.

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

- (a) Litigation, circulation of a petition to challenge rates, consideration of bankruptcy, dissolution, or reincorporation, or any other thing that could negatively affect or jeopardize the Recipient's revenues used for operations, maintenance, and repairs of the Project during its useful life.
- (b) Any substantial change in scope of the Project. The Recipient agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to the Division and the Division has given written approval for such change;
- (c) Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
- (d) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more beyond the estimated date of Completion of Construction previously provided to the Division;
- (e) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Recipient agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient agrees to implement appropriate actions as directed by the Division;
- (f) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered

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

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

2.6 Project Access.

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

2.7 Project Completion; Initiation of Operations.

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

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

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

2.9 Reports.

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

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

2.10 Federal Disadvantaged Business Enterprise (DBE) Reporting.

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

2.11 Records.

- (a) Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles the Recipient agrees to:
 - (1) Establish an official file for the Project which shall adequately document all significant actions relative to the Project;
 - (2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
 - (3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
 - (4) Establish an accounting system which will accurately depict final total costs of the Project, including both direct and indirect costs;
 - (5) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
 - (6) If Force Account is used by the Recipient for any phase of the Project, other than for planning, design and construction engineering, and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee.
- (b) The Recipient shall be required to maintain books, records and other material relative to the Project in accordance with generally accepted accounting principles. The Recipient shall also be required to retain such books, records, and other material for each subcontractor who performed work on this project for a minimum of thirty six (36) years after repayment of Project Funds, if any, or six (6) years after Project Completion if no repayment is required. The Recipient shall require that such books, records, and other material be subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the United States Environmental Protection Agency, the Office of Inspector General, or any authorized representatives of the aforementioned, and shall allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar right regarding audit, interviews, and records retention in any subcontract related to the performance of this Agreement.

2.12 Audit.

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

2.13 Signage.

The Recipient shall place a sign at least four feet tall by eight feet wide made of 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.

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

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

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

3.2 [reserved].

3.3 No Obligation of the State.

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

3.4 Disbursement of Project Funds; Availability of Funds.

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

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

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

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

3.5 Withholding of Disbursements.

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

3.6 Rates, Fees and Charges.

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

3.7 Accounting Standards and Federal Single Audit Act.

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

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

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

4.8 Disputes.

- (a) Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Division Deputy Director, or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Recipient and to the State Water Board's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Recipient, the Recipient mails or otherwise furnishes a written appeal of the decision to the State Water Board's Executive Director. The decision of the State Water Board's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Recipient shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Recipient shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement.
- (b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
- (c) Recipient shall continue with the responsibilities under this Agreement during any dispute.

4.9 Governing Law.

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

4.10 Income Restrictions.

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

4.11 Independent Actor.

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

4.12 Non-Discrimination Clause.

- (a) During the performance of this Agreement, Recipient and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
- (b) The Recipient, its contractors, and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (c) The Recipient, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- (d) The Recipient, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- (e) The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

4.13 No Third Party Rights.

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

4.14 Operation and Maintenance; Insurance.

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

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

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

4.15 Permits, Subcontracting, Remedies and Debarment.

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

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

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

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

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

4.16 Prevailing Wages & Davis Bacon.

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

4.17 Recipient's Responsibility for Work.

The Recipient shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Recipient shall be responsible for any and all disputes arising out of its contracts for work on the Project. The State Water Board will not mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.

4.18 Related Litigation.

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

4.19 Rights in Data.

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

4.20 State Reviews and Indemnification

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

settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of this Agreement.

4.21 State Water Board Action; Costs and Attorney Fees.

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

4.22 Termination; Immediate Repayment; Interest.

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

4.23 Unenforceable Provision.

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

4.24 Useful Life.

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

4.25 Venue.

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

4.26 Waiver and Rights of the State Water Board.

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

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

EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS

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

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

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

The Recipient shall:

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

7. Construction

Recipient shall:

- Prepare and submit bid documentation to the Division.
Ensure the installation of trash capture devices in accordance with final plans and specifications and provide photo-documentation of installed equipment to the Division.
- Ensure the performance of a final inspection of the trash capture devices to guarantee compliance to design plans and specifications and provide inspection notes to the Division.

8. Technology transfer

EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS

The Recipient shall:

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

9. Trash monitoring

The Recipient shall:

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

10. Reports

The Recipient shall submit:

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

EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS

TABLE OF ITEMS FOR REVIEW

DESCRIPTION	CRITICAL DUE DATE	ESTIMATED DUE DATE
PLANNING AND DESIGN		
Project Assessment and Evaluation Plan (PAEP)		March 2010 May 2011
Landowner Agreement(s) and Certification of Access		Before payment for work at each site location
Final Plans and Specifications		Monthly/Quarterly, as applicable
Project Construction Contract Award for initial construction/installation	November 30, 2009 Completed	
CONSTRUCTION		
Newspaper Advertisement		Monthly/Quarterly, as applicable Completed
Documentation		Monthly/Quarterly, as applicable Completed
Photos of Construction Work		Monthly/Quarterly, as applicable
Final Inspection Notes		Monthly/Quarterly, as applicable
TECHNOLOGY TRANSFER		
Copy of Email List and First Email		December 2014 Completed
Website link		December 2014 Completed
Photo Documentation of Interpretive Signage		Monthly/Quarterly, as applicable
Media Press Releases		Monthly/Quarterly, as applicable
Outreach Photos and Materials		September 2010, and monthly/quarterly as applicable
Training Session Sign-in Sheets		Monthly/Quarterly, as applicable
MONITORING		
Post-construction monitoring data		Annually
INVOICING		Monthly/Quarterly
PROJECT REPORTING		
Progress Reports by the monthly or quarterly with the invoice		Monthly/Quarterly, as applicable
Annual Assessment and Evaluation Plan Report		Annually
Natural Resource Projects Inventory (NRPI) Project Survey Form		Before final invoice
Draft Project Certification	November 1, 2013	
Final Project Certification	December 1, 2013	

EXHIBIT B – PROJECT FINANCING AMOUNT

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

	ARRA FINANCING	<u>BOND FUNDED FINANCING</u>	<u>TOTAL</u>
Construction	\$4,270,000 <u>\$4,938.75</u>	<u>\$4,240,061.25</u>	<u>\$4,245,000.00</u>
Allowances	\$730,000.00	<u>\$25,000.00</u>	<u>\$755,000.00</u>
TOTAL	\$5,000,000 <u>\$734,938.75</u>	<u>\$4,265,061.25</u>	<u>\$5,000,000.00</u>

6. ~~Line Item Adjustment(s).~~ Subject to the prior review and approval of the State Water Board's Grant Manager, ~~adjustments between existing line item(s) may be used to defray allowable direct costs up to fifteen percent (15%) of the total ARRA financing amount including any amendment(s) thereto. Line item adjustments in excess of fifteen percent (15%) shall require a formal Agreement amendment.~~
6. There shall be no adjustments to the above budget.

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

D.1 Special Other Program Conditions:

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

EXHIBIT G – SECTION 1511 CERTIFICATION

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

1. Project description: Project, commonly known as Bay Area-Wide Trash Capture Demonstration Project, will retrofit Bay Area storm drainage infrastructure by installing trash capture devices, in order to address trash impairment of San Francisco Bay and local creeks. The project will facilitate early compliance with the San Francisco Bay Regional Water Quality Control Board's Municipal Regional Stormwater Permit (pending) affecting Phase I communities, and anticipated requirements for operators of small municipal separate storm sewer systems (Phase II)
2. Estimated total cost of the Project: Five million dollars and no cents (\$5,000,000.00)
3. Type of assistance: ~~Full~~ pPrincipal forgiveness
4. Estimated amount of ARRA funds to be used: ~~Five million dollars and no cents (\$5,000,000.00)~~
5. **Revised amount of ARRA funds to be used: Seven hundred thirty four thousand, nine hundred thirty eight dollars and seventy five cents (\$734,938.75).**



ASSOCIATION OF BAY AREA GOVERNMENTS
AND
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

PROJECT FINANCE AGREEMENT
STATE REVOLVING FUND PROJECT NO. C-06-6441-110
AGREEMENT NO. 09-823-550

AMENDMENT NO. 23

AMOUNT: \$ 5,000,000
TERM DATES: SEPTEMBER 15, 2009 – ~~NOVEMBER 1, 2032~~ **MARCH 1, 2033**

The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement, originally executed on October 15, 2009, amended on April 20, 2010 and May 10, 2011, and incorporated herein:

Changes made in this amendment are shown as follows in the attached Exhibit:

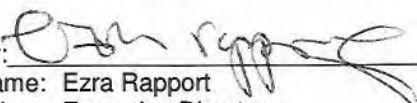
Exhibit A – Scope of Work & Incorporated Documents (3 pages attached)*

Exhibit B – Project Financing Amount (1 page attached)*

* Text additions are displayed in bold and underline. Except as otherwise noted, text deletions are displayed as strike through text (i.e., strike out)


All other terms and conditions shall remain the same.

ASSOCIATION OF BAY AREA GOVERNMENTS:

By: 
Name: Ezra Rapport
Title: Executive Director

Date: 3/5/13

STATE WATER RESOURCES CONTROL BOARD:

By: 
Name: Elizabeth L. Haven
Title: Deputy Director, Division of Financial Assistance

Date: 3/12/13

EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS

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

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

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

The Recipient shall:

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

7. Construction

Recipient shall:

- Prepare and submit bid documentation to the Division.
Ensure the installation of trash capture devices in accordance with final plans and specifications and provide photo-documentation of installed equipment to the Division.
- Ensure the performance of a final inspection of the trash capture devices to guarantee compliance to design plans and specifications and provide inspection notes to the Division.

EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS

8. Technology transfer

The Recipient shall:

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

9. Trash monitoring

The Recipient shall:

- Work with **a group of municipalities within the project to collect and report on estimates of trash reduction as a result of device installations, to demonstrate project success**, ~~those under permit regulations to monitor using the required monitoring methods and documents under the permit.~~ Submit post-construction monitoring data to the Division.

10. Reports

The Recipient shall submit:

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

EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS

TABLE OF ITEMS FOR REVIEW

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

EXHIBIT B – PROJECT FINANCING AMOUNT

1. **Estimated Reasonable Cost.** The estimated reasonable cost of the total Project, including associated planning and design costs is Five million dollars and no cents (\$5,000,000).
2. **Project Funding.** Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds in the amount of Five million dollars and no cents (\$5,000,000).
3. **Contingent Principal Forgiveness and Grant.** Contingent on the Recipient's performance of its obligations under Exhibits A and E, the State Water Board agrees to forgive all of the ARRA principal due under this Agreement and to provide a bond-funded grant. If, for any reason whatsoever within or outside the Recipient's control, or any combination thereof, the Recipient fails to satisfy the conditions under these exhibits, the Recipient will be considered to have breached this Agreement, no principal will be forgiven, the grant will be withdrawn, and the Recipient agrees to repay all Project Funds IMMEDIATELY at the highest legal rate of interest.
4. The term of this agreement is from September 15, 2009 to ~~November 1, 2032~~ **March 1, 2033**.
5. Budget costs are as follows:

	ARRA FINANCING	BOND FUNDED FINANCING	TOTAL
Construction	\$4,938.75	\$4,240,061.25	\$4,245,000.00
Allowances	\$730,000.00	\$25,000.00	\$755,000.00
TOTAL	\$734,938.75	\$4,265,061.25	\$5,000,000.00

6. There shall be no adjustments to the above budget.



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

April 12, 2013

Mr. Ezra Rapport
Executive Director
Association of Bay Area Governments
101 Eighth Street
Oakland, CA 94607-4756

Agreement Number: **09-823-550-4**; Project Number: **C-06-6441-110**

Enclosed is Amendment No. 4 to your Finance Agreement for your approval and signature. This Amendment cannot be considered binding by either party until approved by the State Water Resources Control Board. The State is not obligated to make any payments for services performed prior to final approval of any Agreement.

If the Agency is in agreement with all terms and conditions of the Amendment, please sign and date two (2) signature pages and return to:

US Mail

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

Overnight Mail

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

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

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

Enclosure



ASSOCIATION OF BAY AREA GOVERNMENTS
AND
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

PROJECT FINANCE AGREEMENT
STATE REVOLVING FUND PROJECT NO. C-06-6441-110
AGREEMENT NO. 09-823-550

AMENDMENT NO. 34

AMOUNT: \$ 5,000,000
TERM DATES: SEPTEMBER 15, 2009 – MARCH 1, 2033

The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement, originally executed on October 15, 2009, amended on April 20, 2010, May 10, 2011, **and March 12, 2013**, and incorporated herein:

Changes made in this amendment are shown as follows in the attached Exhibit:

Project Finance Agreement (18 pages attached)*
Exhibit B – Project Financing Amount (1 page attached)*

* Text additions are displayed in bold and underline. Except as otherwise noted, text deletions are displayed as strike through text (i.e., strike out)

All other terms and conditions shall remain the same.

ASSOCIATION OF BAY AREA GOVERNMENTS:

By: _____
Name: Ezra Rapport
Title: Executive Director

Date: _____

STATE WATER RESOURCES CONTROL BOARD:

By: _____
Name: Elizabeth L. Haven
Title: Deputy Director,
Division of Financial Assistance

Date: _____

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

WITNESSETH:

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

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

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

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

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

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

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

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

WHEREAS, the State Water Board implements the Coastal Nonpoint Source Program with bond funding from Propositions 13 and 50 and has determined that this project is eligible to receive grants from such bond funding; and

WHEREAS, the State Water Board implements the Urban Stormwater Program with bond funding from Proposition 40 and has determined that this project is eligible to receive grants from such bond funding; and

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

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

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

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

ARTICLE I DEFINITIONS

1.1 Definitions.

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

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

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

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

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

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

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

"CWSRF" means Clean Water State Revolving Fund.

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

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

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

"Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and

erection of the Project, or, for expanded use projects, any implementation other than planning or design.

"Operations and Maintenance Costs" means, so long as outstanding System Obligations [other than the Obligation] are outstanding, the definition of such term as defined therein, and thereafter, the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with generally accepted accounting principles, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles.

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

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

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

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

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

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

"State" means State of California.

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

"System" means for the purposes of a wastewater project, all wastewater collection, transport, treatment, storage and disposal facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other properties, structures or works hereafter acquired

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

1.2 Exhibits and Appendices Incorporated.

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

ARTICLE II REPRESENTATIONS AND WARRANTIES

2.1 General Recipient Commitments.

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

2.2 Completion of Project.

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

2.3 Project Certification.

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

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

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

2.4 Award of Construction Contracts.

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

2.5 Notice.

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

- (a) Litigation, circulation of a petition to challenge rates, consideration of bankruptcy, dissolution, or disincorporation, or any other thing that could negatively affect or jeopardize the Recipient's revenues used for operations, maintenance, and repairs of the Project during its useful life.
- (b) Any substantial change in scope of the Project. The Recipient agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to the Division and the Division has given written approval for such change;
- (c) Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
- (d) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more beyond the estimated date of Completion of Construction previously provided to the Division;
- (e) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Recipient agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient agrees to implement appropriate actions as directed by the Division;
- (f) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered

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

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

2.6 Project Access.

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

2.7 Project Completion; Initiation of Operations.

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

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

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

2.9 Reports.

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

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

2.10 Federal Disadvantaged Business Enterprise (DBE) Reporting.

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

2.11 Records.

- (a) Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles the Recipient agrees to:
 - (1) Establish an official file for the Project which shall adequately document all significant actions relative to the Project;
 - (2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
 - (3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
 - (4) Establish an accounting system which will accurately depict final total costs of the Project, including both direct and indirect costs;
 - (5) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
 - (6) If Force Account is used by the Recipient for any phase of the Project, other than for planning, design and construction engineering, and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee.
- (b) The Recipient shall be required to maintain books, records and other material relative to the Project in accordance with generally accepted accounting principles. The Recipient shall also be required to retain such books, records, and other material for each subcontractor who performed work on this project for a minimum of thirty six (36) years after Project Completion . The Recipient shall require that such books, records, and other material be subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the United States Environmental Protection Agency, the Office of Inspector General, or any authorized representatives of the aforementioned, and shall allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar right regarding audit, interviews, and records retention in any subcontract related to the performance of this Agreement.

2.12 Audit.

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

2.13 Signage.

The Recipient shall place a sign at least four feet tall by eight feet wide made of 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.

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

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

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

3.2 [reserved].

3.3 No Obligation of the State.

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

3.4 Disbursement of Project Funds; Availability of Funds.

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

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

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

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

3.5 Withholding of Disbursements.

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

3.6 Rates, Fees and Charges.

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

3.7 Accounting Standards and Federal Single Audit Act.

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

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

ARTICLE IV MISCELLANEOUS PROVISIONS

4.1 Timeliness.

TIME IS OF THE ESSENCE IN THIS AGREEMENT.

4.2 Amendment.

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

4.3 Assignability.

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

4.4 Bonding.

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

4.5 Compliance with Law, Regulations, etc.

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

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

4.6 Conflict of Interest.

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

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

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

4.8 Disputes.

- (a) Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Division Deputy Director, or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Recipient and to the State Water Board's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Recipient, the Recipient mails or otherwise furnishes a written appeal of the decision to the State Water Board's Executive Director. The decision of the State Water Board's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Recipient shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Recipient shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement.
- (b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
- (c) Recipient shall continue with the responsibilities under this Agreement during any dispute.

4.9 Governing Law.

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

4.10 Income Restrictions.

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

4.11 Independent Actor.

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

4.12 Non-Discrimination Clause.

- (a) During the performance of this Agreement, Recipient and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
- (b) The Recipient, its contractors, and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (c) The Recipient, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- (d) The Recipient, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- (e) The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

4.13 No Third Party Rights.

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

4.14 Operation and Maintenance; Insurance.

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

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

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

4.15 Permits, Subcontracting, Remedies and Debarment.

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

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

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

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

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

4.16 Prevailing Wages & Davis Bacon.

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

4.17 Recipient's Responsibility for Work.

The Recipient shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Recipient shall be responsible for any and all disputes arising out of its contracts for work on the Project. The State Water Board will not mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.

4.18 Related Litigation.

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

4.19 Rights in Data.

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

4.20 State Reviews and Indemnification

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

settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of this Agreement.

4.21 State Water Board Action; Costs and Attorney Fees.

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

4.22 Termination; Immediate Repayment; Interest.

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

4.23 Unenforceable Provision.

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

4.24 Useful Life.

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

4.25 Venue.

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

4.26 Waiver and Rights of the State Water Board.

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

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

EXHIBIT B – PROJECT FINANCING AMOUNT

1. Estimated Reasonable Cost. The estimated reasonable cost of the total Project, including associated planning and design costs is Five million dollars and no cents (\$5,000,000).
2. Project Funding. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds in the amount of Five million dollars and no cents (\$5,000,000).
3. Contingent Principal Forgiveness and Grant. Contingent on the Recipient's performance of its obligations under Exhibits A and E, the State Water Board agrees to forgive all of the ARRA principal due under this Agreement and to provide a bond-funded grant. If, for any reason whatsoever within or outside the Recipient's control, or any combination thereof, the Recipient fails to satisfy the conditions under these exhibits, the Recipient will be considered to have breached this Agreement, no principal will be forgiven, the grant will be withdrawn, and the Recipient agrees to repay all Project Funds IMMEDIATELY at the highest legal rate of interest.
4. The term of this agreement is from September 15, 2009 to March 1, 2033.
5. Budget costs are as follows:

	ARRA FINANCING <u>51620</u>	BOND FUNDED FINANCING <u>COASTAL NONPOINT SOURCE 2NB22</u>	<u>BOND FUND PROP 40 URBAN STORMWATER 19903</u>	TOTAL
Construction	\$4,938.75	\$4,240,061.25 <u>\$4,245,619.73</u>	<u>\$0</u>	\$4,245,000.00 <u>\$4,250,558.48</u>
Allowances	\$730,000.00 <u>\$622,207.22</u>	\$25,000.00 <u>\$19,441.52</u>	<u>\$107,792.78</u>	\$755,000.00 <u>\$749,441.52</u>
TOTAL	\$734,938.75 <u>\$627,145.97</u>	\$4,265,061.25	<u>\$107,792.78</u>	\$5,000,000.00

6. There shall be no adjustments to the above budget.

ASSOCIATION OF BAY AREA GOVERNMENTS

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

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

Recitals

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

ABAG and XXXX mutually agree as follows:

- 1. Initial Allocation and Current Balances. XXXX has access to \$67,108 (sixty-seven thousand, one hundred and eight dollars) in PFA Funds to acquire and install TCDs. PFA Funds may only be used to fund or defray the costs of acquiring and/or installing TCDs from the panel of vendors listed in Exhibit A-2 (see section 3). ABAG will calculate the amount of PFA Funds to which XXXX has access on any given day by reducing the initial allocation by the amount encumbered by TCDs on order (see section 3) and amounts paid for accepted TCDs. This information will be posted at <http://www.bayareatrashtacker.org/content/contract-resources> and will be adjusted on an as-needed basis.
- 2. Reallocations.
 - (a) XXXX acknowledges that the success of the Project depends on maximum use of the PFA Funds and that greater use may be achieved by reallocating access to PFA Funds among the Potential Participants that have executed an "Agreement for Local Agency Participation Grant Funded SF Bay Area Trash Capture Demonstration Project" by January 1, 2011 (Participating Entities). All reallocations will be reflected in the current balance (see section 1).

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

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

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

9. Fabrication and Installation Risk. If for any reason, XXXX and the vendor of the TCD do not submit a Notice of Acceptance, or ABAG disapproves the Notice of Acceptance for a TCD, agrees that if there is any liability to the vendor for amounts owed for the TCD or for any damages, XXXX, and not ABAG, will be solely liable to the vendor for any amounts owed or damages caused thereby.
10. Operation and Maintenance of TCD. XXXX agrees to provide for operation and maintenance of each TCD acquired under this agreement throughout the useful life of the TCD (not to exceed 25 years).
11. Monitoring. See Exhibit A, Scope of Work, for monitoring requirements.
12. Hold Harmless. Contractor shall hold harmless, defend and indemnify ABAG, its directors, officers, agents and employees from and against any and all liability, claims, losses, or damages arising from all acts or omissions to act of Contractor or its officers, agents, employees or subcontractors in rendering services under this agreement, excepting liability, claims, losses or damages based solely on ABAG's acts or omissions.
13. Entire Agreement. This agreement and its attachment are entire as to the activities covered by it. This agreement supersedes any and all other agreements either oral or in writing between ABAG and XXXX with respect to the subject matter hereof. ABAG and XXXX acknowledge that no representations, inducements, promises or agreements, orally or otherwise, have been made to any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other contracts, statement, or promise not contained in this agreement shall be valid or binding.
14. Conflict of Interest. XXXX covenants that presently there is no interest, and none shall be acquired, direct or indirect, which conflicts in any manner or degree with its performance as required under this agreement. XXXX further covenants that in the performance of this agreement, no person having any interest shall be employed by it.
15. Notices. Any notices, demands, or elections required or permitted to be given or made hereunder shall be in writing, shall be personally delivered or mailed by certified or registered mail, return receipt requested, addressed to the Authorized Representatives of the respective parties as follows:

ABAG

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

City/County

City of XXXX

Phone: _____

Email: _____

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

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

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

Dated: _____

City/County

By:

(Print name and title)

(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:

Print Name & Title
City of XXXX

EXHIBIT A

SCOPE OF WORK

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

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

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

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

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

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

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

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

[Appendix V, p. 110]

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

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

EXHIBIT A-1
LIST OF POTENTIAL PARTICIPANTS

Alameda County

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

Contra Costa County

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

Marin County

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

Napa County

American Canyon
Calistoga
Napa
St Helena
Yountville
County of Napa

San Mateo County

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

Santa Clara County

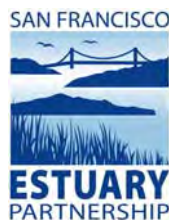
Campbell
Cupertino
Los Altos
Los Altos Hills
Los Gatos
Milpitas
Monte Sereno
Mountain View
Palo Alto
San Jose
Santa Clara
Saratoga
Sunnyvale
County of Santa Clara

Solano County

Benicia
Fairfield
Suisun City
Vallejo
County of Solano

Sonoma County

Petaluma
Sonoma
County of Sonoma

EXHIBIT A-2

Bay Area-wide Trash Capture Demonstration Project

Vendors and devices approved March 18, 2010

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

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

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

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

High Flow Capacity Devices with Water Board certification

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

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

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

EXHIBIT A-3**SAMPLE PURCHASE ORDER FORM**

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

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

THIS PURCHASE ORDER IS NOT FINAL UNTIL APPROVED BY ABAG

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

Date

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

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

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

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

Special Conditions:**

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

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

Name (print) _____ Phone _____

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

Name (print) _____ Phone _____

Approved by _____ Date: _____
 (ABAG)

OWP # 102147

EXHIBIT A-4

SAMPLE NOTICE OF ACCEPTANCE

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

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

Date: _____

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

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

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

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

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

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

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

Name (print) _____ Phone _____

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

Name (print) _____ Phone _____

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

Comments/Instructions:

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

EXHIBIT B
STANDARD CONTRACT PROVISIONS

1. Definitions:

“Contractor” as used in Exhibit B is XXXX.

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

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

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

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

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

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

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

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

8. Insurance Requirements. Contractor 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 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 City 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 30 (thirty) 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.
- g. Authority to Self-Insure. The requirements of this section may be satisfied by the provisions of equivalent coverage through a program of self-insurance which is certified in writing with an "Affidavit of Insurance", or functionally equivalent document.

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

ARTICLE I: DEFINITIONS

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

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

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

ARTICLE II: REPRESENTATIONS AND WARRANTIES

2.1 General Contractor Commitments.

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

2.2 Completion of Project.

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

2.3 Project Certification.

ABAG shall prepare a Project Certification that includes information collected by the Contractor in accordance with the Bay Area-wide Trash Capture Demonstration Project monitoring and reporting plan, a determination of the effectiveness of the Project in preventing or reducing pollution, and the results of the monitoring program. The Project Certification shall follow the general format provided by the Bay Area-wide Trash Capture Demonstration Project.

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

2.4 [not applicable]

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

- (a) Litigation, circulation of a petition to challenge rates, consideration of bankruptcy, dissolution, or disincorporation, or any other thing that could negatively affect or jeopardize the Contractor’s revenues used for operations, maintenance, and repairs of the Project during its useful life.
- (b) Any substantial change in scope of the Project. The Contractor agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to ABAG and ABAG has given written approval for such change;
- (c) [not applicable]
- (d) [not applicable]

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

2.6 Project Access.

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

2.7 Project Completion; Initiation of Operations.

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

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

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

2.9 Reports.

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

2.10 [not applicable]

2.11 [not applicable]

2.12 [not applicable]

2.13 Signage.

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

ARTICLE III: [not applicable]

ARTICLE IV: MISCELLANEOUS PROVISIONS

4.1 Timeliness.

TIME IS OF THE ESSENCE IN THIS AGREEMENT

4.2 Amendment.

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

4.3 Assignability.

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

4.4 [not applicable]

4.5 Compliance with Law, Regulations, etc.

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

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

4.6 Conflict of Interest.

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

4.7 Damages for Breach Affecting ARRA Compliance.

(a) In the event that any breach of any of the provisions of this Agreement by the Contractor shall result in the loss of tax exempt status for any state bonds, or if such breach shall result in an obligation on the part of the State Water Board or ABAG to reimburse the federal government by reason of any arbitrage profits, the Contractor shall immediately pay the State Water Board or ABAG, as the case may be, in an amount equal to

any damages paid by or loss incurred by the state due to such breach.

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

4.8 Disputes.

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

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

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

4.9 Governing Law.

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

4.10 [not applicable]

4.11 Independent Actor.

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

4.12 Non-Discrimination Clause.

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

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

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

(d) The Contractor, its contractors, and subcontractors shall give written notice of their obligations under this

clause to labor organizations with which they have a collective bargaining or other Agreement.

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

4.13 No Third Party Rights.

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

4.14 Operation and Maintenance; Insurance.

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

The Contractor 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 Contractor 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 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 System shall be free and clear of all claims and liens.

4.15 Permits, Subcontracting, Remedies and Debarment.

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

Any subcontractors, outside associates, or consultants required by the Contractor in connection with the services covered by this Agreement 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 Contractor shall not subcontract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension." The Contractor shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code, § 4477)

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

[Appendix V, p. 123]

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

4.16 [not applicable]

4.17 Contractor's Responsibility for Work.

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

4.18 [not applicable]

4.19 Rights in Data.

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

4.20 State and ABAG Reviews and Indemnification.

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

utilized in connection with any of the transactions contemplated by this Agreement. To the fullest extent permitted by law, the Contractor agrees to pay and discharge any judgment or award entered or made against ABAG or the State Water Board with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of this Agreement.

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

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

4.22 Termination; Immediate Repayment; Interest.

(a) This Agreement will automatically terminate without written notice if the Contractor fails to meet the timelines in Exhibit A to the PFA and the ARRA special conditions of Exhibit C-2. Under such circumstance, the Contractor shall immediately pay all Project Funds received under this Agreement for purchase of the trash capture device, at the highest legal rate of interest.

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

4.23 Unenforceable Provision.

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

4.24 Useful Life of the Project.

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

4.25 Venue.

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

4.26 Waiver and Rights of the State Water Board.

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

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

EXHIBIT C-1

SPECIAL ENVIRONMENTAL, FINANCIAL AND OTHER PROGRAM CONDITIONS

- The Contractor shall comply with the Special Environmental, Financial, and Other Program Conditions listed in Exhibit D of the CWSRF Project Finance Agreement with ABAG for the Bay Area-wide Trash Capture Demonstration Project. See Exhibits D-2 and D-3 of this contract.
- Reimbursement of Project expenses will be restricted to TCDs installed at locations where the Contractor has submitted a statement that explains certifications of access to land, operation and maintenance, and no litigation to State Water Board staff. See Exhibit D-4.

EXHIBIT C-2
FEDERAL ARRA SPECIAL CONDITIONS

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

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

EXHIBIT C-3

ARRA SECTION 1511 CERTIFICATION

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

EXHIBIT C-4
DAVIS-BACON ACT COMPLIANCE

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

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

EXHIBIT D-1

OPERATION AND MAINTENANCE CERTIFICATION

The undersigned certifies by his or her signature the following:

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

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

or

☐ Other – _____ (Name of fund), of which the estimated costs of O&M will be ____ percent (__%).

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

Signature

Date

Print Name of Signer

Position/Title

EXHIBIT D-2

PROJECT SITE(S) ACCESS CERTIFICATION

The undersigned certifies by his or her signature the following:

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

Signature

Date

Print Name of Signer

Position/Title

EXHIBIT D-3

NO LITIGATION CERTIFICATION

The undersigned certifies by his or her signature the following:

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

Signature

Date

Print Name of Signer

Position/Title

EXHIBIT D-4

TITLE CERTIFICATION

The undersigned certifies by his or her signature the following:

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

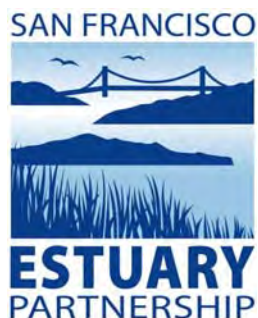
For any Project Site where the City of XXXX has an easement, said easement is valid for the life of the Project (not to exceed 25 years).

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

City of XXXX
Attorney or Legal Counsel

Date

Print Name of Signer



Bay Area-wide Trash Capture Demonstration Project

REQUEST FOR PROPOSALS

To Provide and Install Trash Capture Devices in the San Francisco Bay Area

December 18, 2009

KEY DATES:

Optional notification of intent to propose: If you intend to propose, or attend the Pre-Proposal Meeting, please email Janet Cox, project lead, at jwcox@waterboards.ca.gov by January 5, 2010.

Optional Pre-Proposal Meeting: January 7, 2010, 10:00 a.m. in room 10 of the Elihu M. Harris State Office Building, 1515 Clay St., Oakland, CA 94612

Requests for device certification due: to Water Board staff as soon as possible but no later than 5:00 pm Monday, January 25, 2010. See Appendix F.

Proposals due: 5:00 pm Monday, January 25, 2010, in electronic format, to Janet Cox, project lead, jwcox@waterboards.ca.gov. Download Proposal Form at

Opening of bids: 11:00 am Tuesday, Jan. 26, 2010, room 1411, Elihu M. Harris State Office Building, 1515 Clay St., Oakland, CA 94612

Official notification of selected vendors: March 18, 2010

The Association of Bay Area Governments (ABAG), a joint powers agency, formed under California Government Code Sections 6500, et. seq., and the San Francisco Estuary Partnership (SFEP), a project of ABAG, invite qualified businesses to respond to this Request for Proposals (RFP) for manufacture and installation of trash capture devices in the nine county San Francisco Bay Region, pursuant to terms of a grant from the State Revolving Fund under the American Recovery and Reinvestment Act of 2009 (ARRA).

I. BACKGROUND AND DESCRIPTION OF PROJECT

Background

This grant project will directly fund installation of trash capture devices in the Bay Area's municipal separate storm sewer systems, in order to trap and remove trash that would otherwise wash downstream, impacting receiving waters. The project is intended to reduce trash impacts to Bay Area waters including creeks, beaches, San Francisco Bay, and the Pacific Ocean, and to assist implementation of the San Francisco Bay Regional Water Quality Control Board's Municipal Regional Stormwater NPDES Permit (MRP) for Phase I municipalities, adopted by the Regional Water Board on October 14, 2009.

Description of Project

As required by the MRP, all trash capture devices installed as part of this project must meet the full trash capture definition: a device or series of devices capturing all particles larger than 5mm, and meeting a hydraulic design standard of not less than the peak flow rate resulting from a one-year, one-hour storm in the storm drainage catchment where the device is installed. In addition, devices must meet the following minimum operability standards: safely contain captured trash for removal during regular maintenance, and include overflow or bypass provision to avoid flooding.

The intent of this RFP is to assemble a panel of vendors, and a list of fixed unit prices for a variety of devices (catch basin inserts, catch basin screens/trash excluders, end-of-pipe screening devices, and other devices or series of devices meeting the full trash capture definition and for which custom, site-specific engineering is not needed) for installation in as many of the 97 cities and 9 Bay Area counties as choose to participate. Participating cities will select devices suitable for specific locations in their jurisdictions. Placement of a device on the approved list will not guarantee that participating cities will utilize that device. A total of approximately \$4.2 million is available to fund purchases of devices.

II. MINIMUM QUALIFICATIONS

A. Eligibility

To be eligible to submit a proposal, a vendor must:

- Have been regularly engaged in the business of manufacturing and/or installation of trash capture devices for at least 2 years, OR produce references or evidence of manufacture and/or installation of similar or comparable structures or devices
- Provide a trash capture device certifiable by the San Francisco Bay Water Board as meeting the full trash capture definition and minimum operability standards specified above (see Appendix F for certification procedures), OR a device that meets the minimum operability standards and is certified by the Los Angeles Water Board as meeting its full capture definition

For information about certification as meeting the full trash capture definition and minimum operability standards, please contact Dale Bowyer at the San Francisco Bay Water Board, dbowyer@waterboards.ca.gov, 510.622.2323.

B. Additional requirements

In addition to the qualifications and experience of the proposer as specified, ABAG expects the vendor to be able to:

- Perform the duties and meet the requirements outlined in Appendix A
- Be willing to work in a specific or more general geographic area (list of potential participating municipalities attached in Appendix E)
- Since time is of the essence in ARRA-funded projects, be prepared to deliver and/or install devices within three months of receipt of orders

- Warranty parts and labor for a minimum of one year
- Certify that the firm or any party associated with the firm is not ineligible for participation in federal assistance programs under Executive Order 12549, “Debarment and Suspension”; and that the firm or any individual associated with the firm is not on ESEPA’s List of Violating Facilities (40 CFR, Part 31.35, Gov. code 4477)

III. SCOPE OF WORK

The scope of work is contained in Appendix A.

Each selected vendor will be under contract with ABAG but will take primary direction from city or county staff where the work is located. Vendors must be prepared to begin work following signing of a contract agreement with ABAG. Prices for the work shall include delivery and installation within the nine Bay Area counties (see Appendix E). Work will be considered complete, and invoices will be processed by ABAG, once a Notice of Acceptance and photo documentation of the installation have been prepared by the city or county where the work is located, and received by ABAG.

IV. FORM OF PROPOSAL

Vendors are invited to notify SFEP that they intend to submit a proposal, by January 5, 2010. Email notification to Janet Cox, Project Lead, at jwcox@waterboards.ca.gov is acceptable. This notification is not required, but it will help SFEP staff plan for the proposal review process.

Vendors must submit proposals IN ELECTRONIC FORM no later than 5:00 p.m. on Monday, January 25, 2010 to be considered. Please submit proposals to Janet Cox at the email address above. Proposals must include:

1. Appendix B, Proposal Form
2. Appendix C, References Form

Download these forms in Word from <http://www.sfestuary.org/projects/detail2.php?projectID=42>.

For each device proposed for selection under this RFP, the Appendix B Proposal Form must include responses to the following:

- A. Type of device offered or produced
- B. Design diagrams or CAD file
- C. Description of design elements that are 1) standard for all such devices, and 2) tailored to a specific location or catch basin/pipe design
- D. Description of the site-specific measurements and other information a municipality must provide the vendor in order for the vendor to determine the appropriate size and configuration of the device for that location
- E. Flow or range of flows for which device is rated (in cfs)

- F. Photo(s) of installed device(s)
- G. Materials used to construct the device (ie: stainless steel/grade, plastic, etc.)
- H. Estimated design life of the device (including materials)
- I. Customary length of time from receipt of order to delivery/installation of devices
- J. Description of vendor's installation process including consultation and review of device locations with municipal staff, traffic control during installation, and estimated time required to install each device
- K. Maintenance requirements (describe in detail how the device must be maintained and the approximate amount of time required for one cleaning or maintenance event)
- L. Availability of replacement parts
- M. Warranty coverage and duration
- N. Price including price breaks or discounts for quantity orders. Price should include installation. Prices shall remain in effect for two years from contract execution.

V. PROPOSAL EVALUATION AND SELECTION PROCESS

We anticipate several successful proposals by multiple vendors. Selection will be made by a panel of SFEP, Water Board, and municipal staff. At its discretion, the selection panel may recommend a vendor based on a written proposal and references alone; or on written materials and one or more interviews. The panel will make its recommendation to the Executive Board of ABAG, which will execute a contract or contracts with successful proposers.

A pre-proposal meeting will be held on January 7, 2010 at 10:00 am, in room 10 on the second floor of the Elihu J. Harris State Building, 1515 Clay St., Oakland, CA 94612. Members of the selection panel will be present to respond to questions from prospective proposers. Attendance at this meeting is optional but recommended.

Proposals that meet the minimum requirements set out in Section II will be evaluated by the following criteria, listed in descending order of importance:

- Completeness of responses on the Proposal Form (Appendix B)
- Whether vendor has a local firm or locally-licensed firm that can provide devices and/or installation, or can otherwise demonstrate the ability to supply the Bay Area
- Experience, background, training and number of staff and/or subcontractors who will fabricate and/or install devices
- Quality of references

While price will not be determinative in selection of vendors under this RFP, proposers should be aware that cities are likely to consider price in their selection of devices for installation.

The panel of selected vendors will be approved by ABAG's Board of Directors at their March 17, 2010 meeting.

VI. GENERAL CONDITIONS

A. Limitations

This request for proposal (RFP) does not commit ABAG to award a contract or to pay any costs incurred in the preparation of a proposal in response to this RFP.

B. Award

At its discretion, the selection panel may recommend a vendor based on a written proposal and references alone; or on written materials and one or more interviews. The panel will make its recommendation to the Executive Board of ABAG, which will execute a contract or contracts with successful proposers.

C. Binding Offer

A signed proposal submitted to ABAG in response to this RFP shall constitute a binding offer from a vendor to contract with ABAG according to the terms of the proposal for a period of two years after its date of submission, which shall be the date proposals are due to ABAG.

D. Contract Arrangements

The selected vendor will be expected to execute a contract similar to ABAG's standard agreement for services, which is summarized in Appendix D, Synopsis of Contract Provisions. Particular attention should be paid to ABAG's insurance and indemnification requirements. A copy of the standard agreement may be obtained from the Project Manager. Also included are the special ARRA requirements which must be included in any contract executed under ABAG's funding agreement with the State Water Board. If a vendor wishes to propose a change to any provision in the standard agreement, the provision and the proposed alternative language must be specified in the proposal submitted in response to this RFP. Submission of a proposal without the requested changes shall be deemed acceptance of the standard agreement's terms and conditions.

The contract payment terms will be firm fixed price per unit, with monthly payments made on the basis of receipt by ABAG of Notices of Acceptance from municipalities, and an acceptable invoice approved by the appropriate municipal representative.

E. Selection Disputes

A vendor may object to a provision of the RFP on the grounds that it is arbitrary, biased, or unduly restrictive, or to the selection of a particular vendor on the grounds that ABAG procedures, the provisions of the RFP, or applicable provisions of federal, state or local law have been violated or inaccurately or inappropriately applied, by submitting to the SFEP Project Lead a written explanation of the basis for the protest:

- 1) No later than five (5) working days prior to the date proposals are due, for objections to RFP provisions, or in the case of an addendum issued during that five-day period, five (5) working days after such addendum

OR

- 2) Within five (5) working days after the date on which contract award is authorized or the date the proposer is notified that contract award has been authorized, whichever is later, for objections to contractor/vendor selection, except that a determination by the Project Lead not to evaluate a proposal may be protested within five (5) working days of notification.

Except with regard to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the Executive Board (Board) of ABAG authorizes award. In the case of protests of contract award, the protesting proposer has up to five (5) calendar days after submission of a protest to review the record and supplement its protest. Protests of recommended awards must clearly and specifically describe the basis for the protest in sufficient detail for the ABAG review officer to recommend a resolution to the ABAG Executive Director.

The ABAG Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer. Authorization to award a contract to a particular contractor/vendor by the Board shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the Executive Director.

Should the vendor wish to appeal the decision of the Executive Director, it may file a written appeal with the Board, no later than three (3) working days after receipt of the written response from the Executive Director. The Board's decision will be the final decision.

F. Public Records

This RFP and any material submitted by a proposer in response to this RFP are subject to public inspection under the California Public Records Act (Government Code § 6250 et seq.), unless exempt by law. Proposals will remain confidential until the Board has authorized award.

VII. SPECIAL CONDITIONS

A. Federal (ARRA) Provisions (see Appendix G)

B. Removal and Cleanup of Work Locations

Throughout all phases of installation the vendor/installer shall keep the site clean and free from rubbish and debris. The vendor/installer shall abate dust nuisance by cleaning and sweeping, or other means as necessary. Upon completion of the work, the vendor/installer shall remove all of its tools, materials and other articles from the work site.

C. Working Hours and Holidays

The Contractor will be subject to work hour restrictions specific to the jurisdiction in which work will be performed. The Contractor shall be cognizant and abide with street parking restrictions and schedule work accordingly. The Contractor shall be responsible for all traffic citations/fines incurred by its staff due to failure to follow this section. The working days for this project are Monday through Friday, excluding City/County-observed holidays (12 holidays).

D. Traffic Control

All traffic control in the work area shall conform to the 2009 edition of the Manual of Uniform Traffic Control Devices (MUTCD). Vehicles and personnel not complying with this requirement shall be ordered removed from the work area and shall not be utilized again for the remainder of the work day.

E. Safety Plan

Safety is the responsibility of the Contractor. The Contractor shall observe and comply with the safety provisions of all applicable laws, building and construction codes as outlined in Title 8 of the California Code of Regulations (Code), safety and health regulations in the Code, and City Safety Policies. The Contractor shall comply with CalOSHA's requirements for confined space entry for catch basins.

If a work procedure or site condition exists that violates any of the above requirements, the City/County staff supervising installation may order the Contractor to comply immediately with said safety provisions, and the Contractor shall comply with such orders at its own expense. If the Contractor fails to act promptly, the City/County staff may suspend the work. Failure of the City/County to make such demands shall not relieve the Contractor of its obligations to secure the safe conduct of the work.

F. Contractor State License Requirements

The Contractor shall hold a California State Issued License, Class A – General Engineering Contractor. The Contractor shall submit evidence of current license status with the proposal. Failure of the Contractor to submit will render the proposal nonresponsive.

G. Warranties

The Contractor shall and does hereby warrant that all work executed under this Contract will be performed with good workmanship. The Contractor shall and does hereby warrant that all work will fit for the purpose stated in the specifications and subsequent amendments thereto, be merchantable, and be free of defects in materials used. All warranties for the insert and its metallic components shall be for a period of at least one year from the date of final acceptance of the work.

The Contractor shall repair or replace, at no cost to the municipality, any and all such defective work and all other work damaged thereby, which become defective during the term of the above-mentioned guaranties and warranties.

H. Technical Manuals

Any technical manuals provided with devices shall, at a minimum, include the following:

1. Table of Contents
2. Recommended adjustment, calibration and troubleshooting procedures.
3. Lubrication recommendation if applicable
4. Recommended preventive maintenance and maintenance procedures
5. Complete parts list, by generic title and identification number, with exploded views and schematics of each assembly
6. Recommended spare parts list and list of special tools and equipment required for operation and maintenance (O&M)
7. Disassembly, overhaul, reassembly, and realignment instructions

VIII. POINT OF CONTACT

RFP responses and all inquiries relating to this RFP should be directed as shown below:

San Francisco Estuary Partnership
Attention: Janet Cox, Project Lead
1515 Clay Street, Suite 1400
Oakland, CA 94612
Telephone: (510) 622-2334
FAX: (510) 622-2459
jwcox@waterboards.ca.gov

APPENDIX A

SCOPE OF WORK

Selected vendors shall be prepared to provide and install trash capture devices in the Bay Area's municipal separate storm sewer systems. These devices will trap and remove trash that would otherwise wash downstream, impacting receiving local creeks, San Francisco Bay, and the Pacific Ocean. Implementation of the Bay Area-wide Trash Capture Demonstration Project will assist implementation of the San Francisco Bay Regional Water Quality Control Board's Municipal Regional Stormwater NPDES Permit (MRP) for Phase I municipalities, adopted by the Regional Water Board on October 14, 2009.

As required by the MRP, all trash capture devices installed as part of this project must meet the full trash capture definition: ***A device or series of devices capturing all particles larger than 5mm, and meeting a hydraulic design standard of not less than the peak flow rate resulting from a one-year, one-hour storm in the storm drainage catchment where the device is installed.*** In addition, devices must meet the following minimum operability standards: ***Safely contain captured trash for removal during regular maintenance, and include overflow or bypass provision to avoid flooding.***

Each selected vendor will be under contract with the Association of Bay Area Governments (ABAG) but will take primary direction from city or county staff where the work is located. Vendors must be prepared to begin work following signing of a contract agreement with ABAG. Prices for the work shall include delivery and installation within the nine Bay Area counties (see Appendix E).

Successful proposers will submit a completed Proposal Form (Appendix B) for each device to be considered. They will

- Work with city staff to size devices for specific storm drainage infrastructure and locations; or specify measurements city staff must take in order to ensure successful installation
- Specify the flow or range of flows the device can accept
- Specify materials, design life, availability of replacement parts, and warranty for each device
- Specify, in general terms, the length of time between receipt of device orders and installation
- Describe installation procedures including duration, equipment required for installation, traffic control measures, etc. etc.
- Describe maintenance protocols and approximate maintenance intervals for the device
- Submit a price list that specifies price breaks or discounts for quantity orders
- Because this project is funded by the Federal ARRA program there are certain contracting requirements that all contractors must meet; please see Appendices G, G-1 and G-2 for these requirements.

APPENDIX B
PROPOSAL FORM

Please fill out one form for each device proposed for inclusion in the Project. Use additional sheets of paper and attach designs, photos, etc. as appropriate. ALL SUBMISSIONS IN RESPONSE TO THIS PROPOSAL MUST BE IN ELECTRONIC FORM.

Name of Proposing Company: _____

Address: _____

Name of Device: _____

- A. Type of device
- B. Design diagrams or CAD file (attach)
- C. Description of design elements that are 1) standard for all such devices, and 2) tailored to a specific location or catch basin/pipe design (attach extra sheets if needed)
- D. Description of the site-specific measurements and other information a municipality must provide the vendor in order for the vendor to determine the appropriate size and configuration of the device for that location; or state whether price includes site-specific measurements by vendor (attach extra sheets if needed)
- E. Flow or range of flows for which device is rated (in cubic feet per second)
- F. Photo(s) of installed device(s) (attach)
- G. Materials used to construct the device (i.e., stainless steel/grade, plastic, etc.)
- H. Estimated design life of the device
- I. Customary length of time from receipt of order to delivery/installation of devices

- J. Confirm that price includes installation
- K. Description of vendor's installation process including consultation and review of device locations with municipal staff, traffic control during installation, and estimated time required to install each device (attach extra sheets if needed)
- L. Maintenance requirements (describe in detail how the device must be maintained and the approximate amount of time required for one cleaning or maintenance event; attach extra sheets if needed)
- M. Availability of replacement parts
- N. Life expectancy of the device (including materials)
- O. Warranty coverage and duration
- P. Price including price breaks or discounts for quantity orders. Price should include installation. Prices shall remain in effect for two years from contract execution. (Attach extra sheets or a detailed price list or spreadsheet as appropriate.)
- Q. Options and/or exclusions; alternate prices dependent on the scope of work at a specific location

Representative Name and Title:

Telephone No. _____ Fax No. _____

Authorized Signature: _____

Date: _____

APPENDIX C
CONTRACTOR'S REFERENCE FORM

Name of Proposing Company _____

Representative Name and Title _____

Phone Number _____

References must not be relatives of the contractor's representative or owners. The references given must be for clients with projects similar in nature to the work scope as outlined in Appendix A and performed within the last two years.

1. Client's Name

Description of device/project _____

Contact Person _____

Address _____

City and Zip Code _____

Phone Number _____

2. Client's Name

Description of device/project _____

Contact Person _____

Address _____

City and Zip Code _____

Phone Number _____

Additional references welcome. Add additional sheets as needed.

APPENDIX D

SYNOPSIS OF CONTRACT PROVISIONS

1. Amendment. This agreement may be amended at any time, but only by a writing signed by both parties.
2. Arbitration. Any dispute between a vendor and ABAG regarding the interpretation, effects, alleged breach or powers and duties arising out of this agreement will be submitted to binding arbitration.
3. Assignment. This agreement shall not be assigned, transferred, hypothecated, or pledged by Vendor without prior written consent of ABAG.
4. Binding on Successors, etc. This agreement shall be binding upon the successors, assigns, or transferees of ABAG or vendors as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate, or pledge this agreement other than as provided above.
5. 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 any of the following has a financial or other interest in the business selected as a vendor for this project:
 - a) The employee, officer or agent
 - b) Any member of his or her immediate family
 - c) His or her partner
 - d) An organization which employs, or is about to employ, any of the above

ABAG's officers, employees, or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from contractors, potential contractors, or parties to subcontracts.
6. Controlling Law. This agreement and all matters relating to it shall be governed by the laws of the State of California.
7. Entire Agreement. This agreement is entire as to all of the performances to be rendered under it. This agreement supersedes any and all other contracts either oral or in writing between ABAG and a vendor with respect to the subject matter hereof and contains all of the covenants and contracts between the parties with respect to such matter. Each party to this agreement acknowledges that no representations, inducements, promises or contracts, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other contract, statement, or promise not contained in this agreement shall be valid or binding.
8. Extensions of Time. The granting of or acceptance of extensions of time to complete performance by a vendor will not operate as a release to that vendor or otherwise modify the terms and conditions of this agreement.

9. Headings. The descriptive headings used in this agreement are for convenience only and shall not control or affect the meaning or construction of any of its provisions.
10. Independent Contractor. The vendor renders its services under this agreement as an independent contractor. None of the vendor's agents, employees or subcontractors shall be agents or employees of ABAG.
11. Insurance Requirements.
 - a) The vendor shall, at its own expense, obtain and maintain in effect at all times during the life of this agreement the following insurance:
 - (1) Workers' compensation insurance as required by law.
 - (2) Business vehicle insurance providing coverage for both owned and non-owned vehicles of the vendor, with minimum liability limits of Two Hundred Fifty Thousand Dollars (\$250,000.00) per person and Five Hundred Thousand Dollars (\$500,000.00) per occurrence for bodily injury liability, minimum property damage limits of One Hundred Thousand Dollars (\$100,000.00) per occurrence, minimum uninsured motorist limits equal to said liability coverage and minimum medical payments coverage of Ten Thousand Dollars (\$10,000.00).
 - (3) A comprehensive general liability insurance policy with bodily injury (including death), property damage, personal injury and advertising injury liability coverage which provides minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence and minimum combined single limits coverage of One Million Dollars (\$1,000,000.00). Said comprehensive general liability policy shall also provide minimum medical payment coverage of Ten Thousand Dollars (\$10,000.00) per occurrence.
 - b) Endorsements. Each of the vendor's applicable insurance policies shall contain an endorsement providing that written notice shall be given to ABAG at least thirty (30) days prior to termination, cancellation or reduction of coverage in the policy or policies, and all policies shall be carried by an insurance company or companies acceptable to ABAG.

In addition, each policy or policies of insurance described in subparagraphs (2) and (3) above shall contain an endorsement providing for inclusion of ABAG and its members, directors, officers, agents and employees as additional insureds with respect to the work or operations in connection with this agreement and providing that such insurance is primary insurance and that no insurance of ABAG will be called upon to contribute to a loss. In addition, with respect to said policy or policies of insurance, cross-liability endorsements in form and content as are usually issued by the insurer and acceptable to ABAG shall be provided.
 - c) Evidence of Insurance. Promptly upon execution of this agreement, the vendor shall deliver to ABAG certificates of insurance evidencing the above insurance coverages. Such certificates shall make reference to all provisions or endorsements required herein and shall be signed on behalf of the insurer by an authorized representative thereof. The

vendor agrees, upon written request by ABAG, to make available at any time copies of such policies certified by an authorized representative of the insured.

12. Prohibited Interest. The vendor'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.
13. Records/Audit. The vendor shall keep complete and accurate books and records of all financial aspects of its relationship with ABAG in accordance with generally-accepted accounting principles. The vendor shall permit authorized representatives of ABAG and/or any of ABAG's governmental grantors to inspect, copy, and audit all data and records of the vendor relating to its performance of services under this agreement. The vendor shall maintain all such data and records intact for a period of not less than three (3) years after the date that services are completed hereunder or this agreement is otherwise terminated.
14. Remedies Cumulative. The remedies conferred by this agreement upon ABAG are not intended to be exclusive, but are cumulative and in addition to all other remedies provided by law.
15. Severability. Should any part of this agreement 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 agreement, which shall continue in full force and effect; provided that, the remainder of this agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.
16. Termination.
 - a) Termination for Cause. If, through any cause, the vendor shall fail to fulfill in timely and proper manner its obligations under this agreement, or if the vendor shall violate any of the covenants, conditions, contracts, or stipulations of this agreement, ABAG shall thereupon have the right to terminate this agreement by giving written notice to the vendor of such termination and specifying the effective date thereof. The notice of termination shall be given at least five (5) days before its effective date. In the event of termination, all unfinished or finished documents, data, studies, surveys, drawings, maps, models, photographs, reports, and other material prepared by the vendor under this agreement shall, at the option of ABAG, become its property excepting documents containing confidential or proprietary information of the vendor, and the vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and this agreement to the date of termination. Notwithstanding the above, the vendor shall not be relieved of liability to ABAG for damages sustained by ABAG by virtue of any breach of this agreement by the vendor, including but not limited to, the expense of completing the work by whatever means ABAG deems expedient, and ABAG may withhold any payment to the vendor for the purpose of set-off until such time as the exact amount of damages due ABAG from the vendor is determined.
 - b) Termination for Convenience. ABAG may terminate this agreement at any time by giving written notice of termination to the vendor which shall specify the effective date thereof. Notice of termination under this subparagraph shall be given at least fifteen (15) days before the effective date of such termination. In the event of termination

under this subparagraph (b), all finished or unfinished documents and other materials described in subparagraph (a) above shall at the option of ABAG become its property excepting documents containing confidential or proprietary information of the vendor. If the agreement is terminated by ABAG as provided in this subparagraph, the vendor will be paid in an amount which bears the same ratio to the total compensation as services actually performed bear to the total services of the vendor covered by this agreement, less payments of compensation previously made; provided that, if this agreement is terminated due to the fault of the vendor, only the subparagraph relative to termination for cause shall apply.

- c) Force Majeure. The performance of work under this agreement may be terminated by ABAG, in its discretion, upon application therefor by the vendor for unforeseen causes beyond the control and without the fault or negligence of the vendor, including acts of God, acts of the public enemy, governmental acts, fires and epidemics if such causes irrecoverably disrupt or render impossible the vendor's performance hereunder. An "act of God" shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the vendor to foresee or make preparation in defense against.
- 17. Time of the Essence. Time is of the essence in this agreement.
 - 18. Waiver. The waiver by ABAG of a breach by the vendor of any provision of this agreement shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or a different provision of this agreement.

APPENDIX E

LIST OF POTENTIAL PARTICIPATING MUNICIPALITIES (Phase I permittees are covered by Municipal Regional Permit)

Alameda County (Phase I)

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

Contra Costa County (Phase I)

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

Marin County (Phase II)

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

Napa County (Phase II)

American Canyon
Calistoga
Napa
St Helena
Yountville

San Mateo County (Phase I)

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

Santa Clara County (Phase I)

Campbell
Cupertino
Los Altos
Los Altos Hills

Los Gatos
Milpitas
Monte Sereno
Mountain View
Palo Alto
San Jose
Santa Clara
Saratoga
Sunnyvale

Solano County

Benicia (Phase II)
Fairfield (Phase I)
Suisun City (Phase I)
Vallejo (Phase I)

Sonoma County (Phase II)

Petaluma
Sonoma

APPENDIX F

CERTIFICATION OF TRASH CAPTURE DEVICES

In order for a trash capture device or series of trash capture devices to meet the “full trash capture” definition, it must meet these specifications and requirements, and receive approval from S.F Bay Water Board staff:

1. A full capture system or device is any single device or series of devices that
 - a. Traps all particles retained by a 5 mm mesh screenAND
 - b. Has a design treatment capacity of not less than the peak flow rate Q resulting from a one-year, one-hour, storm in the sub-drainage area.

Peak flow rate Q is determined using the rational formula: $Q = C * I * A$ where

C is the runoff coefficient

I is the one-year, one hour duration rainfall intensity

A is the tributary drainage area

$C * A$ may be expressed as a summation of $C_i * A_i$ for the total drainage area
2. The device must have sufficient operability to safely trap and hold trash and litter captured for removal during scheduled maintenance; and must have provision for overflow bypass to prevent flooding when the device contains captured trash.

In order to obtain review of a device and certification for full trash capture status, a vendor must submit documentation demonstrating the hydrologic performance of the device in a one-year, one-hour storm event at a specific location, assuming that the trash collection portion of the device is at least half full, or the screen or net half blocked, if applicable. Include suitable tributary drainage areas A , corresponding runoff factors C and the rainfall I from local information for an actual installation. Reference the source of rainfall data. In addition, the documentation should include the method and key parameters that will be used to modify the device design for different locations with a different rainfall and catchment size and characteristics.

Include drawings and details sufficient to completely portray the device structure, including a detail of the 5mm screen or net elements and the overflow or bypass structures or components.

Include references from cities or agencies that have installed and maintained the subject device.

Devices that have already received Los Angeles Regional Board full trash capture certification will in general also be accepted. Include a copy of the Los Angeles full trash capture certification letter in the submittal.

Process for Submittal: A letter or e-mail requesting “full capture system certification” along with supporting documentation must be submitted to the Regional Board to the attention of Dale Bowyer (contact information below) to start the process. Within thirty (30) days of receipt of the letter and documentation, the Regional Board staff will communicate to the proponent any supplemental documentation or information needed to complete the evaluation of the proposed device as a “full trash capture system”. Regional Board staff will make a written determination on the certification of the proposed device within thirty (30) days after the receipt of all requested documentation.

S.F. Bay Water Board staff contact – Dale Bowyer, 510-622-2323 dbowyer@waterboards.ca.gov

APPENDIX G FEDERAL (ARRA) PROVISIONS

ARTICLE I: DEFINITIONS –

“Contractor” as used in Appendices G, G-1 and G-2 is the selected vendor.

ARTICLE II: REPRESENTATIONS AND WARRANTIES

2.1 General Contractor Commitments.

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

In case of conflict between the Standard Contract Provisions and these provisions, these provisions shall take precedence over and be used in lieu of the conflicting portions.

2.2 Completion of Project.

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

2.3 [not applicable]

2.4 [not applicable]

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

- (a) Litigation, circulation of a petition to challenge rates, consideration of bankruptcy, dissolution, or disincorporation, or any other thing that could negatively affect or jeopardize the Contractor’s revenues used for operations, maintenance, and repairs of the Project during its useful life.
- (b) 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 Project Manager;
- (d) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Contractor agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Contractor agrees to implement appropriate actions as directed by the Project Manager;
- (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 Contractor agrees to promptly notify the ABAG Project Manager. This notification is in addition to the Contractor'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 Contractor 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 Contractor acknowledges that the Project records and locations are public records.

2.7 Project Completion.

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

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

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

2.9 [not applicable]

2.10 [not applicable]

2.11 Records.

- (a) Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles the Contractor 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 Contractor 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 Contractor shall be required to maintain books, records and other material relative to the Project in accordance with generally accepted accounting principles. The Contractor 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 Contractor 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 Contractor 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.

The Contractor shall comply with the audit requirements in the CWSRF Project Finance Agreement with ABAG for the Bay Area-wide Trash Capture Demonstration Project.

2.13 [not applicable]

ARTICLE III: [not applicable]

ARTICLE IV: MISCELLANEOUS PROVISIONS

4.1 Timeliness.

TIME IS OF THE ESSENCE IN THIS AGREEMENT.

4.2 Amendment.

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

4.3 Assignability.

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

4.4 [not applicable]

4.5 Compliance with Law, Regulations, etc.

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

4.6 Conflict of Interest.

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

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

- (a) In the event that any breach of any of the provisions of this Agreement by the Contractor shall result in the loss of tax exempt status for any state bonds, or if such breach shall result in an obligation on the part of the State or ABAG to reimburse the federal government by reason of any arbitrage profits, the Contractor shall immediately reimburse the State through ABAG in an amount equal to any damages paid by or loss incurred by the State due to such breach.
- (b) In the event that any breach of any of the provisions of this Agreement by the Contractor shall result in the failure of Project Funds to be used pursuant to the provisions of ARRA, or if such breach shall result in an obligation on the part of the State Water Board or ABAG to reimburse the federal government, the Contractor shall immediately 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 Contractor and to the State Water Board's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Contractor, the Contractor mails or otherwise furnishes a written appeal of the decision to the State Water Board's Executive Director. The decision of the State Water Board's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In

connection with any appeal under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement.

- (b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
- (c) The Contractor shall continue with the responsibilities under this Agreement during any dispute.

4.9 Governing Law.

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

4.10 [not applicable]

4.11 Independent Actor.

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

4.12 Non-Discrimination Clause.

- (a) During the performance of this Agreement, Contractor and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
- (b) The Contractor, its contractors, and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (c) The Contractor, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- (d) The Contractor, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- (e) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

4.13 No Third Party Rights.

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

herein.

4.14 [not applicable]

4.15 Permits, Subcontracting, Remedies and Debarment.

Any subcontractors, outside associates, or consultants required by the Contractor 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 Project Manager.

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

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

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

4.16 Prevailing Wages.

The Contractor agrees to be bound the provisions of the Davis-Bacon Act, as identified in Appendix G-2. To the extent non-ARRA Project Funds are made available under this Agreement, the Contractor agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages.

4.17 Contractor's Responsibility for Work.

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

4.18 Related Litigation.

Under no circumstances may a Contractor use funds from any disbursement under this Agreement to pay costs associated with any litigation the Contractor 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 Contractor 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 Contractor agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State and ABAG shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the State and ABAG reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Contractor upon request. (40 CFR §§ 31.34, 31.36)

4.20 State and ABAG Reviews and Indemnification.

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

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

The Contractor agrees that any remedy provided in this Agreement is in addition to and not in

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

4.22 Termination.

- (a) This Agreement will automatically terminate without written notice if the Contractor fails to meet the timelines in the Scope of Work and the ARRA special conditions of Appendix G-1.
- (b) Additionally, this Agreement may be terminated by written notice during construction of the Project, or thereafter at any time, at the option of the State Water Board through ABAG, upon violation by the Contractor of any material provision of this Agreement after such violation has been called to the attention of the Contractor and after failure of the Contractor to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the State Water Board through ABAG.

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 is equal to the term of this Agreement, as set forth in the Scope of Work hereto.

4.25 Venue.

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

4.26 Waiver and Rights of the State Water Board.

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

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

APPENDIX G-1

FEDERAL (ARRA) SPECIAL CONDITIONS

1. ARRA Special Conditions.

- (a) Buy American. Unless the Contractor has obtained a waiver from USEPA on file with the State Water Board, the Contractor shall not use Project Funds to purchase iron, steel, or manufactured goods produced outside of the United States. Unless the Contractor has obtained a waiver from USEPA on file with the State Water Board, the Contractor hereby certifies that all iron, steel, and manufactured goods used in the Project were produced in the United States.
- (b) Whistleblower Rights Notice. The Contractor 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 Contractor shall ensure that its contractors and subcontractors post such notices.
- (c) Davis Bacon. The Contractor 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.)
- (d) Reports. The Contractor may be asked for quarterly reports related to the goals of ARRA, including jobs created or saved. The Recipient agrees to provide such reports in an expeditious fashion.

2. Implementation of Recommendations.

Notwithstanding any other provision of this Agreement, the Contractor agrees that the State Water Board through ABAG 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.

APPENDIX G-2

DAVIS-BACON

(a) The Contractor 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 Contractor, 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 Contractor 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.

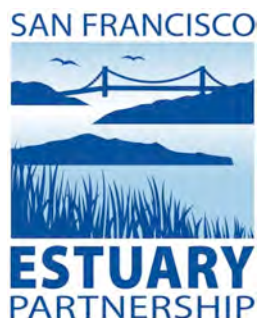
(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall 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 Contractor 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 Contractor 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.



Bay Area-wide Trash Capture Demonstration Project

REQUEST FOR PROPOSALS

To Provide

High Flow Capacity Trash Capture Devices

in the San Francisco Bay Area

January 8, 2009, revised February 4, 2010

KEY DATES:

Optional notification of intent to propose: If you intend to propose, or attend the Pre-Proposal Meeting, please email Janet Cox, project lead, at jwcox@waterboards.ca.gov by January 19, 2010.

Optional Pre-Proposal Meeting: Thursday, January 21, 2010, 1:00 p.m. in room 11 of the Elihu M. Harris State Office Building, 1515 Clay St., Oakland, CA 94612

Requests for device certification due: to Water Board staff as soon as possible but no later than 5:00 pm Monday, February 8, 2010. See Appendix F.

Proposals due: 5:00 pm Monday, February 8, 2010, in electronic format, to Janet Cox, project lead, jwcox@waterboards.ca.gov. Download Proposal Form at <http://www.sfestuary.org/projects/detail2.php?projectID=42>

Opening of bids: 11:00 am Tuesday, February 9, 2010, room 1411, Elihu M. Harris State Office Building, 1515 Clay St., Oakland, CA 94612

Official notification of selected vendors: March 18, 2010

The Association of Bay Area Governments (ABAG), a joint powers agency, formed under California Government Code Sections 6500, et. seq., and the San Francisco Estuary Partnership (SFEP), a project of ABAG, invite qualified businesses to respond to this Request for Proposals (RFP) for manufacture, site-specific sizing, and delivery of high flow capacity trash capture devices or systems in the nine county San Francisco Bay Region, pursuant to terms of a grant from the State Revolving Fund under the American Recovery and Reinvestment Act of 2009 (ARRA).

I. BACKGROUND AND DESCRIPTION OF PROJECT

Background

This grant project will fund provision of trash capture devices in the Bay Area's municipal separate storm sewer systems, in order to trap and remove trash that would otherwise wash downstream, impacting receiving waters. The project is intended to reduce trash impacts to Bay Area waters including creeks, beaches, San Francisco Bay, and the Pacific Ocean, and to assist implementation of the San Francisco Bay Regional Water Quality Control Board's Municipal Regional Stormwater

NPDES Permit (MRP) for Phase I municipalities, adopted by the Regional Water Board on October 14, 2009.

Description of Project

As required by the MRP, all trash capture devices provided as part of this project must meet the full trash capture definition: ***a device or series of devices capturing all particles larger than 5mm, and meeting a hydraulic design standard of not less than the peak flow rate resulting from a one-year, one-hour storm in the storm drainage catchment where the device is installed.*** In addition, devices must meet the following minimum operability standards: ***safely contain captured trash for removal during regular maintenance, and include overflow or bypass provision to avoid flooding.***

The intent of this RFP is to assemble a panel of vendors, and a list of fixed unit prices, for several types of large trash capture devices: vortex separators or hydrodynamic separators; inline trash screening systems such as gross solids removal devices (inclined screen or linear radial); end-of-pipe systems such as trash netting; and other similar devices meeting the full trash capture definition, for which sizing and design requires hydrologic/hydraulic estimates, and installation involves substantial modification of existing infrastructure (e.g., excavation or utility relocation.) Prices shall reflect manufacture, site-specific sizing, and delivery of a unit. Installation will be covered under a separate contract.

Placement of a device on the approved list shall not guarantee that participating cities will utilize that device.

A total of approximately \$4.2 million is available to fund purchases of devices. This total will also fund manufacture and installation of small trash capture devices such as catch basin inserts, catch basin screens/trash excluders, end-of-pipe screening devices, and other devices meeting the full trash capture definition for which installation does not require substantial modification of existing infrastructure. Small trash capture device manufacture and installation proposals are being solicited under a separate RFP. Ninety-seven cities and nine Bay Area counties may elect to participate in this grant project. Participating cities will select devices suitable for specific locations in their jurisdictions.

II. MINIMUM QUALIFICATIONS

A. Eligibility

To be eligible to submit a proposal, a vendor must:

- Have been regularly engaged in the business of manufacturing and/or installation of trash capture devices for at least 2 years, OR produce references or evidence of manufacture and/or installation of similar or comparable structures or devices
- Provide a trash capture device certifiable by the San Francisco Bay Water Board as meeting the full trash capture definition and minimum operability standards specified above (see Appendix F for certification procedures), OR a device that meets the minimum operability standards and is certified by the Los Angeles Water Board as meeting its full capture definition

For information about certification as meeting the full trash capture definition and minimum operability standards, please contact Dale Bowyer at the San Francisco Bay Water Board, dbowyer@waterboards.ca.gov, 510.622.2323.

B. Additional requirements

In addition to the qualifications and experience of the proposer as specified, ABAG expects the vendor to be able to:

- Perform the duties and meet the requirements outlined in Appendix A
- Be willing to work in a specific or more general geographic area (list of potential participating municipalities attached in Appendix E)
- Since time is of the essence in ARRA-funded projects, be prepared to ensure delivery of devices within a reasonable timeframe, not to exceed 90 days from date of order, for the three-year duration of the area-wide project.
- Warranty parts for a minimum of two years

III. SCOPE OF WORK

The scope of work is contained in Appendix A.

Each selected vendor will be under contract with ABAG but will take primary direction from city or county staff where the work is located. Vendors must be prepared to begin work following signing of a contract agreement with ABAG. Prices for the work shall include delivery within the nine Bay Area counties (see Appendix E). Work will be considered complete, and invoices will be processed by ABAG, once the city or county where the work is located has indicated successful receipt of the device, and this notification has been received by ABAG.

IV. FORM OF PROPOSAL

Vendors are invited to notify SFEP that they intend to submit a proposal, by January 19, 2010. Email notification to Janet Cox, Project Lead, at jwcox@waterboards.ca.gov is acceptable. This notification is not required, but it will help SFEP staff plan for the proposal review process.

Vendors must submit proposals IN ELECTRONIC FORM no later than 5:00 p.m. on Monday, February 8, 2010 to be considered. Proposals must include:

1. Appendix B, Proposal Form
2. Appendix C, References Form

For each device proposed for selection under this RFP, the Appendix B Proposal Form (also attached as a Word document) must include responses to the following:

- A. Type of device offered or produced
- B. Design diagrams or CAD file

- C. Description of design elements that are 1) standard for all such devices, and 2) tailored to a specific location or catch basin/pipe design
- D. Description of the site-specific measurements and other information a municipality must provide the vendor in order for the vendor to determine the appropriate size and configuration of the device for that location
- E. Flow or range of flows for which device is rated (in cfs)
- F. Trash storage capacity of the device when the one-year, one-hour storm is no longer fully filtered
- G. Maximum overflow or bypass flow capacity of the device. How does this compare to the 10-year storm?
- H. Photo(s) of installed device(s)
- I. Materials used to construct the device (ie: stainless steel/grade, plastic, etc.)
- J. Estimated design life of the device (including materials)
- K. Customary length of time from receipt of order to delivery/installation of devices
- L. Description of vendor's consultation and manufacturing process including sizing/siting consultation and review of device locations with municipal staff, site-specific sizing and design to be performed including hydrologic/hydraulic estimates, custom manufacturing, and other elements required to produce a device for a specific location. Attach extra sheets if necessary.
- M. Maintenance requirements (Describe in detail how the device must be maintained; equipment required for maintenance; and the approximate amount of time and number of staff required for one cleaning or maintenance event. Attach extra sheets if needed.)
- N. Availability of replacement parts
- O. Warranty coverage and duration
- P. Price including price breaks or discounts for quantity orders. Prices shall remain in effect for two years from contract execution.
- Q. Options and/or exclusions; alternate prices dependent on the scope of work at a specific location

V. PROPOSAL EVALUATION AND SELECTION PROCESS

We anticipate several successful proposals by multiple vendors. Selection will be made by a panel of SFEP, Water Board, and municipal staff. At its discretion, the selection panel may recommend a vendor based on a written proposal and references alone; or on written materials and one or more interviews. The panel will make its recommendation to the Executive Board of ABAG, which will execute a contract or contracts with successful proposers.

A pre-bid meeting will be held on January 21, 2010 at 10:00 a.m. in room 11 of the Elihu M. Harris State Building, 1515 Clay St., Oakland, CA 94612. Members of the selection panel will be present to respond to questions from prospective proposers. Attendance at this meeting is optional but recommended.

Proposals that meet the minimum requirements set out in Section II will be evaluated by the following criteria, listed in descending order of importance:

- Completeness of responses on the Proposal Form (Appendix B)
- Quality of references
- Experience, background, training, and number of staff and/or subcontractors who will site/size and/or fabricate devices

While price will not be determinative in selection of vendors under this RFP, proposers should be aware that cities are likely to consider price in their selection of devices for installation.

VI. GENERAL CONDITIONS

A. Limitations

This request for proposal (RFP) does not commit ABAG to award a contract or to pay any costs incurred in the preparation of a proposal in response to this RFP.

B. Award

At its discretion, the selection panel may recommend a vendor based on a written proposal and references alone; or on written materials and one or more interviews. The panel will make its recommendation to the Executive Board of ABAG, which will execute a contract or contracts with successful proposers.

C. Binding Offer

A signed proposal submitted to ABAG in response to this RFP shall constitute a binding offer from a vendor to contract with ABAG according to the terms of the proposal for a period of two years after its date of submission, which shall be the date proposals are due to ABAG.

D. Contract Arrangements

The selected vendor will be expected to execute a contract similar to ABAG's standard agreement for services, which is summarized in Appendix D, Synopsis of Contract Provisions. Particular attention should be paid to ABAG's insurance and indemnification requirements. A copy of the standard agreement may be obtained from the Project Manager. Also included are the special ARRA requirements which must be included in any contract executed under ABAG's funding agreement with the State Water Board. If a vendor wishes to propose a change to any provision in the standard agreement, the provision and the proposed alternative language must be specified in the proposal submitted in response to this RFP. Submission of a proposal without the requested changes shall be deemed acceptance of the standard agreement's terms and conditions.

The contract payment terms will be firm fixed price per unit, with payments made monthly on the basis of receipt by ABAG of notices from municipalities that appropriate device(s) have been delivered, and an acceptable invoice approved by the appropriate municipal representative.

E. Selection Disputes

A vendor may object to a provision of the RFP on the grounds that it is arbitrary, biased, or unduly restrictive, or to the selection of a particular vendor on the grounds that ABAG procedures, the provisions of the RFP, or applicable provisions of federal, state or local law have been violated or inaccurately or inappropriately applied, by submitting to the SFEP Project Lead a written explanation of the basis for the protest:

- 1) No later than five (5) working days prior to the date proposals are due, for objections to RFP provisions, or in the case of an addendum issued during that five-day period, five (5) working days after such addendum

OR

- 2) Within five (5) working days after the date on which contract award is authorized or the date the proposer is notified that contract award has been authorized, whichever is later, for objections to contractor/vendor selection, except that a determination by the Project Lead not to evaluate a proposal may be protested within five (5) working days of notification.

Except with regard to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the Executive Board (Board) of ABAG authorizes award. In the case of protests of contract award, the protesting proposer has up to five (5) calendar days after submission of a protest to review the record and supplement its protest. Protests of recommended awards must clearly and specifically describe the basis for the protest in sufficient detail for the ABAG review officer to recommend a resolution to the ABAG Executive Director.

The ABAG Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer. Authorization to award a contract to a particular contractor/vendor by the Board shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the Executive Director.

Should the vendor wish to appeal the decision of the Executive Director, it may file a written appeal with the Board, no later than three (3) working days after receipt of the written response from the Executive Director. The Board's decision will be the final decision.

F. Public Records

This RFP and any material submitted by a proposer in response to this RFP are subject to public inspection under the California Public Records Act (Government Code § 6250 et seq.), unless exempt by law. Proposals will remain confidential until the Board has authorized award.

VII. SPECIAL CONDITIONS

A. Federal (ARRA) Provisions (see attached Appendix G)

B. Warranties

- C.** The Contractor shall and does hereby warrant that all work executed under this Contract will be performed with good workmanship. The Contractor shall and does hereby warrant that all work will fit for the purpose stated in the specifications and subsequent amendments thereto, and be free of defects in materials used.
- D.** The Contractor shall repair or replace, at no cost to the municipality, any and all such defective work and all other work damaged thereby, which become defective during the term of the above-mentioned guaranties and warranties.

E. Technical Manuals

Technical Manuals provided with devices shall, at a minimum, include the following:

1. Table of Contents
2. Recommended adjustment, calibration and troubleshooting procedures.
3. Lubrication recommendation if applicable
4. Recommended preventive maintenance and maintenance procedures
5. Complete parts list, by generic title and identification number, with exploded views and schematics of each assembly
6. Recommended spare parts list and list of special tools and equipment required for operation and maintenance (O&M)
7. Disassembly, overhaul, reassembly, and realignment instructions

VIII. POINT OF CONTACT

RFP responses and all inquiries relating to this RFP should be directed as shown below:

San Francisco Estuary Partnership
Attention: Janet Cox, Project Lead
1515 Clay Street, Suite 1400
Oakland, CA 94612
Telephone: (510) 622-2334
FAX: (510) 622-2459
jwcox@waterboards.ca.gov

APPENDIX A

SCOPE OF WORK

Selected vendors shall be prepared to provide trash capture devices in the Bay Area's municipal separate storm sewer systems. These devices will trap and remove trash that would otherwise wash downstream, impacting receiving local creeks, San Francisco Bay, and the Pacific Ocean. Implementation of the Bay Area-wide Trash Capture Demonstration Project will assist implementation of the San Francisco Bay Regional Water Quality Control Board's Municipal Regional Stormwater NPDES Permit (MRP) for Phase I municipalities, adopted by the Regional Water Board on October 14, 2009.

As required by the MRP, all trash capture devices provided as part of this project must meet the full trash capture definition: ***a device or series of devices capturing all particles larger than 5mm, and meeting a hydraulic design standard of not less than the peak flow rate resulting from a one-year, one-hour storm in the storm drainage catchment where the device is installed.*** In addition, devices must meet the following minimum operability standards: ***safely contain captured trash for removal during regular maintenance, and include overflow or bypass provision to avoid flooding.***

Each selected vendor will be under contract with the Association of Bay Area Governments (ABAG) but will take primary direction from city or county staff where the device will be sited. Vendors must be prepared to begin consultation with municipal staff following signing of a contract agreement with ABAG. Prices for the work shall include delivery within the nine Bay Area counties (see Appendix E), plus sufficient consultation to ensure that the device is suitable for the catchment in which it will be installed.

Specifically, vendors will:

- Work with city staff to size devices for specific storm drainage infrastructure and locations
- Specify the flow or range of flows the device can accept
- Specify materials, design life, availability of replacement parts, and warranty for each device
- Specify, in general terms, the length of time between receipt of device orders and delivery of device unit
- Describe what cities need to know about installation procedures including duration, equipment required for installation, traffic control measures, etc.
- Describe maintenance protocols and approximate maintenance intervals for the device
- Because this project is funded by the Federal ARRA program there are certain contracting requirements that all contractors must meet. Please see Appendices G, G-1 and G-2 for those requirements.

PERFORMANCE & DESIGN SPECIFICATIONS

HIGH FLOW CAPACITY TRASH CAPTURE DEVICES

The Contractor shall provide a trash capture device in accordance with these Specifications. Devices solicited in this Request for Proposals include, for example, vortex or hydrodynamic separators; inline trash screening systems such as gross solids removal devices (inclined screen or linear radial); end-of-pipe systems such as trash nets; and/or other similar devices meeting the full trash capture definition, for which sizing and design requires hydrologic/hydraulic estimates, and installation involves substantial modification of existing infrastructure (e.g., excavation or utility relocation.)

Acceptable devices shall be non-mechanical and gravity-driven, requiring no external power source. Devices shall be capable of capturing and permanently retaining settleable, floatable, and neutrally buoyant particles and contaminants in accordance with the sizing criteria of these specifications. Each trash capture device shall be equipped with a screen or mesh that will filter all particles greater than 5.0 mm. For vortex separators, the separation screen shall be self-cleaning. All device types shall be non-blocking for all diverted flows, even when flows within the storm drain pipeline exceed the trash capture device's design treatment flow capacity.

Trash Capture Device Design

Solids Removal Performance Requirements:

All devices: The trash capture device shall capture 100 percent of floatables and 100 percent of all particles equal to or greater than 5.00 millimeters for all flow conditions up to unit's design treatment flow capacity, regardless of specific gravity. This requirement also applies to neutrally buoyant material. The trash capture device shall have the capacity to treat the entire Water Quality Flow Rate without any flow bypassing the treatment unit. The hydraulic loading rate of the unit shall not exceed recommended loadings when calculated using the peak runoff rate of the water quality storm event for which the device is sized.

The trash capture device shall safely contain captured trash out of the flow path for all flow conditions, including peak conditions. The device shall not allow materials that have been captured within the unit to be flushed through or out of the unit during reasonably foreseeable flow conditions, including flood and/or tidal influences.

Trash Capture Device Structure

The trash capture device structure shall be designed to withstand flowing water, vehicle traffic, and earth loadings to be experienced during the life of the treatment unit, at least 25 years.

The manufacturer of the trash capture device shall submit details and shop drawings of sufficient detail for city staff to confirm that no available flow paths exist that would allow the passage of an object greater than 5.0 mm and that the hydraulic loading rate at the peak runoff of the water quality storm event does not exceed recommendations.

For Vortex Separators

The trash capture device shall be furnished with a sump or other means of storing trash, debris, and settleable material. This sump shall be below the invert of the treatment chamber (separation swirl

concentrating or vortex zone), and separated from the treatment chamber by a constricting access-way for both physical and hydraulic shear separation to ensure that settled material does not reside in the treatment flow path and thus become subject to re-suspension.

Warranty

The manufacturer of the trash capture device shall guarantee the unit free from defects in materials and workmanship for a period of two years following installation. Equipment supplied by the manufacturer shall be installed and used only in the particular application for which it was specifically designed.

APPENDIX B

PROPOSAL FORM

Please fill out one form for each device proposed for inclusion in the Project. Use additional sheets of paper and attach designs, photos, etc. as appropriate. ALL SUBMISSIONS IN RESPONSE TO THIS REQUEST FOR PROPOSALS MUST BE IN ELECTRONIC FORM. We suggest you download the Word version of this form from the project website (<http://www.sfestuary.org/projects/detail2.php?projectID=42>) and type into the form, attaching extra sheets as needed. Please submit with the References Form (Appendix C) to Janet Cox, jwcox@waterboards.ca.gov

Name of Proposing Company: _____

Address: _____

Name of Device: _____

- A. Type of device
- B. Design diagrams or CAD file (attach)
- C. Description of design elements that are 1) standard for all such devices, and 2) tailored to a specific location or catch basin/pipe design (attach extra sheets if needed)
- D. Description of the site-specific measurements and other information a municipality must provide the vendor in order for the vendor to determine the appropriate size and configuration of the device for that location; or state whether price includes site-specific measurements by vendor (attach extra sheets if needed)
- E. Flow or range of flows for which device is rated (in cubic feet per second)
- F. Trash storage capacity of the device when the one-year, one-hour storm is no longer fully filtered
- G. Maximum overflow or bypass flow capacity of the device. How does this compare to the 10-year storm?

- H. Photo(s) of installed device(s) (attach)
- I. Materials used to construct the device (i.e., stainless steel/grade, plastic, etc.)
- J. Estimated design life of the device
- K. Customary length of time from receipt of order to delivery/installation of devices
- L. Description of vendor's consultation and manufacturing process including sizing/siting consultation and review of device locations with municipal staff, site-specific sizing and design to be performed including hydrologic/hydraulic estimates, custom manufacturing, and other elements required to produce a device for a specific location. Attach extra sheets if necessary.
- M. Maintenance requirements (Describe in detail how the device must be maintained; equipment required for maintenance; and the approximate amount of time and number of staff required for one cleaning or maintenance event. Attach extra sheets if needed.)
- N. Availability of replacement parts
- O. Warranty coverage and duration
- P. Price including price breaks or discounts for quantity orders. Prices shall remain in effect for two years from contract execution. (Attach extra sheets or a detailed price list or spreadsheet as appropriate.)
- Q. Options and/or exclusions; alternate prices dependent on the scope of work at a specific location

Representative Name and Title:

Email

—

Telephone No. _____ Fax No.

Authorized Signature:

Date: _____

APPENDIX C
CONTRACTOR'S REFERENCE FORM

Name of Proposing Company _____

Representative Name and Title _____

Phone Number _____

References must not be relatives of the contractor's representative or owners. The references given must be for clients with projects similar in nature to the work scope as outlined in Appendix A and performed within the last two years.

1. Client's Name

Description of device/project _____

Contact Person _____

Address _____

City and Zip Code _____

Phone Number _____

2. Client's Name

Description of device/project _____

Contact Person _____

Address	<hr/>
City and Zip Code	<hr/>
Phone Number	<hr/>

Additional references welcome. Add additional sheets as needed.

APPENDIX D

SYNOPSIS OF CONTRACT PROVISIONS

1. Amendment. This agreement may be amended at any time, but only by a writing signed by both parties.
2. Assignment. This agreement shall not be assigned, transferred, hypothecated, or pledged by Vendor without prior written consent of ABAG.
3. Binding on Successors, etc. This agreement shall be binding upon the successors, assigns, or transferees of ABAG or vendors as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate, or pledge this agreement other than as provided above.
4. 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 any of the following has a financial or other interest in the business selected as a vendor for this project:
 - a) The employee, officer or agent
 - b) Any member of his or her immediate family
 - c) His or her partner
 - d) An organization which employs, or is about to employ, any of the aboveABAG's officers, employees, or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from contractors, potential contractors, or parties to subcontracts.
5. Controlling Law. This agreement and all matters relating to it shall be governed by the laws of the State of California.
6. Entire Agreement. This agreement is entire as to all of the performances to be rendered under it. This agreement supersedes any and all other contracts either oral or in writing between ABAG and a vendor with respect to the subject matter hereof and contains all of the covenants and contracts between the parties with respect to such matter. Each party to this agreement acknowledges that no representations, inducements, promises or contracts, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other contract, statement, or promise not contained in this agreement shall be valid or binding.
7. Extensions of Time. The granting of or acceptance of extensions of time to complete performance by a vendor will not operate as a release to that vendor or otherwise modify the terms and conditions of this agreement.

8. Headings. The descriptive headings used in this agreement are for convenience only and shall not control or affect the meaning or construction of any of its provisions.
9. Independent Contractor. The vendor renders its services under this agreement as an independent contractor. None of the vendor's agents, employees or subcontractors shall be agents or employees of ABAG.
11. Insurance Requirements.
 - a) The vendor shall, at its own expense, obtain and maintain in effect at all times during the life of this agreement the following insurance:
 - (1) Workers' compensation insurance as required by law.
 - (2) Business vehicle insurance providing coverage for both owned and non-owned vehicles of the vendor, with minimum liability limits of Two Hundred Fifty Thousand Dollars (\$250,000.00) per person and Five Hundred Thousand Dollars (\$500,000.00) per occurrence for bodily injury liability, minimum property damage limits of One Hundred Thousand Dollars (\$100,000.00) per occurrence, minimum uninsured motorist limits equal to said liability coverage and minimum medical payments coverage of Ten Thousand Dollars (\$10,000.00).
 - (3) A comprehensive general liability insurance policy with bodily injury (including death), property damage, personal injury and advertising injury liability coverage which provides minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence and minimum combined single limits coverage of One Million Dollars (\$1,000,000.00). Said comprehensive general liability policy shall also provide minimum medical payment coverage of Ten Thousand Dollars (\$10,000.00) per occurrence.
 - (b) Endorsements. Each of the vendor's applicable insurance policies shall contain an endorsement providing that written notice shall be given to ABAG at least thirty (30) days prior to termination, cancellation or reduction of coverage in the policy or policies, and all policies shall be carried by an insurance company or companies acceptable to ABAG.

In addition, each policy or policies of insurance described in subparagraphs (2) and (3) above shall contain an endorsement providing for inclusion of ABAG and its members, directors, officers, agents and employees as additional insureds with respect to the work or operations in connection with this agreement and providing that such insurance is primary insurance and that no insurance of ABAG will be called upon to contribute to a loss. In addition, with respect to said policy or policies of insurance, cross-liability endorsements in form and content as are usually issued by the insurer and acceptable to ABAG shall be provided.

- (c) Evidence of Insurance. Promptly upon execution of this agreement, the vendor shall deliver to ABAG certificates of insurance evidencing the above insurance coverages. Such certificates shall make reference to all provisions or endorsements required herein and shall be signed on behalf of the insurer by an authorized representative thereof. The vendor agrees, upon written request by ABAG, to make available at any time copies of such policies certified by an authorized representative of the insured.
- 12. Prohibited Interest. The vendor'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.
- 13. Records/Audit. The vendor shall keep complete and accurate books and records of all financial aspects of its relationship with ABAG in accordance with generally-accepted accounting principles. The vendor shall permit authorized representatives of ABAG and/or any of ABAG's governmental grantors to inspect, copy, and audit all data and records of the vendor relating to its performance of services under this agreement. The vendor shall maintain all such data and records intact for a period of not less than three (3) years after the date that services are completed hereunder or this agreement is otherwise terminated.
- 14. Remedies Cumulative. The remedies conferred by this agreement upon ABAG are not intended to be exclusive, but are cumulative and in addition to all other remedies provided by law.
- 15. Severability. Should any part of this agreement 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 agreement, which shall continue in full force and effect; provided that, the remainder of this agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.
- 16. Termination.
 - a) Termination for Cause. If, through any cause, the vendor shall fail to fulfill in timely and proper manner its obligations under this agreement, or if the vendor shall violate any of the covenants, conditions, contracts, or stipulations of this agreement, ABAG shall thereupon have the right to terminate this agreement by giving written notice to the vendor of such termination and specifying the effective date thereof. The notice of termination shall be given at least five (5) days before its effective date. In the event of termination, all unfinished or finished documents, data, studies, surveys, drawings, maps, models, photographs, reports, and other material prepared by the vendor under this agreement shall, at the option of ABAG, become its property excepting documents containing confidential or proprietary information of the vendor, and the vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and this agreement to the date of termination. Notwithstanding the above, the vendor shall not be relieved

of liability to ABAG for damages sustained by ABAG by virtue of any breach of this agreement by the vendor, including but not limited to, the expense of completing the work by whatever means ABAG deems expedient, and ABAG may withhold any payment to the vendor for the purpose of set-off until such time as the exact amount of damages due ABAG from the vendor is determined.

- b) Termination for Convenience. ABAG may terminate this agreement at any time by giving written notice of termination to the vendor which shall specify the effective date thereof. Notice of termination under this subparagraph shall be given at least fifteen (15) days before the effective date of such termination. In the event of termination under this subparagraph (b), all finished or unfinished documents and other materials described in subparagraph (a) above shall at the option of ABAG become its property excepting documents containing confidential or proprietary information of the vendor. If the agreement is terminated by ABAG as provided in this subparagraph, the vendor will be paid in an amount which bears the same ratio to the total compensation as services actually performed bear to the total services of the vendor covered by this agreement, less payments of compensation previously made; provided that, if this agreement is terminated due to the fault of the vendor, only the subparagraph relative to termination for cause shall apply.
 - c) Force Majeure. The performance of work under this agreement may be terminated by ABAG, in its discretion, upon application therefor by the vendor for unforeseen causes beyond the control and without the fault or negligence of the vendor, including acts of God, acts of the public enemy, governmental acts, fires and epidemics if such causes irrecoverably disrupt or render impossible the vendor's performance hereunder. An "act of God" shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the vendor to foresee or make preparation in defense against.
- 17. Time of the Essence. Time is of the essence in this agreement.
 - 18. Waiver. The waiver by ABAG of a breach by the vendor of any provision of this agreement shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or a different provision of this agreement.

APPENDIX E

LIST OF POTENTIAL PARTICIPATING MUNICIPALITIES (Phase I permittees are covered by Municipal Regional Permit)

Alameda County (Phase I)

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

Contra Costa County (Phase I)

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

Marin County (Phase II)

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

Napa County (Phase II)

American Canyon
Calistoga
Napa
St Helena
Yountville

San Mateo County (Phase I)

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

Santa Clara County (Phase I)

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

Solano County

Benicia (Phase II)
Fairfield (Phase 1)
Suisun City (Phase I)
Vallejo (Phase I)

Sonoma County (Phase II)

Petaluma
Sonoma

APPENDIX F

CERTIFICATION OF TRASH CAPTURE DEVICES

In order for a trash capture device or series of trash capture devices to meet the “full trash capture” definition, it must meet these specifications and requirements, and receive approval from S.F Bay Water Board staff:

1. A full capture system or device is any single device or series of devices that
 - a. Traps all particles retained by a 5 mm mesh screen

AND

 - b. Has a design treatment capacity of not less than the peak flow rate Q resulting from a one-year, one-hour, storm in the sub-drainage area.

Peak flow rate Q is determined using the rational formula: $Q = C * I * A$ where

C is the runoff coefficient

I is the one-year, one hour duration rainfall intensity

A is the tributary drainage area

$C * A$ may be expressed as a summation of $C_i * A_i$ for the total drainage area
2. The device must have sufficient operability to safely trap and hold trash and litter captured for removal during scheduled maintenance; and must have provision for overflow bypass to prevent flooding when the device contains captured trash.

In order to obtain review of a device and certification for full trash capture status, a vendor must submit documentation demonstrating the hydrologic performance of the device in a one-year, one-hour storm event at a specific location, assuming that the trash collection portion of the device is at least half full, or the screen or net half blocked, if applicable. Include suitable tributary drainage areas A , corresponding runoff factors C and the rainfall I from local information for an actual installation. Reference the source of rainfall data. In addition, the documentation should include the method and key parameters that will be used to modify the device design for different locations with a different rainfall and catchment size and characteristics. Include drawings and details sufficient to completely portray the device structure, including a detail of the 5mm screen or net elements and the overflow or bypass structures or components.

Include references from cities or agencies that have installed and maintained the subject device.

Devices that have already received Los Angeles Regional Board full trash capture certification will in general also be accepted. Include a copy of the Los Angeles full trash capture certification letter in the submittal.

Process for Submittal: A letter or e-mail requesting “full capture system certification” along with supporting documentation must be submitted to the Regional Board to the attention of Dale Bowyer (contact information below) to start the process. Within thirty (30) days of receipt of the letter and documentation, the Regional Board staff will communicate to the proponent any supplemental documentation or information needed to complete the evaluation of the proposed device as a “full trash capture system”. Regional Board staff will make a written determination on the certification of the proposed device within thirty (30) days after the receipt of all requested documentation.

S.F. Bay Water Board staff contact – Dale Bowyer, 510-622-2323 dbowyer@waterboards.ca.gov

APPENDIX G FEDERAL (ARRA) PROVISIONS

ARTICLE I: DEFINITIONS –

“Contractor” as used in Appendices G, G-1 and G-2 is the selected vendor.

ARTICLE II: REPRESENTATIONS AND WARRANTIES

2.1 General Contractor Commitments.

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

In case of conflict between the Standard Contract Provisions and these provisions, these provisions shall take precedence over and be used in lieu of the conflicting portions.

2.2 Completion of Project.

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

2.3 [not applicable]

2.4 [not applicable]

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

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

(b) 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 Project Manager;

(d) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Contractor agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Contractor agrees to implement appropriate actions as directed by the Project Manager;

(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 Contractor agrees to promptly notify the ABAG Project Manager. This notification is in addition to the Contractor’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 Contractor 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 Contractor acknowledges that the Project records and locations are public records.

2.7 Project Completion.

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

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

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

2.9 [not applicable]

2.10 [not applicable]

2.11 Records.

(a) Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles the Contractor 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 Contractor 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 Contractor shall be required to maintain books, records and other material relative to the Project in accordance with generally accepted accounting principles. The Contractor 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 Contractor 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 Contractor 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.

The Contractor shall comply with the audit requirements in the CWSRF Project Finance Agreement with ABAG for the Bay Area-wide Trash Capture Demonstration Project.

2.13 [not applicable]

ARTICLE III: [not applicable]

ARTICLE IV: MISCELLANEOUS PROVISIONS

4.1 Timeliness.

TIME IS OF THE ESSENCE IN THIS AGREEMENT.

4.2 Amendment.

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

4.3 Assignability.

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

4.4 [not applicable]

4.5 Compliance with Law, Regulations, etc.

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

- (1) Comply with the provisions of the 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 Contractor.

4.6 Conflict of Interest.

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

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

- (a) In the event that any breach of any of the provisions of this Agreement by the Contractor shall result in the loss of tax exempt status for any state bonds, or if such breach shall result in an obligation on the part of the State or ABAG to reimburse the federal government by reason of any arbitrage profits, the Contractor shall immediately reimburse the State through ABAG in an amount equal to any damages paid by or loss incurred by the State due to such breach.
- (b) In the event that any breach of any of the provisions of this Agreement by the Contractor shall result in the failure of Project Funds to be used pursuant to the provisions of ARRA, or if such breach shall result in an obligation on the part of the State Water Board or ABAG to reimburse the federal government, the Contractor shall immediately 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 Contractor and to the State Water Board's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Contractor, the Contractor mails or otherwise furnishes a written appeal of the decision to the State Water Board's Executive Director. The decision of the State Water Board's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement.
- (b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
- (c) The Contractor shall continue with the responsibilities under this Agreement during any dispute.

4.9 Governing Law.

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

4.10 [not applicable]

4.11 Independent Actor.

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

4.12 Non-Discrimination Clause.

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

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

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

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

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

4.13 No Third Party Rights.

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

4.14 [not applicable]

4.15 Permits, Subcontracting, Remedies and Debarment.

Any subcontractors, outside associates, or consultants required by the Contractor 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 Project Manager.

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

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

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

4.16 Prevailing Wages.

The Contractor agrees to be bound the provisions of the Davis-Bacon Act, as identified in Appendix G-2. To the extent non-ARRA Project Funds are made available under this Agreement, the Contractor agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages.

4.17 Contractor's Responsibility for Work.

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

4.18 Related Litigation.

Under no circumstances may a Contractor use funds from any disbursement under this Agreement to pay costs associated with any litigation the Contractor 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 Contractor 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 Contractor agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State and ABAG shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the State and ABAG reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Contractor upon request. (40 CFR §§ 31.34, 31.36)

4.20 State and ABAG Reviews and Indemnification.

The parties agree that review or approval of Project plans and specifications by ABAG or the State

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

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

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

4.22 Termination.

- (a) This Agreement will automatically terminate without written notice if the Contractor fails to meet the timelines in the Scope of Work and the ARRA special conditions of Appendix G-1.
- (b) Additionally, this Agreement may be terminated by written notice during construction of the Project, or thereafter at any time, at the option of the State Water Board through ABAG, upon violation by the Contractor of any material provision of this Agreement after such violation has been called to the attention of the Contractor and after failure of the Contractor to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the State Water Board through ABAG.

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 is equal to the term of this Agreement, as set forth in the Scope of Work hereto.

4.25 Venue.

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

4.26 Waiver and Rights of the State Water Board.

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

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

APPENDIX G-1

FEDERAL (ARRA) SPECIAL CONDITIONS

1. ARRA Special Conditions.

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

(b) Whistleblower Rights Notice. The Contractor 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 Contractor shall ensure that its contractors and subcontractors post such notices.

(c) Davis Bacon. The Contractor agrees that all laborers and mechanics shall be paid not less than federal prevailing wages. (State prevailing wage requirements may be higher.)

(d) Reports. The Contractor may be asked for quarterly reports related to the goals of ARRA, including jobs created or saved. The Recipient agrees to provide such reports in an expeditious fashion.

2. Implementation of Recommendations.

Notwithstanding any other provision of this Agreement, the Contractor agrees that the State Water Board through ABAG 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.

ASSOCIATION OF BAY AREA GOVERNMENTS

CONTRACT FOR TRASH CAPTURE DEVICES

This contract is made and entered into effective May 1, 2010, by and between the Association of Bay Area Governments (ABAG), a public entity formed under the California Joint Exercise of Powers Act, Government Code Section 6500, et seq. and Revel Environmental Manufacturing, Inc., (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 the fabrication, delivery and installation (as required) of one or more trash capture devices (TCDs) as described in Exhibit A-2 in municipal separate storm sewer systems of one or more of the cities, towns or counties (Participating Entities) listed in Exhibit A-1. Work will occur pursuant to a Purchase Order in the form attached as Exhibit A-3. Exhibit A, Scope of Work, which provides an overview of the work, and Exhibits A-1 through A-4, inclusive, are incorporated herein.

2. Time of Performance

Commencing May 1, 2010, Contractor shall be available to fulfill Purchase Orders. Contractor shall not accept any Purchase Orders later than September 1, 2012. All work performed under this contract must be complete by November 1, 2012.

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 this contract. Any amendments to subcontracts must be approved by ABAG.

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 One Million Dollars (\$1,000,000.00). Compensation by ABAG to Contractor shall be payable in the amounts as set forth in attached Exhibit A-2 once the TCD device has been installed and a Notice of Acceptance in the form attached as A-4, signed by both the Authorized Representative of the Participating Entity and the Contractor, is received by ABAG. ABAG shall review the Notices of Acceptance and approve or disapprove them for payment. Payment shall be made monthly by ABAG as appropriate,

5. Availability of Funds

This Contract shall be contingent upon funds being appropriated by the State Water Resources Control Board Clean Water State Revolving Fund (CWSRF) to ABAG for the purposes of this contract. ABAG will bill the CWSRF monthly, and shall pay the Notice of Acceptance (invoice) within fourteen (14) days of receiving payment from the CWSRF. 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 coverage set forth in Exhibit B, which is hereby made part of this Contract.

7. Hold Harmless. Contractor shall hold harmless and indemnify ABAG, its directors, officers, agents and employees from and against any and all liability, claims, losses, or damages arising from all acts or omissions to act of Contractor or its officers, agents, employees or subcontractors in rendering services under this agreement, excepting liability, claims, losses or damages based solely on ABAG's acts or omissions.

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 any 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 such 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.: Janet Cox
(510) 622-2334
Email: jwcox@waterboards.ca.gov

and

Contractor

Revel Environmental Manufacturing, Inc.
960-B Detroit Avenue
Concord, CA 94518
Attention: Marcel Sloane
(925) 676-4736
Email: marcel@remfilters.com

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. Transfer of Rights to Purchasing Entities

Immediately upon payment to Contractor for a TCD, all rights to the TCD are transferred to the Purchasing Entity, as defined in section 12 of this contract, including, without limitation, title, patent infringement protections set forth in section 12 of this contract and the warranties set forth in section 13 of this contract.

13. Patent Infringement Protection

Contractor represents to ABAG and each Participating Entity that submits a Notice of Acceptance for a TCD provided by Contractor that the TCDs fabricated, delivered, and installed under this Contract will not infringe upon the copyright, patent or license, or otherwise violate the proprietary rights, including trade secret rights, of any person or entity. Contractor agrees to defend, indemnify and hold harmless ABAG, its members, the San Francisco Estuary Partnership (SFEP), and each Participating Entity that submits a Notice of Acceptance for a TCD provided by Contractor (Purchasing Entity), from and against any and all liabilities, costs and damages arising out of any such infringement; and from any suit, demand, or claim made against ABAG, its members, SFEP, or any Purchasing Entity, which alleges any such infringement or violation. In addition to the foregoing, if there is such a suit, demand or claim, Contractor agrees, as soon as possible, to either procure for each Purchasing Entity the right to continue using the TCD, replace the TCD with non-infringing device, or modify it so it becomes non-infringing; provided, that the replaced or modified TCD shall be equal to that contracted for hereunder and satisfactory to each Purchasing Entity. Contractor further agrees to pay any judgment or reasonable settlement offer resulting from a suit, demand or claim, and pay any reasonable attorney's fees incurred by ABAG, its members, SFEP, or each Purchasing Entity in defense against such suit.

14. Warranties

Contractor represents and warrants to ABAG and each Purchasing Entity that each TCD meets the specifications and description in Exhibit A-2 and all work executed under this contract will be performed with good workmanship. The Contractor shall and does hereby warrant that all work will be fit for the purpose stated in the specifications and subsequent amendments thereto and be free of defects in materials used. All warranties for the TCD and any metallic components shall be for a period of at least one year from the date of final acceptance of the work. Additional warranty provisions, if any, are provided in Exhibit A-2.

Contractor shall repair or replace, at not cost to the Participating Entity or ABAG, any and all such defective work and all other work damaged thereby, which become defective during the term of the above-mentioned guaranties and warranties.

15. Reporting Requirement

See Exhibit C, Section 2.6 for reporting requirements.

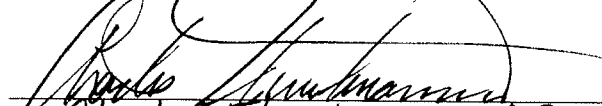
16. Other Contract Provisions

This Contract shall be subject to the Standard Contract Provisions and Federal ARRA and State Water Resource Control Board Contract Provisions as set forth in Exhibits B and C, respectively, which are incorporated herein by this reference. This Contract will be subject to the additional terms and conditions set forth in a Purchase Order and Notice of Acceptance signed by Contractor and approved by ABAG as set forth in Exhibits A-3 and A-4.

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

Dated: 5/12/2010


Contractor: REVEL ENVIRONMENTAL
MANUFACTURING, INC.


By: Charles Fleischmann, V.P.
(Print name and title)

91 1778041
(Tax ID #)

Dated: 5/19/10

ASSOCIATION OF BAY AREA GOVERNMENTS:


Henry L. Gardner
Executive Director

Approved as to legal form and content:

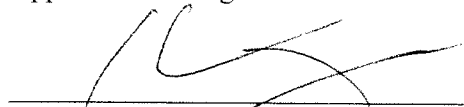

Kenneth K. Moy, Legal Counsel
Association of Bay Area Governments

EXHIBIT A

SCOPE OF WORK

OVERVIEW

Contractor shall provide and install trash capture devices (TCDs) in Bay Area municipal separate storm sewer systems during the term of this agreement, May 1, 2010 through November 1, 2012. These devices will trap and remove trash that would otherwise wash downstream, impacting local creeks, San Francisco Bay, and the Pacific Ocean.

All trash capture devices installed as part of this project must meet the full trash capture definition: a device or series of devices capturing all particles larger than 5mm, and meeting a hydraulic design standard of not less than the peak flow rate resulting from a one-year, one-hour storm in the storm drainage catchment where the device is installed. In addition, devices must meet the following minimum operability standards: safely contain captured trash for removal during regular maintenance, and include overflow or bypass provision to avoid flooding.

Upon selection of a device described in Exhibit A-2 by a participating entity and approval of the selection by SFEP/ABAG, Contractor will fabricate, deliver and install the TCDs as described in Exhibit A-2 pursuant to a Purchase Order in the form attached as Exhibit A-3. Contractor shall work with Authorized Representative of the participating entity to size devices for specific storm drainage infrastructure and locations; or specify measurements staff of the participating entity must take in order to ensure successful installation.

Contractor shall provide the Authorized Representative of the participating entity the following items for each TCD model and size to be supplied under this contract:

- Specify the flow or range of flows the device can accept
- Specify materials, design life, availability of replacement parts, and warranty for each device
- Specify, in general terms, the length of time between receipt of device orders and installation
- Describe maintenance protocols and approximate maintenance intervals for the device
- Describe installation procedures, including duration, equipment required for installation, traffic control measures, etc.
- Technical manuals, if any, including, at minimum, the following: a table of contents, recommended adjustment, calibration and troubleshooting procedures, lubrication recommendation (if applicable), recommended preventative maintenance and maintenance procedures, complete parts list, recommended spare parts list and list of special tools required for operation and maintenance, and disassembly, overhaul, reassembly and realignment instructions

Contractor must hold throughout the term of this Contract a valid State of California Contractor's License of the type described in its proposal.

Exhibit A-1

LIST OF POTENTIAL PARTICIPATING ENTITIES

The list of the actual participants will be maintained at the following location:

<http://www.sfestuary.org/projects/detail2.php?projectID=42>

The list will be updated on an as needed basis.

Alameda County (Phase I)

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

Contra Costa County (Phase I)

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

Marin County (Phase II)

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

Napa County (Phase II)

American Canyon
Calistoga
Napa
St. Helena
Yountville

San Mateo County (Phase I)

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

Santa Clara County (Phase I)

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

Solano County

Benicia (Phase II)
Fairfield (Phase I)
Suisun City (Phase I)
Vallejo

Sonoma County (Phase II)

Petaluma
Sonoma

APPENDIX B
PROPOSAL FORM

Please fill out one form for each device proposed for inclusion in the Project. Use additional sheets of paper and attach designs, photos, etc. as appropriate. ALL SUBMISSIONS IN RESPONSE TO THIS PROPOSAL MUST BE IN ELECTRONIC FORM. Please submit with the References Form (Appendix C) to Janet Cox, jwcox@waterboards.ca.gov

Name of Proposing Company: REM Inc. (Revel Environmental Mfg. Inc.)

Address: 960 B Detroit Ave., Concord California 94518

Name of Device: TRITON Bioflex Drop Inlet Trash Guard

A. Type of device:

The TRITON Bioflex Drop Inlet Trash Guard (BFTG) catch basin filter insert is designed to meet the specifications defined as a “Full Capture System” by the SFRWCB. The filter captures 100% of trash, debris and other particles greater than 5mm. The TRITON BFTG series filter can be configured to include hydrocarbon capturing media as well.

B. Design diagrams or CAD file (attach)

Please see Appendix

A1 (Trash Guard for Drop Inlet Filters Spec Sheet)

A2 (Drop Inlet Media Combinations)

A3 (How Does Our Tech Work TRITON Drop Inlet)

A4 (Bioflex Material Spec Sheet)

A5 (Trash Guard Installation Options)

A7 (Trash Guard Sizing Examples)

A9 (Trash Guard Installation Examples)

A10 (Guard Flow Rates)

A11 (Trash Guard Volume Examples)

- C. Description of design elements that are 1) standard for all such devices, and 2) tailored to a specific location or catch basin/pipe design (attach extra sheets if needed)

The TRITON BFTG series filters are configured with REM's patented vertical cartridge system. The system treats flow laterally through a three dimensional media called Bioflex resulting in reduced occlusion and increased flow over a wider range of trash capture capacity.

The TRITON BFTG filter utilizes a scalable modular design allowing for maximum customization of trash capturing capacity and treatment flow for all drop inlet catch basin sizes, shapes and configurations. Please refer to Appendix A3 (How Does Our Tech Work), Appendix A7 (Trash Guard Sizing Examples), and Appendix A9 (Trash Guard Installation Examples) for further information.

- D. Description of the site-specific measurements and other information a municipality must provide the vendor in order for the vendor to determine the appropriate size and configuration of the device for that location; or state whether price includes site-specific measurements by vendor (attach extra sheets if needed)

REM includes on-site consultation, catch basin measurement, and written estimate in support of the TRITON BFTG series filters purchase at no additional charge. REM shall gather the information necessary to configure a filter customized for maximum treatment performance. Municipalities may obtain preliminary filter information by completing the basic REM sizing guides provided in Appendix A6 (Sizing Guides for Catch Basins) and A7 (Trash Guard Sizing Examples).

- E. Flow or range of flows for which device is rated (in cubic feet per second)

Please refer to Appendix A10 for a matrix describing TRITON BFTG filter flow rate information, and Appendix A17 for a "Full Capture" Concord, CA field test information.

- F. Photo(s) of installed device(s) (attach)

Please refer to Appendix A18 (TRITON Bioflex Trash Guard Drop Inlet Picture Page).

G. Materials used to construct the device (i.e.: stainless steel/grade, plastic, etc.)

TRITON BFTG Filters construction material:

- Basin inserts are constructed using Non-reactive High Density Polyethylene Plastic (HDPE) with added U.V. inhibitors.
- Removable cartridges are made with Type 304 Stainless Steel welded for 1.75" X 2" square openings.
- Cartridge caps are made from 40% + recycled content.
- Bioflex is fabricated using polyester fiber mesh (netting), a blend of coir fibers, and water based latex (as the binding agent).
- Bioflex is biodegradable and may be re-used after cleaning.
- UV Resistance (ASTM D 4355 – 500 hour exposure)
- Tensile Properties (ASTM D 5035/ECTC).
- REM filters are “Made in the USA”.

Please refer to Appendix A15 (Cert of Origin Declaration), A1 (Trash Guard for Drop Inlet Filters Spec Sheet) and A4 (Bioflex Material Spec Sheet) for further information.

H. Estimated design life of the device:

The TRITON BFTG filter estimated design life is in excess 15 years based on O&M service preformed by REM.

I. Customary length of time from receipt of order to delivery/installation of devices

REM delivers and installs TRITON BFTG filters within three weeks from receipt of an order. Timing may fluctuate depending on REM pipeline and quantity of filters ordered.

J. Confirm that price includes installation.

REM pricing includes installation. Please refer to Appendix A12 (Pricing).

- K. Description of vendor's installation process including consultation and review of device locations with municipal staff, traffic control during installation, and estimated time required to install each device (attach extra sheets if needed)

REM includes on-site consultations, catch basin measurement, and written estimates in support of the TRITON BFTG series filter purchase at no additional charge. Simply contact Marcel Sloane at (925) 676-4736 or marcel@remfilters.com to arrange consultation appointment. REM shall work with municipal personnel in identifying locations, measuring catch basins, establishing traffic control procedures, timing installation, and gathering permits as necessary to complete the specific project.

The installation process includes implementation of traffic control measures and of confined space operational safety procedures as necessary specifically for the project site. Grates are removed and filters installed in the catch basin structure. After the installation is completed the operational area is restored to its original condition.

Filter installation should take no more than 30 minutes per catch basin (excluding traffic control measures). Most often the procedure takes less than 15 minutes.

For more details of different installation applications, please see Appendix A5 (Trash Guard Installation Options), and A9 (Trash Guard Installation Examples).

- L. Maintenance requirements (describe in detail how the device must be maintained and the approximate amount of time required for one cleaning or maintenance event; attach extra sheets if needed)

In order to insure proper operation, REM Inc. recommends that TRITON BFTG filters be serviced as described in Appendix A16 (O&M Requirements).

The filter cleaning process and Bioflex media replacement should take no more than 15 minutes per filter excluding implementation of traffic control and confined space requirements as necessary specific to the project site.

REM offers economical, scalable and turnkey O&M programs that can be customized to address O&M requirements and available resources for any municipality. Please refer to an example of a "turnkey" O&M municipal program in Appendix A13 (O&M Service Program Example).

- M. Availability of replacement parts

TRITON BFTG filter replacement parts are available in stock at the REM warehouse located at 960B Detroit Ave, Concord, CA 94518. Parts are available within 24 to 48 hours of order receipt for shipment, delivery or will-call.

N. Life expectancy of the device (including materials)

REM estimates the life expectancy of the TRITON BFTG filter in excess of 15 years (based on O&M services performed by REM).

O. Warranty coverage and duration

The standard REM product warranty is for one year from the purchase date of the TRITON BFTG filter insert. See Appendix A14 (Product Warranty Page) for more details.

REM extends warranty coverage for an additional five years (six years total) when municipalities activate REM O&M programs. For an example of the REM turnkey O&M program including the complete scope of work performed please refer to Appendix A13 (O&M Service program Example), and Appendix A14 (Product Warranty).

P. Price including price breaks or discounts for quantity orders. Price should include installation. Prices shall remain in effect for two years from contract execution. (Attach extra sheets or a detailed price list or spreadsheet as appropriate.)

See Appendix: A12 (Pricing).

Q. Options and/or exclusions; alternate prices dependent on the scope of work at a specific location

Current pricing for the manufacture recommended turnkey REM O&M service program is \$120/filter per year. The program includes three site visits per year – once in the fall before the rainy season, once during the winter and once during the dry season.

Scope of work performed:

- **Remove and dispose of all captured debris and material in accordance with all laws and regulations. (Materials are disposed of at a Class II facility eliminating owner liability.)**
- **Vacuum and clean filters at each service visit.**
- **Inspect each filter for system operation.**
- **Replace and recharge spent Bioflex media as necessary. If applicable, spent “hydrocarbon” media shall be manifested and recycled through a Cal EPA approved recycle facility.**
- **Attach a bright yellow Dated Service Lock-out Tag to each catch basin after the service is completed.**
- **The “date” corresponds to a REM Service Compliance Report.**

EXHIBIT A-2
Trash Capture Devices

- **Provide 3rd party Service Compliance Reports after each visit indicating the specific work that was performed, debris capacity of each filter, and any observed storm water compliance issues.**
- **REM archives all Compliance Reports to assist owner with regulatory inspections.**
- **REM warrants TRITON Filters an additional Five years beyond the standard one year product warranty at no additional charge.**

Turnkey REM O&M pricing may vary under certain circumstances including but not limited to agreements requiring prevailing wages.

Representative Name and Title:

_____ Marcel Sloane, Regional Manager _____

Telephone No. _____ (925) 676-4736 _____

Fax No. _____ (925) 676-8676 _____

Email _____ marcel@remfilters.com _____

Authorized Signature: _____

Date: _____ 1/25/2010 _____

EXHIBIT A-2
Trash Capture Devices

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Marcel Sloane, Regional Manager

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Fax No. _____ (925) 676-8676

Email _____ marcel@remfilters.com

Authorized Signature: _____

Date: _____ 1/25/2010



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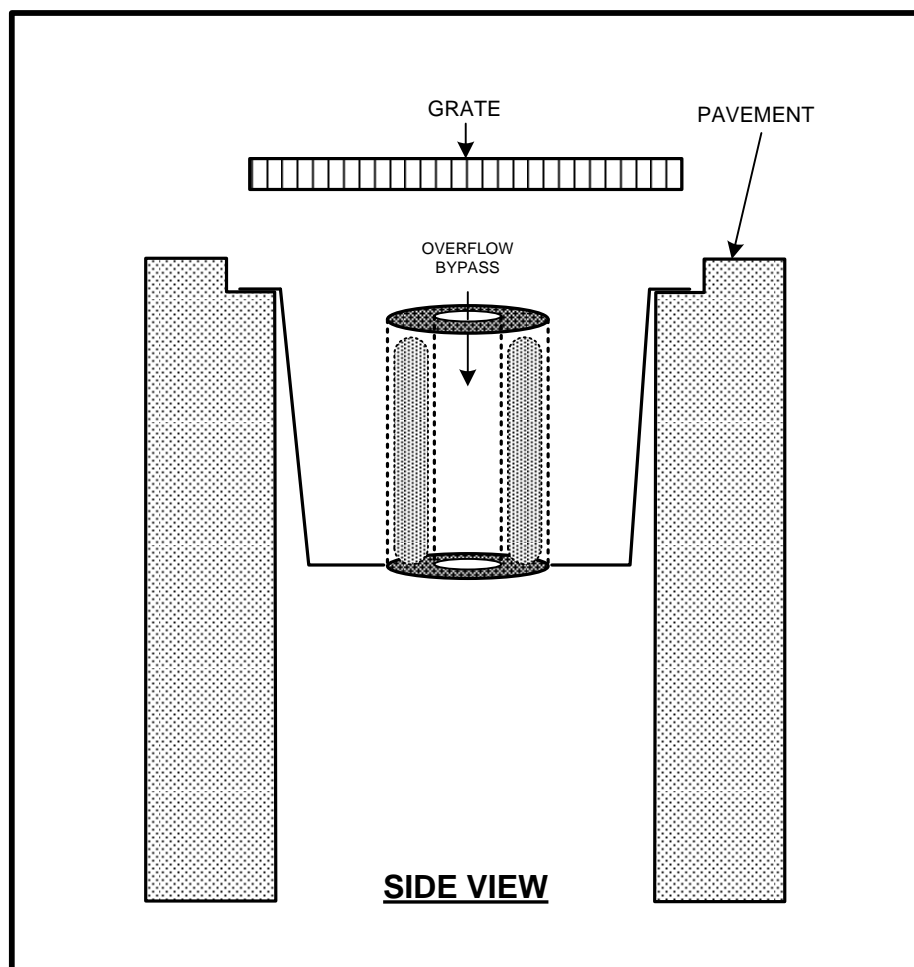
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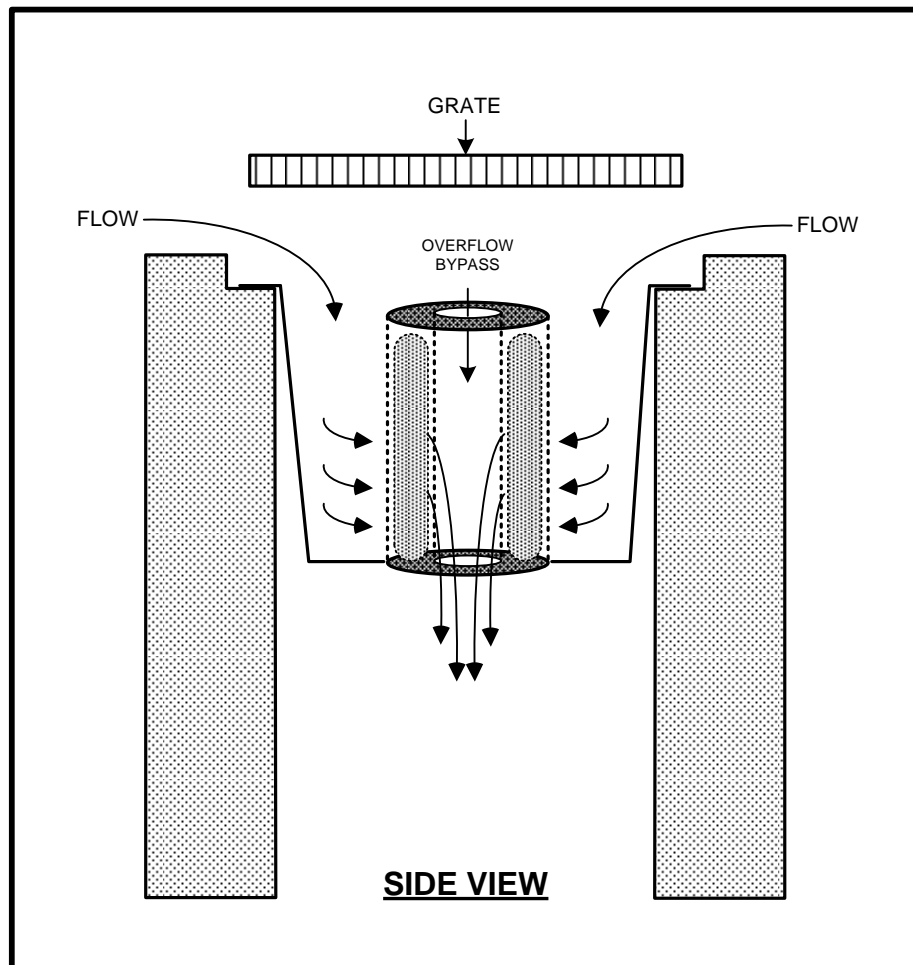
How does our technology work? (TRITON Drop Inlets)

The TRITON Filter™ Series is a filtering system that is designed to be inserted below the grate or entrance of storm water inlets to help eliminate trash, debris, hydrocarbons and other contaminants from storm water runoff. TRITON Filters™ come in a large variety of sizes, including square, round, rectangular, and low profile. Many installation of the TRITON Filter™ for “Drop Inlets” rests on the same flange as the grate does (See below). The top flange of the TRITON Filter™ have neoprene gaskets to help create a tight seal along the inside wall of the catch basin. This is done so that no “low flows” bypass the filter system.

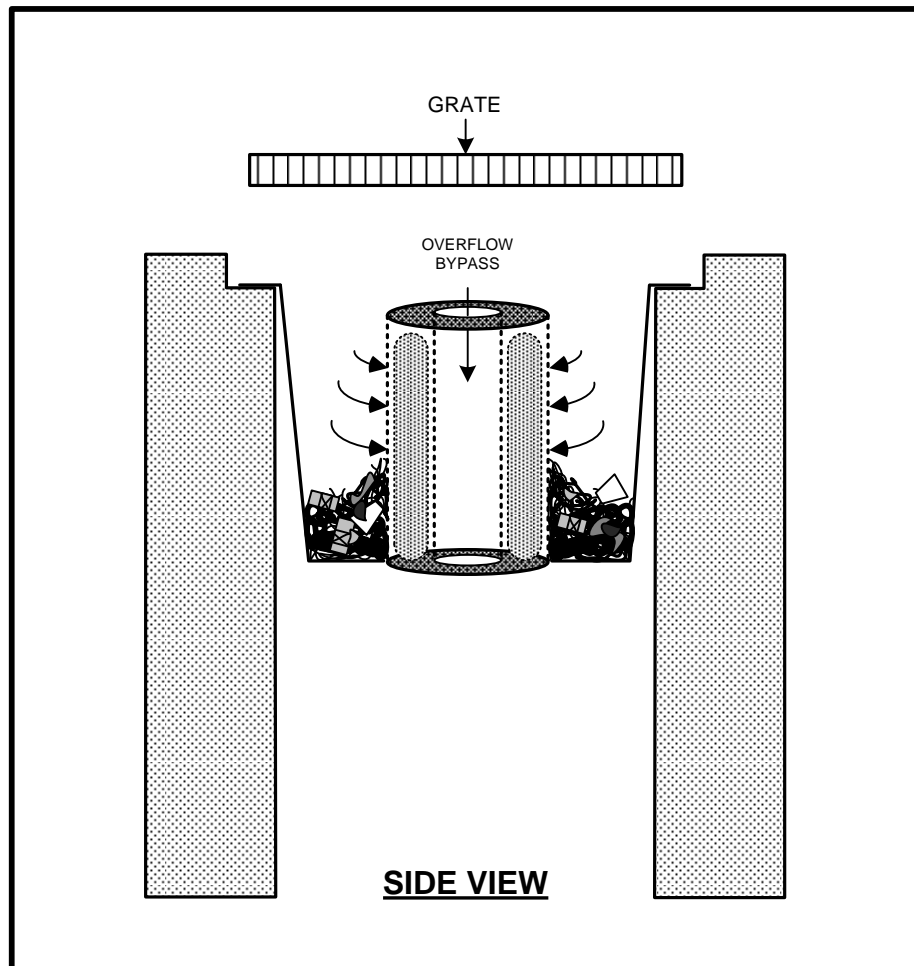


As storm water enters into the catch basin, the first contact will be into the unit's large trough area. The TRITON Filter's large trough area allows for the capturing of debris big and small. The flow will then be filtered through the stainless steel cage which houses either the Hydrocarbon-Pak or the Bioflex Trash Guard. The Bioflex Trash Guard is capable of capturing 100% of particles 5 mm or greater in size, while still achieving high flow rates (Please see Bioflex cut sheet for more information). Depending on what concerns each site may have, you may adapt the filter for the removal of hydrocarbons, trash or both. Some construction sites will use the "Bioflex Trash Guard" inserted into the cartridge housing for during construction, then simply change out the "Bioflex Trash Guard" for the "Hydrocarbon-Pak" for post construction use. This change out takes only minutes to perform.

The cartridges are able to be locked into place by rotating the cartridge $1/6^{\text{th}}$ turn. This allows for quick and easy maintenance.



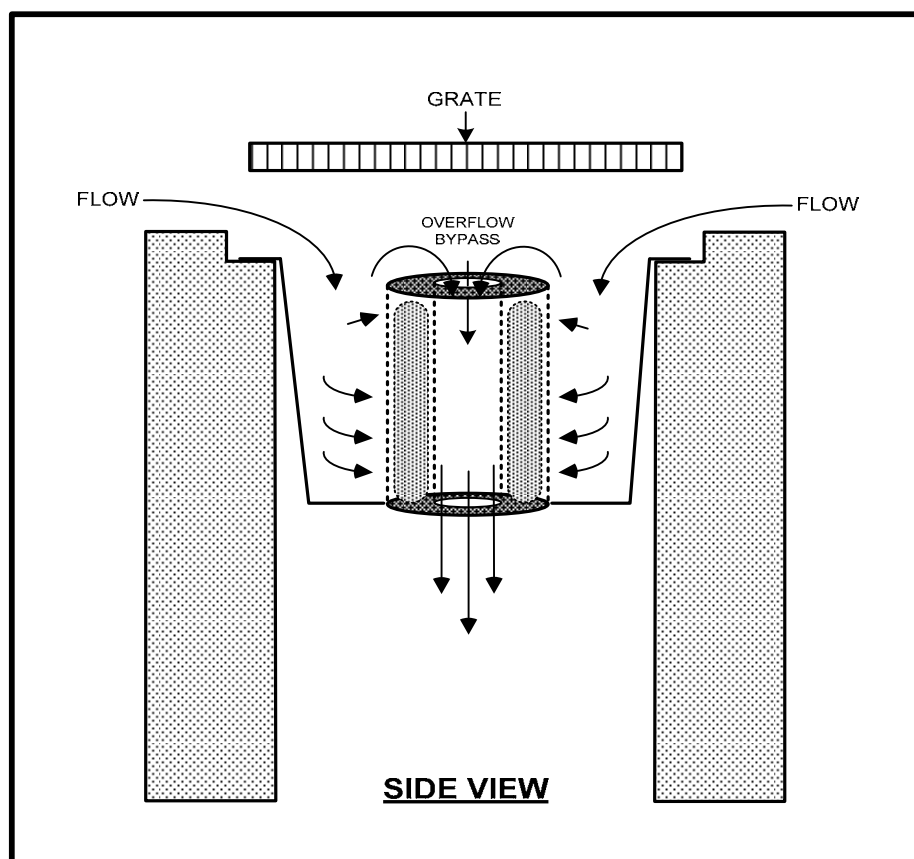
The vertical stainless steel cage which holds in the different removal “Pak Systems”, helps to keep larger debris down and out of the way of the filtering system. This design utilizes a gravity feed system to allow the filter to perform for longer periods of time without becoming blinded by debris, thus yielding less servicing throughout the different seasons.



As the water enters into the filter bay (trough) the heavier sand & silt will be trapped in the lower section of the bay. Over time, the lower portions of the bay will slowly become full of trapped sediments/debris etc. As the lower portions of the stainless steel cage and MediaPak's become potentially blinded, the higher portions remain open and functioning. The flow will constantly rise to the least resistance. This again, allows for longer periods of filtration, with potentially less maintenance requirements.

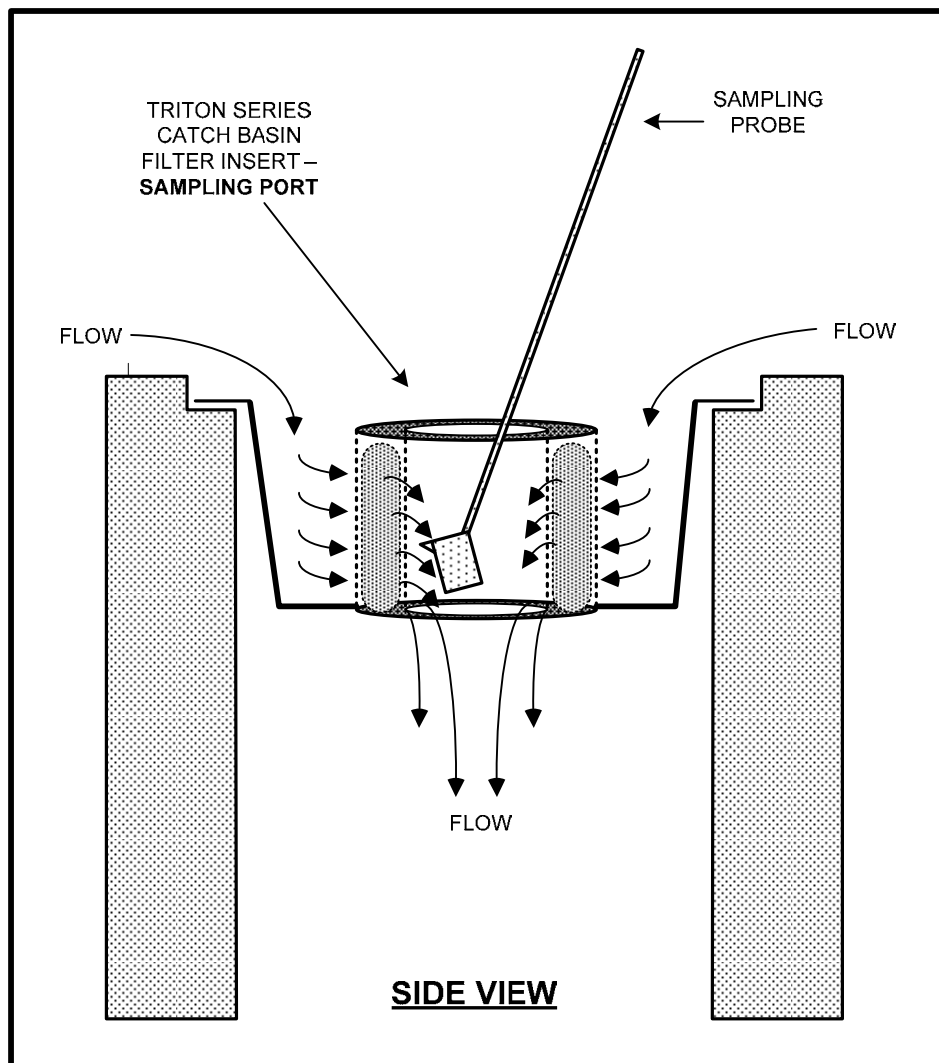
The TRITON Filter™ can also provide a Hydrocarbon MediaPak, which uses an aggressive, yet environmentally safe absorbent material. Due to the filter mediums ability to repel water (“hydrophobic”), water is able to flow smoothly through the filter. The MediaPak’s uses a geo textile fabric that will capture 100% of particles 5 mm or greater in size. Our hydrocarbon media is licensed as an oil cleanup agent by the California EPA’s State Water Resources Control Board. It has also been tested and approved for: Paint Filter Test #9095, the Abalone Larval Toxicity Test, the Toxicity Characteristic Leaching Procedure (TCLP), the Dynamic Degradation & L-W Test for Canadian waterways. Two separate testing’s have also been completed through Zymax Envirotechnology. One of the tests showed that our media was able to capture 24.5 drops out of 25 used (see attached). On the second test, oil and water were mixed together and 99.4% were captured (see attached). For testing results from the University of California, Los Angeles (UCLA) and University of California, Irvine (UCI). Woodbury University, go to the “Testing” tab in the catalog for more detailed results.

The TRITON Filter™ is designed to filter large amounts of runoff without impeding the drains designed hydraulic capacity. During heavy flows, which exceed flow-through capacity, the filter allows the excess to flow over the inside edge of the filter tract and spill into the center of the catch basin, or as noted above: “overflow bypass”.



The TRITON Filter™ Series can be teamed with many different types of media to achieve different filtering outcomes. From metals to Anti microbial filtering, many filtering options are available. Please call our offices for additional options.

The TRITON Filters™ unique designed allows for easy water sampling. These samples are not only easy to obtain, but they are also filtered through the TRITON Filter before being taken. The filters overflow/bypass section is also known as the sampling port. This port makes grabbing filtered samples easy due to it being centered within the catch basin. The filter also rest at or near the top of the catch basin, so there is little difficulty in having to capture your samples. All that is needed when taking a sample is the removal of the existing grate that covers the catch basin and your ready to go.





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Operation & Maintenance O&M Requirements

TRITON Series and GEOTRAP Stormwater Filters

OPERATION & MAINTENANCE (O&M):

Maintenance and Inspections:

In order to ensure proper operation, REM Inc. (Revel Environmental Manufacturing) recommends that REM Stormwater filters be serviced and maintained when debris and pollutant accumulations exceed no more than 80% of the filter's capacity. REM recommends that the filters are inspected and serviced at a minimum of three times (3X's) per seasonal cycle year. The frequency and length of duration between inspections and maintenance may fluctuate based on specific site conditions such as local weather conditions, site use, and pollutant type and loading volume.

Filter Media Replacement:

In order to ensure proper operation, REM recommends that the REM Filter Media Beads, or other specified media that is housed inside REM Filter Media-Paks be replaced when the media beads are no more than 50% coated with contaminants. (The surface area of REM's standard hydrocarbon media beads are stark white in color. The beads will blacken with encapsulated contaminants over time.) It is recommended that the REM Filter Media-Paks and Bioflex Trash Guards be replaced a minimum of one time (1X) per seasonal cycle year. Sites with higher concentrations of pollutants such as hydrocarbons, sediment/silt, and metals may require more frequent Media-Pak replacements. Purchase replacement Media-Paks, Bioflex Trash Guards from REM, Inc. at (888) 526-4736 or sales@remfilters.com. Custom media configurations are available upon request, including activated carbon, rubberizor and zeolite.

Disposal:

Captured pollutant debris and spent media must be disposed of in accordance with all Federal, State, and Local Laws and Regulations.

O&M Service Providers:

REM recommends that a qualified service provider perform all O&M procedures including Inspection, Maintenance, Filter Cleaning, Media-Pak Replacement, Debris and Media Disposal, as well as Service Reporting and Tracking. Please call REM at (888) 526-4736 or email sales@remfilters.com for service provider recommendations.

REM Inspection, O&M and BMP Service Programs:

REM offers "Turn-key" service programs for REM Filters and all other Stormwater structures including interceptor/vault systems, catch basin filters, filtration and infiltration devices, detention and retention basins, and bio-swales. REM programs are tailored for each site to meet manufacture's O&M requirements and BMP practices. The standard plan includes disposal of all captured pollutant debris at Class II Hazardous Material sites to eliminate owner liability, and recycling of spent filter media at EPA approved recycling facilities to reduce landfill. REM provides full "3rd Party" O&M reporting, tracking and archiving for the owner and for municipal inspections and compliance. **REM automatically extends the REM filter warranty for FIVE additional years (6 years total) for most sites maintained by an activated and on-going REM service program at no additional charge.** Please call REM at (888) 526-4736 or email sales@remfilters.com for more information about REM Inspection, O&M Compliance, Maintenance and Reporting Services.



- **O&M Compliance**
- **Inspection and Maintenance**
- **3rd O&M Reporting**
- **Filter Media- Pak Replacement**

**REM Customer Service &
Technical Support:**

(888) 526-4736 - sales@remfilters.com - www.remfilters.com



REM-1



Revel Environmental Manufacturing Inc.

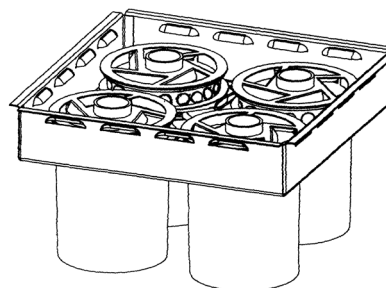
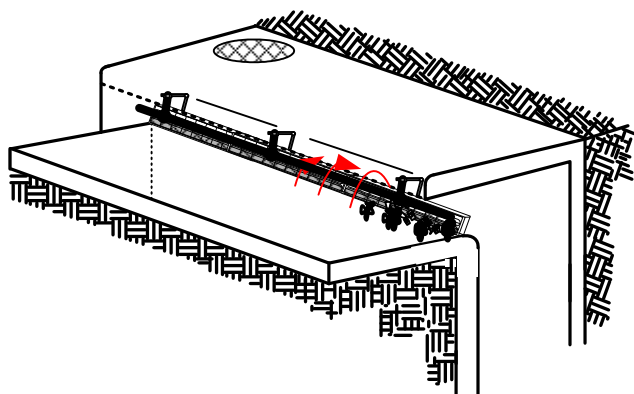
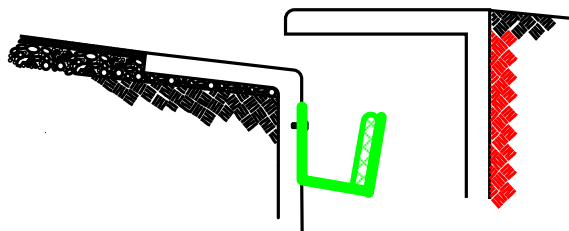
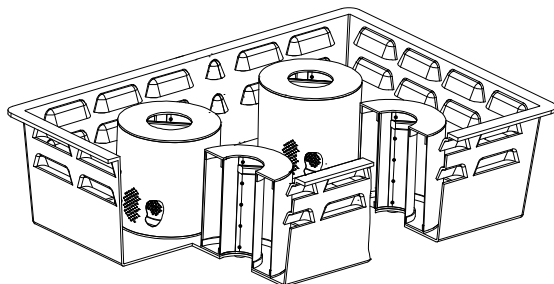
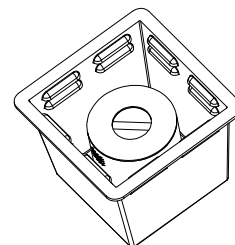
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REM Inc. Product Warranty & Maintenance

MAINTENANCE: It is recommended that the filter medium be replaced when the beads are more than 50% coated with contaminants (Media beads will show a blackened surface). Areas with high concentrations of sand and silt may require more frequent cleaning cycles due to the filters' ability to catch such debris. Areas that accumulate heavy concentration of pollutants may also require frequent filter medium changes. Due to the many different conditions at each location, such as the weather, type of facility, landscaping, foliage, potential for handling hazardous waste, etc., we recommend having a qualified service company perform the replacement and disposal of the filter medium and the general cleaning of the filters. REM offers free extended warranties (filters) on most contracts when service programs are provided. The used filter beads must be disposed of in accordance with Federal, State and Local laws for petroleum waste. REM's Service Maintenance Program recycles the contaminated media, which lessens customer liability and also decreases landfill use. A Service Maintenance agreement can be fitted to your facility's specific needs. For a qualified service company near you, please call REM @ (888) 526-4736 or fax requests to (925) 676-8676 or (714) 557-2679.

WARRANTY, EXCEPT AS SPECIFICALLY SET FORTH IN THIS PARAGRAPH, THERE ARE NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. ALL MERCHANDISE FURNISHED HEREUNDER IS WARRANTED AGAINST ANY DEFECT IN MATERIALS OR WORKMANSHIP, PROVIDING A CLAIM IS MADE IN WRITING WITHIN ONE (1) YEAR FROM THE DATE OF DELIVERY OF THE MERCHANDISE TO THE PURCHASER. REVEL ENVIRONMENTAL MANUFACTURING, INC. OBLIGATION ON ANY CLAIM IS LIMITED TO REPLACEMENT OR REPAIR OF THE DEFECTIVE MERCHANDISE FOB AT REVEL ENVIRONMENTAL MANUFACTURING INC. PREMISES. EXCEPT AS ABOVE STATED, SELLER WILL NOT BE LIABLE FOR ANY LOSS, INJURY OR DAMAGE TO PERSONS OR PROPERTY RESULTING FROM FAILURE OR DEFECTIVE OPERATION OF ANY MERCHANDISE FURNISHED HEREUNDER OR DELAY IN PERFORMANCE OF THIS AGREEMENT, NOR WILL REVEL ENVIRONMENTAL MANUFACTURING, INC. BE LIABLE FOR DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND SUSTAINED BY PURCHASER FROM ANY CAUSE. REVEL ENVIRONMENTAL MANUFACTURING, INC. PRODUCTS ARE DESIGNED TO BE USED IN CONJUNCTION WITH STRINGENT MAINTENANCE PLANS AND POLLUTION PREVENTION PLANS AND ARE NOT INTENDED FOR USE AS THE EXCLUSIVE MEANS OF REDUCING THE AMOUNT OF POLLUTANTS ENTERING THE ENVIRONMENT. PURCHASERS AND USERS OF REVEL ENVIRONMENTAL MANUFACTURING INC. PRODUCTS ARE SOLELY RESPONSIBLE FOR COMPLIANCE WITH LOCAL, STATE, AND FEDERAL LAWS GOVERNING THE DISCHARGE AND DISPERSAL OF FILTERED WATER, TREATED WATER, SPENT FILTER MEDIA AND GENERATED SLUDGE.


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REM TRITON Bioflex Trash Guard (BFTG) Price List
Pricing includes municipal consultation, catch basin sizing, delivery and installation of complete TRITON BFTG filter system.

TR - BFTG Series (For Drop Inlets)		
Catch Basin Size	Quantity Pricing	
1' x 1' thru 1.5' x 2'	1 to 50:	\$255ea.
	51 to 99:	\$240ea.
	100 or more:	\$230ea.
2' x 2' thru 2.5' x 2.5'	1 to 50:	\$335ea.
	51 to 99:	\$320ea.
	100 or more:	\$300ea.
2' x 3' thru 4' x 4'	1 to 50:	\$595ea.
	51 to 99:	\$565ea.
	100 or more:	\$535ea.
Replacement Bioflex Media Pricing for TR - BFTG		
Drop Inlet Cartridge Model	Price	
TR6.5 (8") - BFTG	\$14.75ea.	
TR10 (8") - BFTG	\$14.75ea.	
TR14 (8") - BFTG	\$14.75ea.	
TR10 (16") - BFTG	\$16.25ea.	
TR14 (16") - BFTG	\$16.25ea.	
TR24 (17") - BFTG	\$19.50ea.	
TR24 (17") - BFTG	\$19.50ea.	
Drop inlet pricing is based on standard 8" and 16" cartridge height configurations. Taller cartridge configurations are available upon request		

TRC - BFTG Series (For Curb Inlets)		
Curb Inlet Size	Quantity Pricing	
2' thru 4'	1 to 50:	\$360ea.
	51 to 99:	\$340ea.
	100 or more:	\$320ea.
5' thru 7'	1 to 50:	\$525ea.
	51 to 99:	\$499ea.
	100 or more:	\$470ea.
TRITON Curb Inlet filters are be teamed together inline and scalable for varying curb opening lengths. Most S. F. Bay Area curb style inlet openings range from 2 to 7' in length. Please call REM for more information regarding curb inlets openings longer than 7 feet.		
Replacement Bioflex Media for TRC - BFTG		
Bioflex Replacement Media Pricing is: \$3.70 per ft. / Linear Foot.		

Notes:

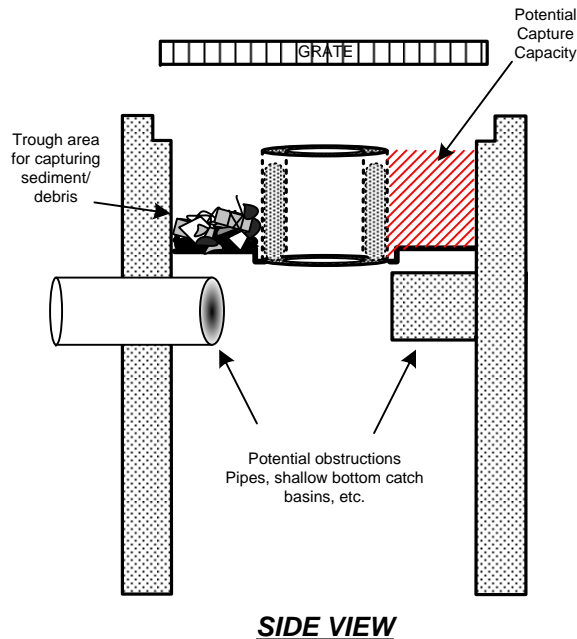
REM O&M Service programs include Bioflex media replacement. Custom service programs are available including: "Cartridge Core Change-out and Swap" upon request.

REM recommends that Bioflex Media be replaced at least once per year.

Pricing for Replacement Bioflex Media does not include delivery or installation.

REM's TRITON BIOFLEX TRASH GUARD VOLUME EXAMPLES

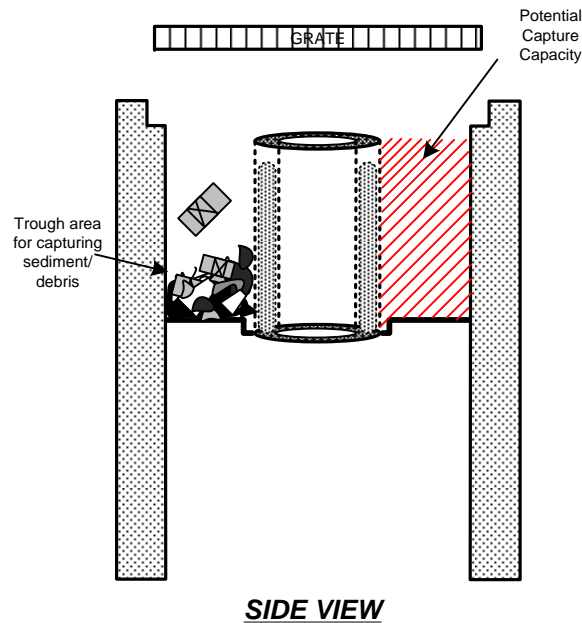
Volume Characteristics



Catch basins that are shallow or have obstructions such as protruding pipes can use our 8" tall TRITON Cartridge System, which will not interfere with existing infrastructure.

Models: TR10 (8") or the TR14 (8") BFTG.

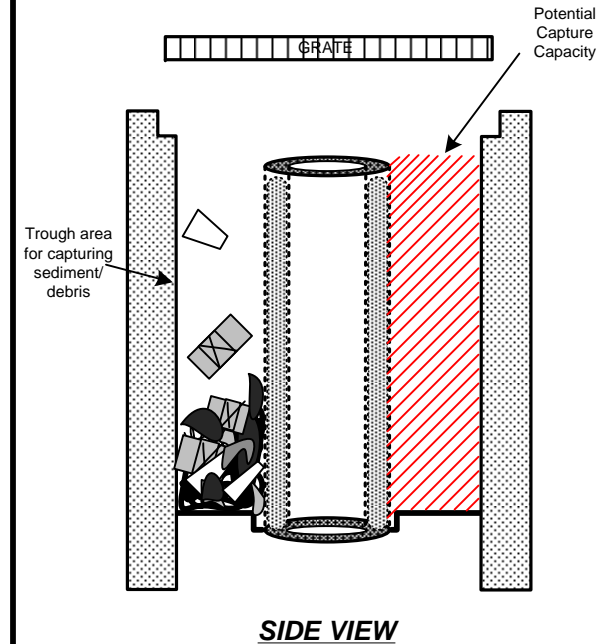
Volume Characteristics



Most common installation is with our 16"/17" tall TRITON Cartridge System. Providing twice the volume capture capacity along with excellent flow rates.

Models: TR10 (16"), TR14 (16") BFTG and the TR24 (17") BFTG.

Volume Characteristics



For areas with large trash loading, our 32" / 34" deep TRITON Cartridge Systems are the most effective. Providing twice the standard size cartridge volume capture capacity along with excellent flow rates.

Models: TR10 (32") or the TR14 (32") BFTG and the TR24 (34") BFTG.

Volume capacities will depend upon each catch basin's configuration, size of filter, etc.

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USA**

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U.S. Patent Number: 6,217,757 B1

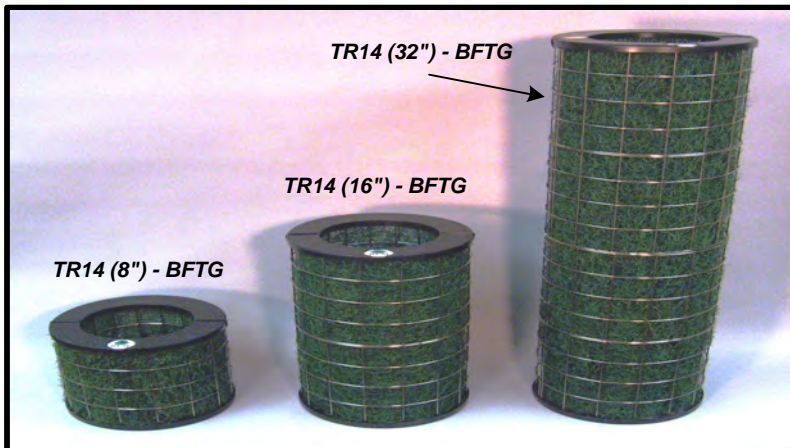
PH: (888) 526-4736

DIMENSIONS ARE IN INCHES UNLESS OTHERWISE NOTED.

REM Inc.

TRITON Bioflex - Series
(Bioflex Trash Guards)

SIZE	DRAWN BY:	FOR:	REV
	C.F.	Varying Volume Capacities	
Scale	1/4 : 1	DATE: 8/17/2009	SHEET REM-11 OF 1





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REVEL ENVIRONMENTAL MANUFACTURING, INC. (REM Inc.) TRITON BIOFLEX TRASH GUARDS for DROP INLETS (BFTG)

	5 mm	Maximum - Flow Rate	Flow Rate - 50% Blocked	Total Bypass	TRASH Volume Capacity	Maximum - Flow Rate** w/ Hydrocarbon Option
	Mesh Req:	CFS	CFS	CFS	Cubic Feet	CFS
DROP INLETS						
Model:						
TR10 (8) BFTG***	Yes	1.6	0.8	6.92	5.9*	0.34
TR10 (16) BFTG***	Yes	3.2	1.6	6.92	11.8*	0.69
TR10 (32) BFTG***	Yes	6.4	3.2	6.92	23.8*	1.38
TR14 (8) BFTG***	Yes	2.59	1.29	9.5	5.68*	0.66
TR14 (16) BFTG***	Yes	5.18	2.59	9.5	11.2*	1.33
TR14 (32) BFTG***	Yes	10.36	5.18	9.5	22.4*	2.67
TR24 (17) BFTG***	Yes	10.75	5.37	32.32	12*	2.42
TR24 (34) BFTG***	Yes	21.5	10.75	32.32	24*	4.84

* Based on a 3' X 3' catch basin. Volume will increase or decrease depending upon size of catch basin.

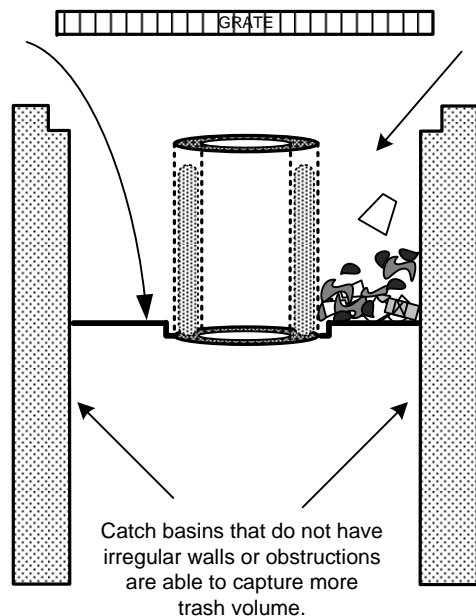
** Hydrocarbon (Oil, grease, animal fats, etc.) removal is an optional media that can be combined with the Bioflex Trash Guards.

*** REM will use the cartridge system that maximizes each catch basins trash capture volume and flow rate.

REM'S TRITON BIOFLEX TRASH GUARD INSTALLATION EXAMPLES

Irregular Catch Basin Characteristics

TRITON Low Boy Basin, allows for more trash capture volume



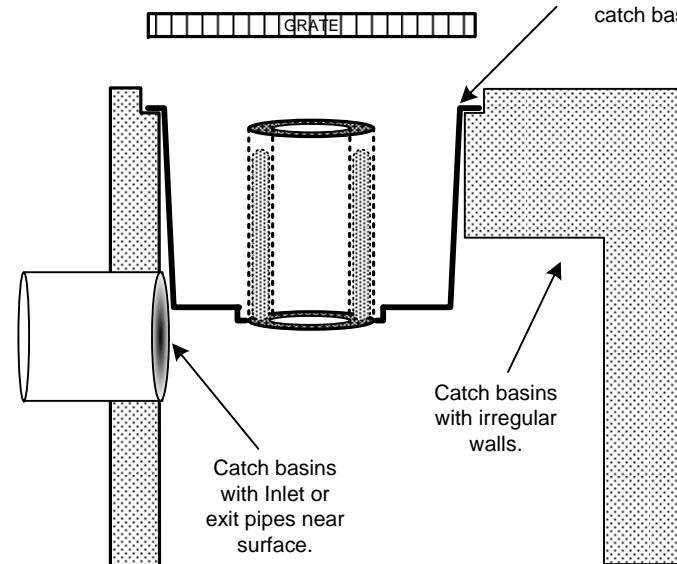
SIDE VIEW

Catch basins that do not have irregular inside walls or obstructions, can take advantage of TRITON'S Low Boy Basin that allows for more trash capture volume. Volume capacities will depend upon each catch basin's configuration, size of filter, etc.

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Irregular Catch Basin Characteristics

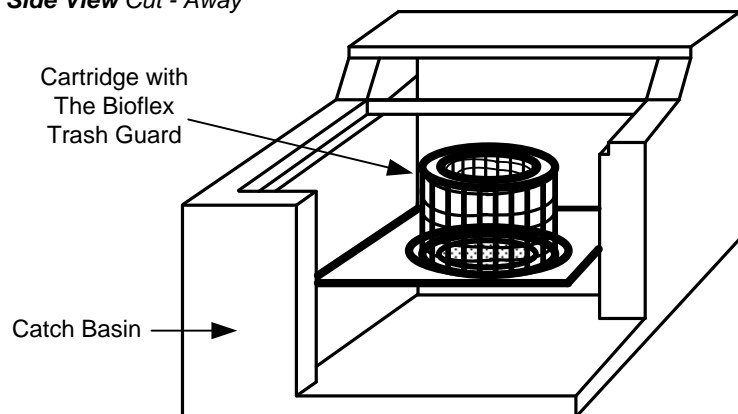
Triton Basin being used in irregular catch basins.



SIDE VIEW

Catch basins that *do* have irregular inside walls or obstructions, will be fitted with TRITON's Standard Filter Basin. In these cases we will not be able to use the whole catch basin's for maximizing trash and debris capacity. REM will use the system that maximizing each catch basin's trash capture volume and flow rate.

Side View Cut - Away



<p>THE DESIGN AND DETAIL OF THIS DRAWING IS THE PROPERTY OF REM INC. AND IS NOT TO BE USED EXCEPT IN CONNECTION WITH OUR WORK, DESIGN AND INVENTION RIGHTS ARE RESERVED.</p> <p>U.S. Patent Number: 6,217,757 B1</p>		<p>REM Inc.</p>		
		<p>TRITON Bioflex - Series (Bioflex Trash Guards)</p>		
PH: (888) 526-4736	SIZE	DRAWN BY: C.F.	FOR: Varying Installation Example	REV
DIMENSIONS ARE IN INCHES UNLESS OTHERWISE NOTED.	Scale	1/4 : 1	DATE: 8/17/2009	SHEET REM-11 OF 1



[Appendix V, p. 220]

Revel Environmental Manufacturing Inc.

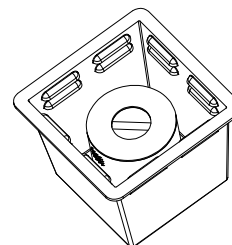
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Installation Instructions for Drop Inlets:

The installation of our line of drop inlet filters is a very simple process, as long as the filters have been sized and ordered correctly, please read "How to Size & Order your catch basin filter insert".

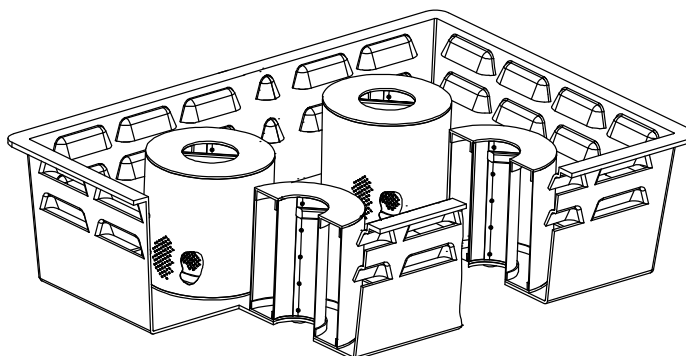
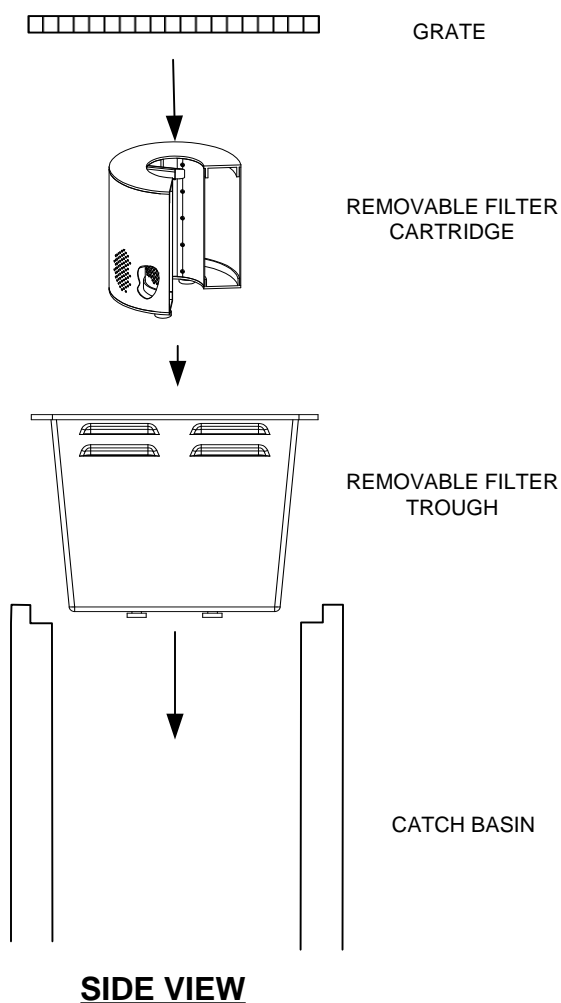
Most installations involve a three step process:

- 1st) Remove the top grate from catch basin that is to be fitted.
- 2nd) Drop filter into catch basin, with the longer sides resting on the grate bearing surfaces.
- 3rd) Replace the top grate back on the catch basin and you are finished.

Removable cartridges are easily removed and replaced by simply turning cartridge a 1/6th. turn to lock or unlock cartridge from filter trough.

Some custom filters may have different instructions for installation, based on their own individual applications. Curb inlets require different installation instructions, due to their inability to hang from the grate bearing flanges. (See "Curb Inlet Installation Instructions")

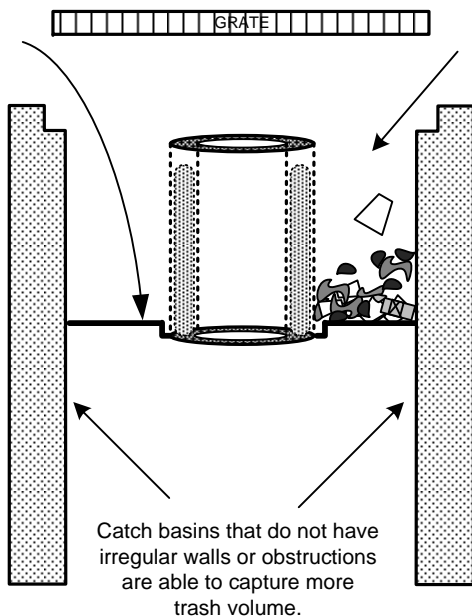
Please contact our office for special instructions or our own installation service @ (888) 526-4736.



REM'S TRITON BIOFLEX TRASH GUARD INSTALLATION EXAMPLES

Irregular Catch Basin Characteristics

TRITON Low Boy Basin, allows for more trash capture volume



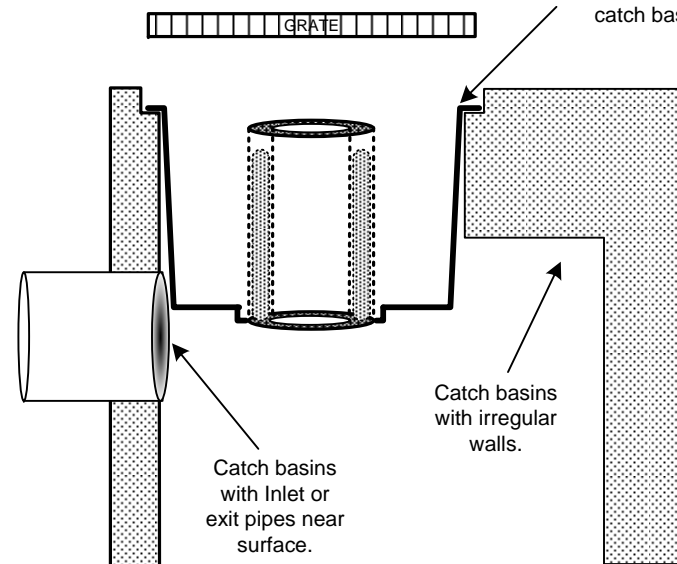
SIDE VIEW

Catch basins that do not have irregular inside walls or obstructions, can take advantage of TRITON'S Low Boy Basin that allows for more trash capture volume. Volume capacities will depend upon each catch basin's configuration, size of filter, etc.

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Irregular Catch Basin Characteristics

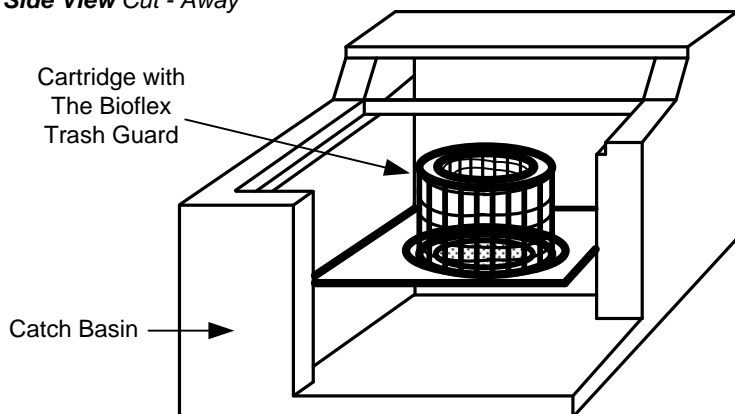
Triton Basin being used in irregular catch basins.



SIDE VIEW

Catch basins that *do* have irregular inside walls or obstructions, will be fitted with TRITON's Standard Filter Basin. In these cases we will not be able to use the whole catch basin's for maximizing trash and debris capacity. REM will use the system that maximizing each catch basin's trash capture volume and flow rate.

Side View Cut - Away



<p>THE DESIGN AND DETAIL OF THIS DRAWING IS THE PROPERTY OF REM INC. AND IS NOT TO BE USED EXCEPT IN CONNECTION WITH OUR WORK, DESIGN AND INVENTION RIGHTS ARE RESERVED.</p> <p>U.S. Patent Number: 6,217,757 B1</p>				<p>REM Inc.</p>			
<p>TRITON Bioflex - Series (Bioflex Trash Guards)</p>							
<p>PH: (888) 526-4736</p>		<p>SIZE</p>	<p>DRAWN BY: C.F.</p>	<p>FOR: Varying Installation Example</p>	<p>REV</p>		
<p>DIMENSIONS ARE IN INCHES UNLESS OTHERWISE NOTED.</p>		<p>Scale</p>	<p>1/4 : 1</p>	<p>DATE: 8/17/2009</p>	<p>SHEET</p>	<p>REM-11</p>	<p>OF 1</p>

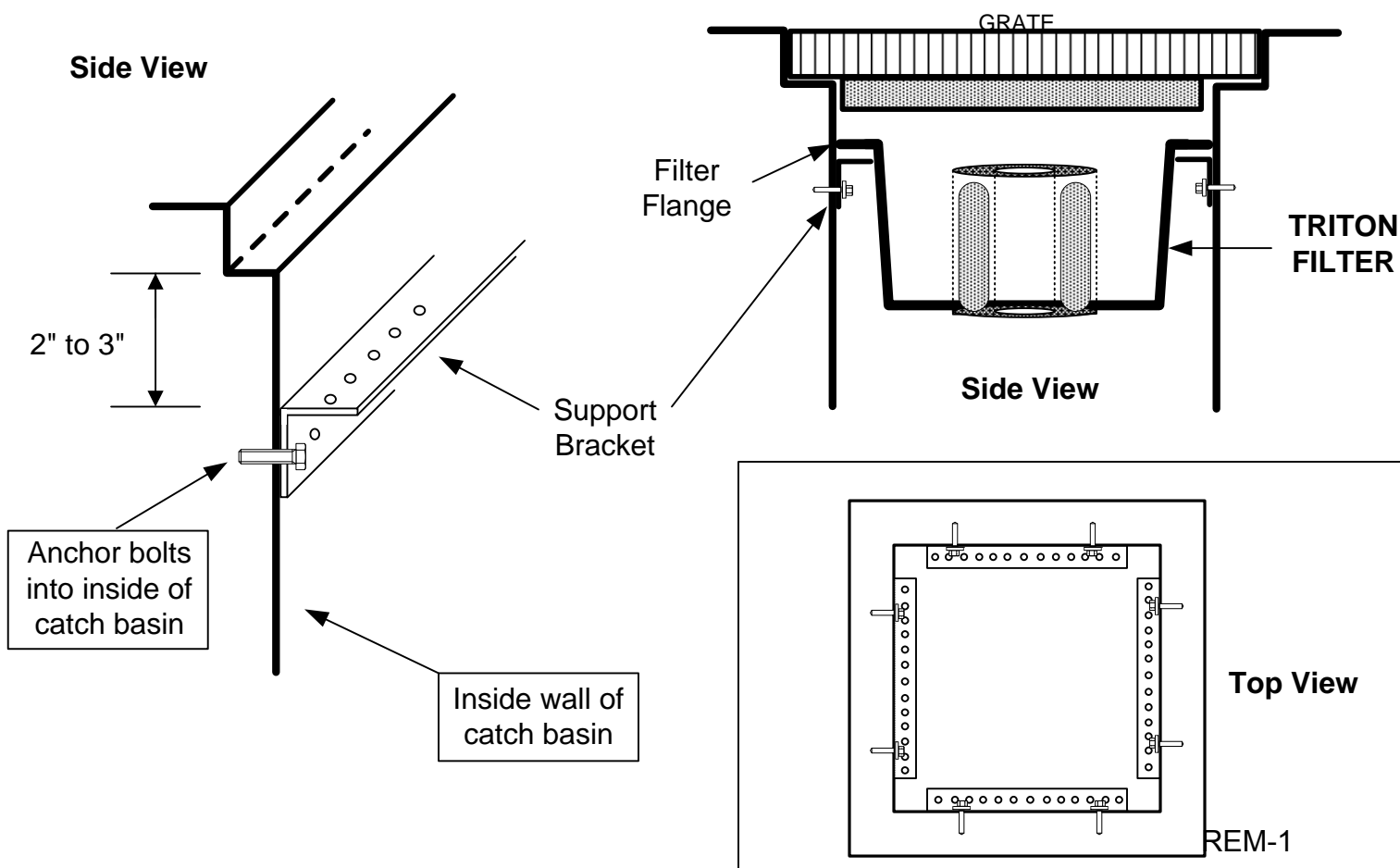
TOOLS REQUIRED:

- 1) Hammer Drill, with 1/4" masonry drill bit.
- 2) Hammer.
- 3) Measuring Tape.
- 4) 1/4" X 2.25" Concrete Anchors. i.e. (Red Head)

Installation Instruction for the TRITON Series Catch Basins (Filter support for below Filter Flange)

Direction for installing filters below the frame and grate.

- 1) Filter flanges may need to be trimmed down to be able to fit into the throat of the catch basin. For example if the ID or inside throat of the catch basin is 48" X 48", you will want to trim the flanges down to 47.25" X 47.25". You will then attach the bulb gasket to the support flange. This bulb gasket will help seal the extra gap between the flange and the inside wall of the catch basin. The gasket is designed to give the filter a snug fit when installed. You may or may not need gasket on all sides of the filter.
- 2) The support brackets should be placed 2" to 3" below the bottom of the grate. Support on all four sides is suggested for the best filter support, although some installation may only allow the support brackets to be installed on only two sides (opposite one another) this is also acceptable as long as the brackets support at least 2" of filter flange on each side.
- 3) Attach support brackets (Slotted Angle) to all four sides using anchor bolts every 2' to 3', or where needed.
- 4) Install catch basin filter into catch basin and replace grate.





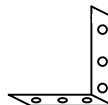
Northern California
960-B Detroit Avenue
Concord, California 94518
P: (925) 676-4736
F: (925) 676-8676

Southern California
2110 South Grand Avenue
Santa Ana, California 92705
P: (714) 557-2676
F: (714) 557-2679

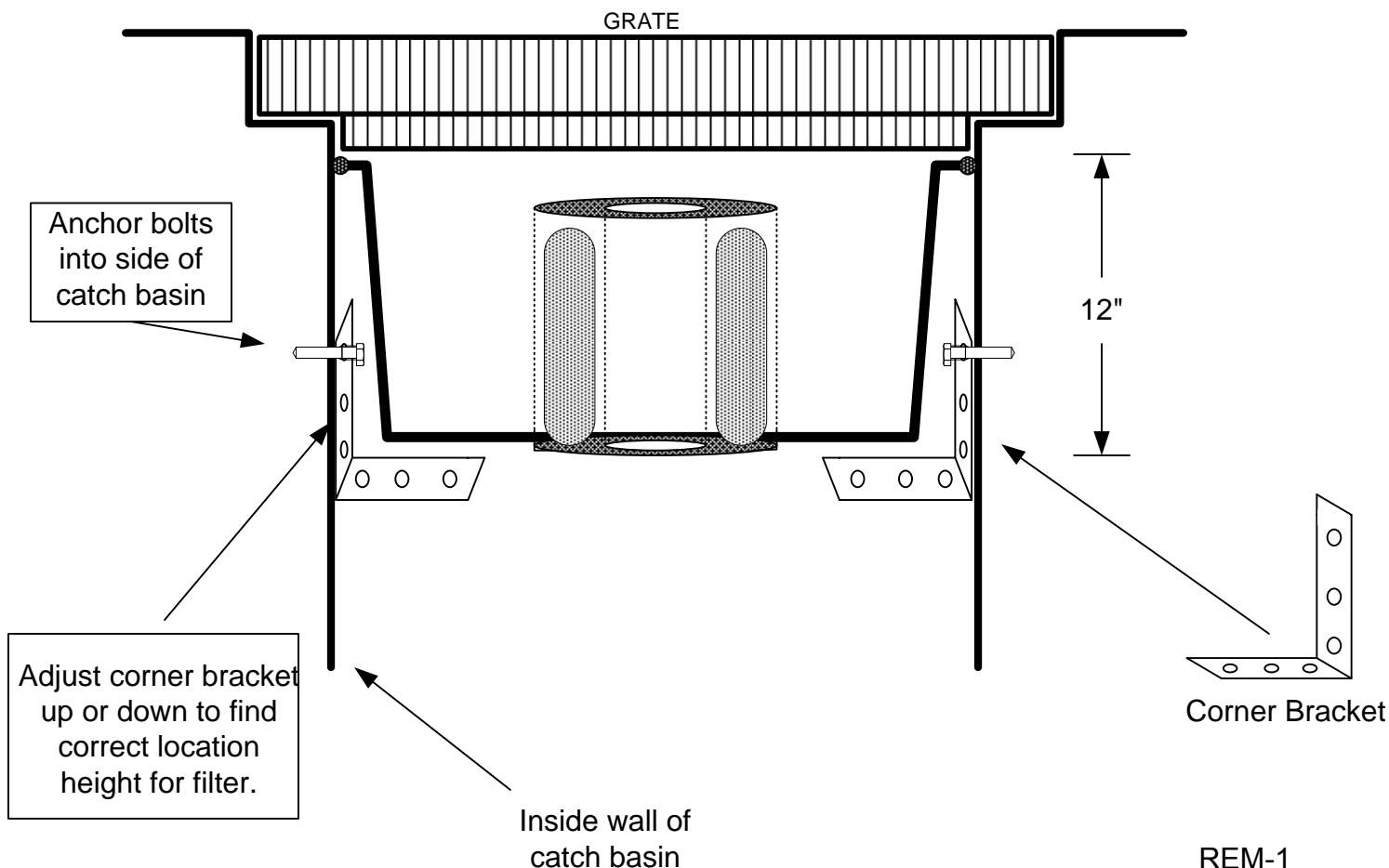
TRITON Series TR1818 (18" X 18") Catch Basins

Direction for installing filters below the frame and grate.

- 1) Attach supplied gasket material to the sides of the filter that will be touching the inside walls of the catch basin if it has not already been attached. The gasket is designed to give the filter a snug fit when installed. You may or may not need gasket on all sides of the filter.
- 2) Determine where support flanges will need to be placed in catch basin for best support. To help you do this, place filter into catch basin and mark where the center of the support should be. Support brackets should be evenly positioned for filter support. Adjust the corner brackets up and down to the correct height placement of the filter, this should be about 12" below the bottom of the grate.
- 3) Using anchor bolts, attach corner brackets to inside walls of catch basin. Make sure anchor bolts are as flush as possible to inside wall.
- 4) Install catch basin filter into catch basin and replace grate.



Side View





Revel Environmental Manufacturing Inc.

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(888) 526-4736

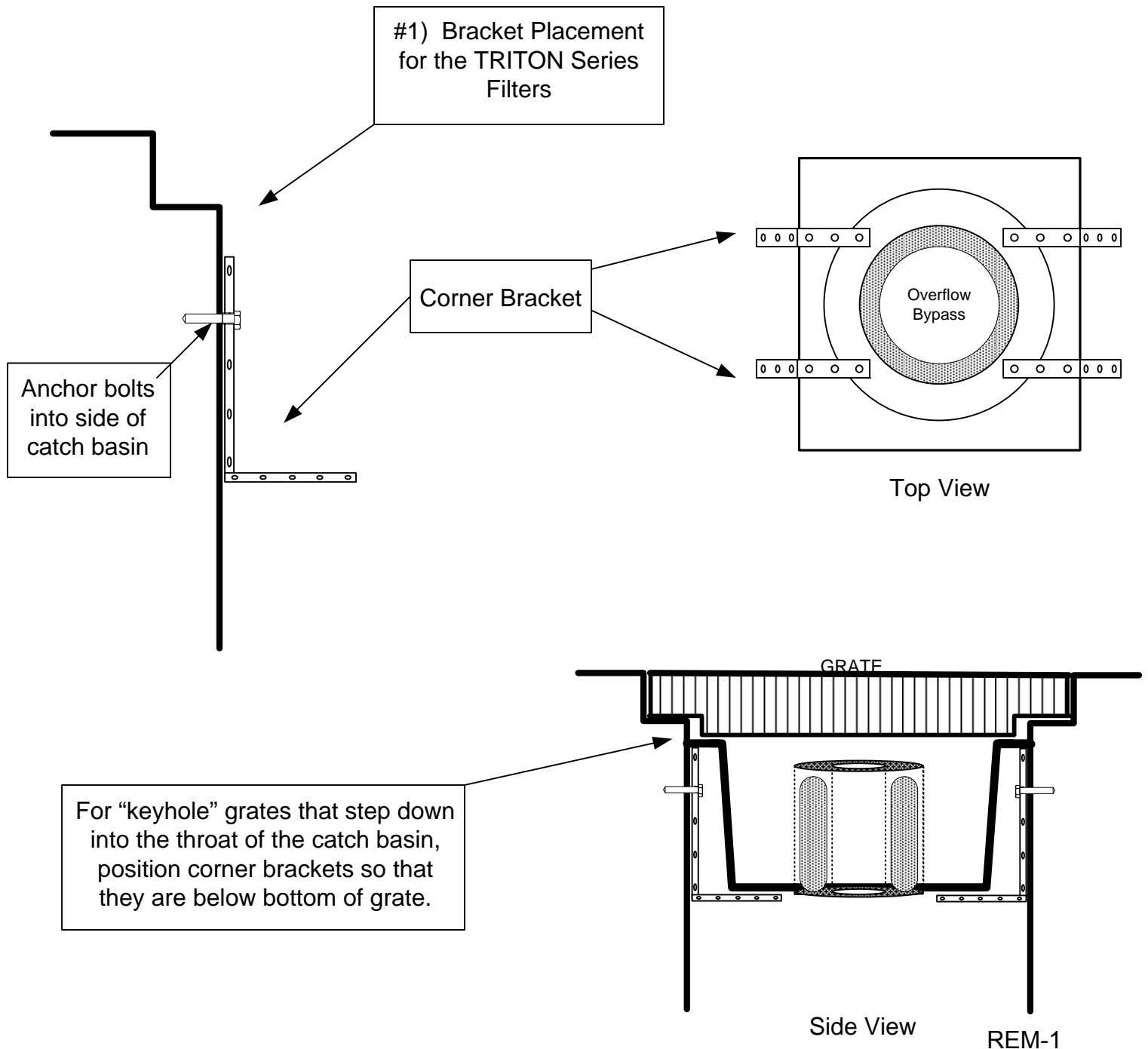
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TRITON Series Catch Basins

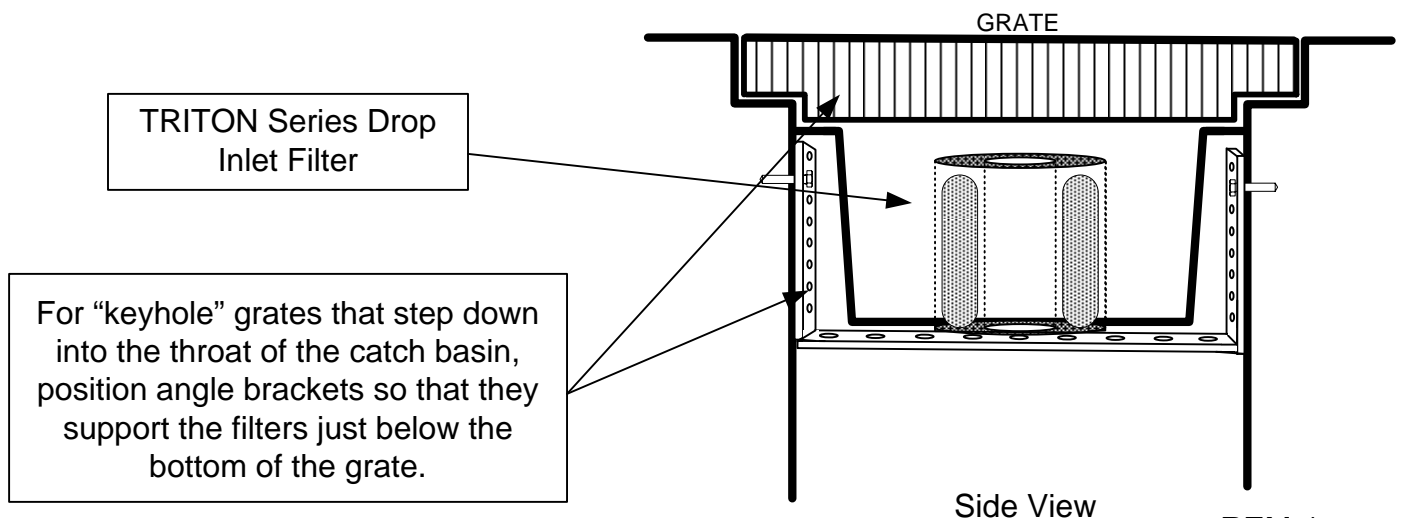
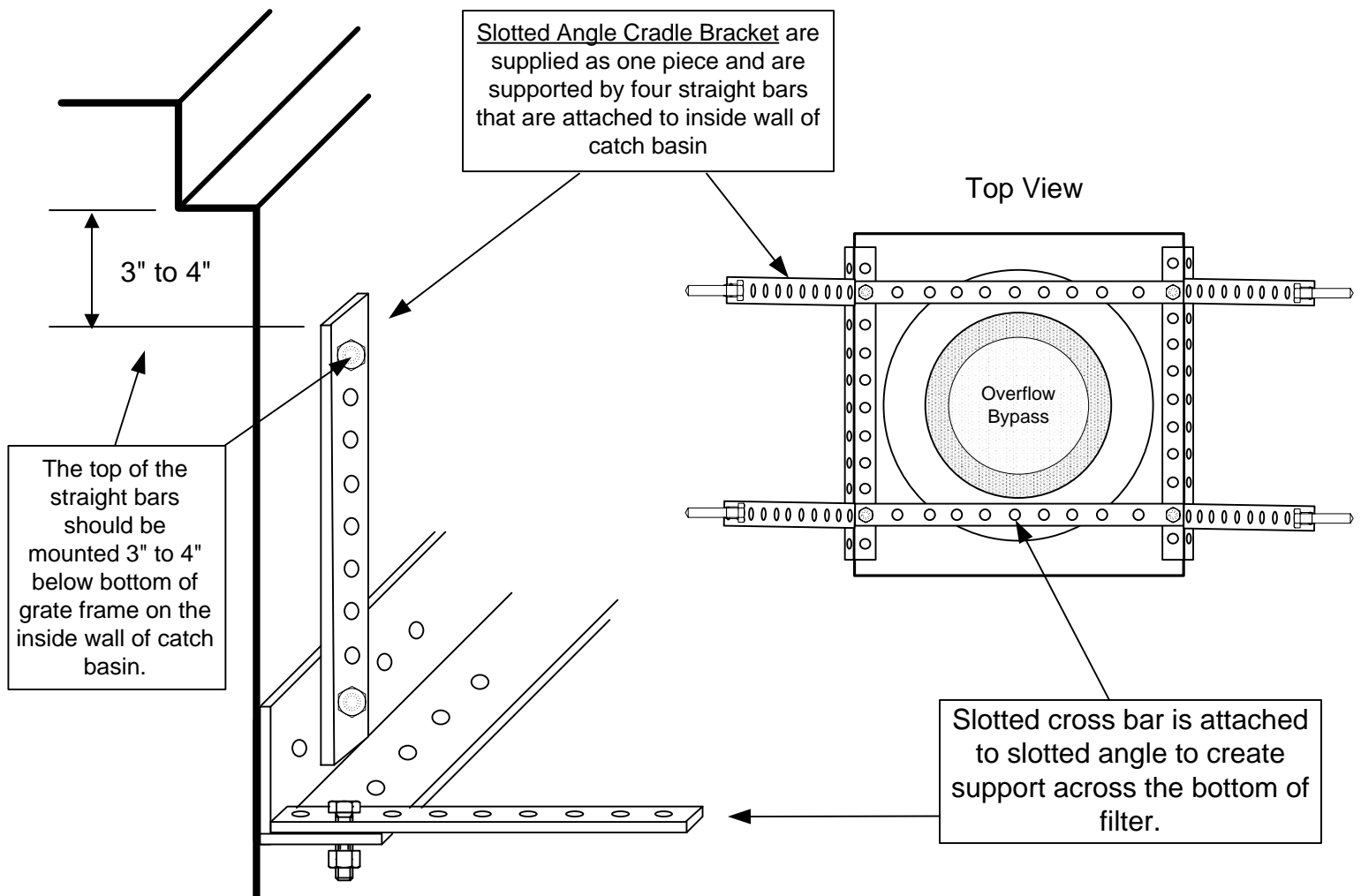
Direction for installing filters below the frame of the grate.





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TRITON Series Catch Basins**Direction for installing filters below the frame and grate.**

TOOLS REQUIRED:

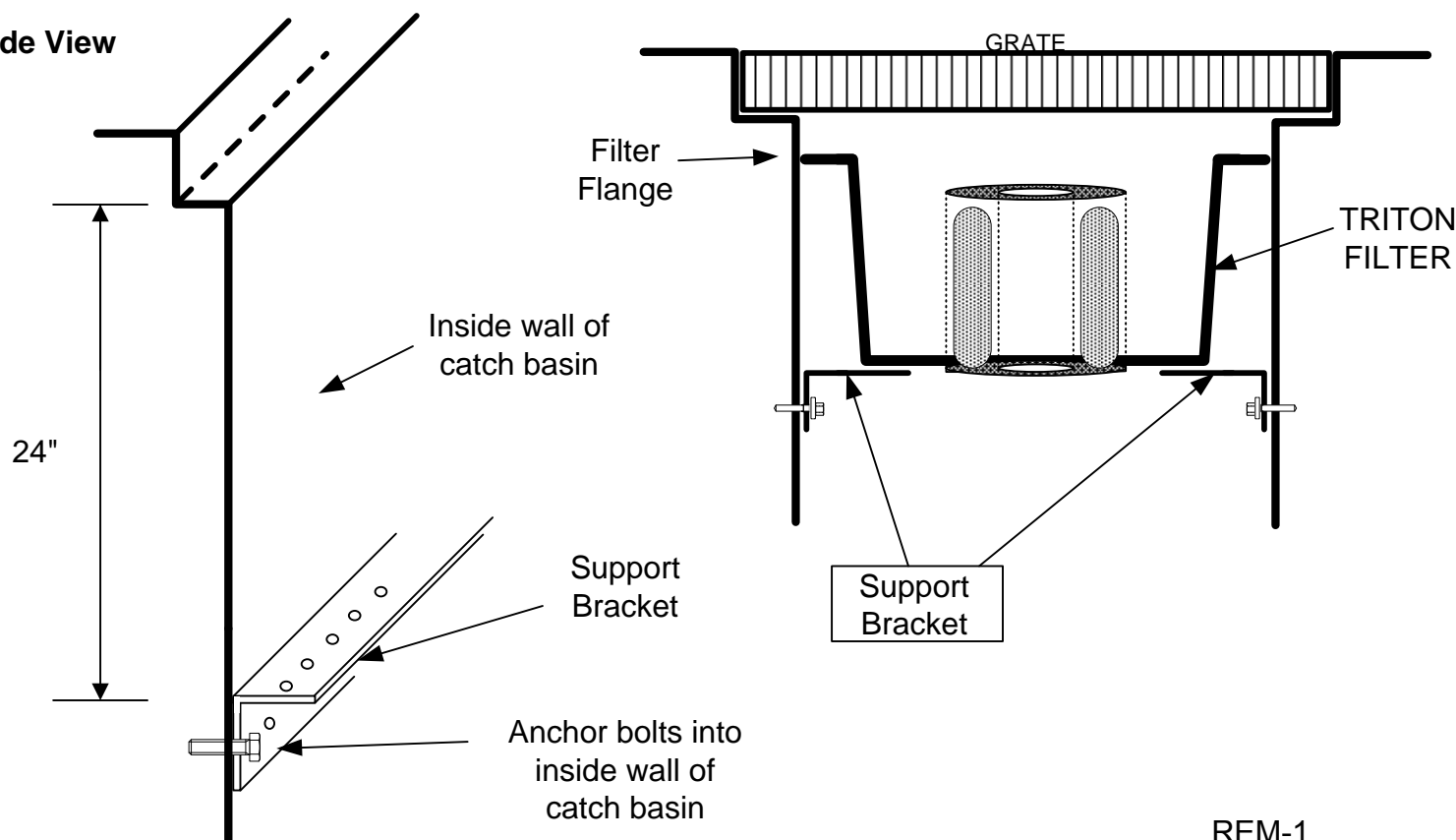
- 1) Hammer Drill, with 1/4" masonry drill bit.
- 2) Hammer.
- 3) Measuring Tape.
- 4) 1/4" X 2.25" Concrete Anchors. i.e. (Red Head)

Installation Instructions for the TRITON Series TR36SR and TR4848 Catch Basins (Filter supported from bottom of filter)

Direction for installing filters below the frame and grate.

- 1) Filter flanges may need to be trimmed down to be able to fit into the throat of the catch basin. For example if the ID or inside throat of the catch basin is 48" X 48", you will want to trim the flanges down to 47.25" X 47.25". You will then attach the bulb gasket to the support flange. This bulb gasket will help seal the extra gap between the flange and the inside wall of the catch basin. The gasket is designed to give the filter a snug fit when installed. You may or may not need gasket on all sides of the filter.
- 2) The support brackets should be placed 24" below the bottom of the grate. Support on all four sides is suggested for the best filter support, although some installation may only allow the support brackets to be installed on only two sides (opposite one another) this is also acceptable as long as the support flange is able to hold at least 2" of the filter body.
- 3) Attach support brackets (Slotted Angle) to all four sides using anchor bolts every 2' to 3' or where needed.
- 4) Install catch basin filter into catch basin and replace grate.

Side View





Appendix V, p. 2271

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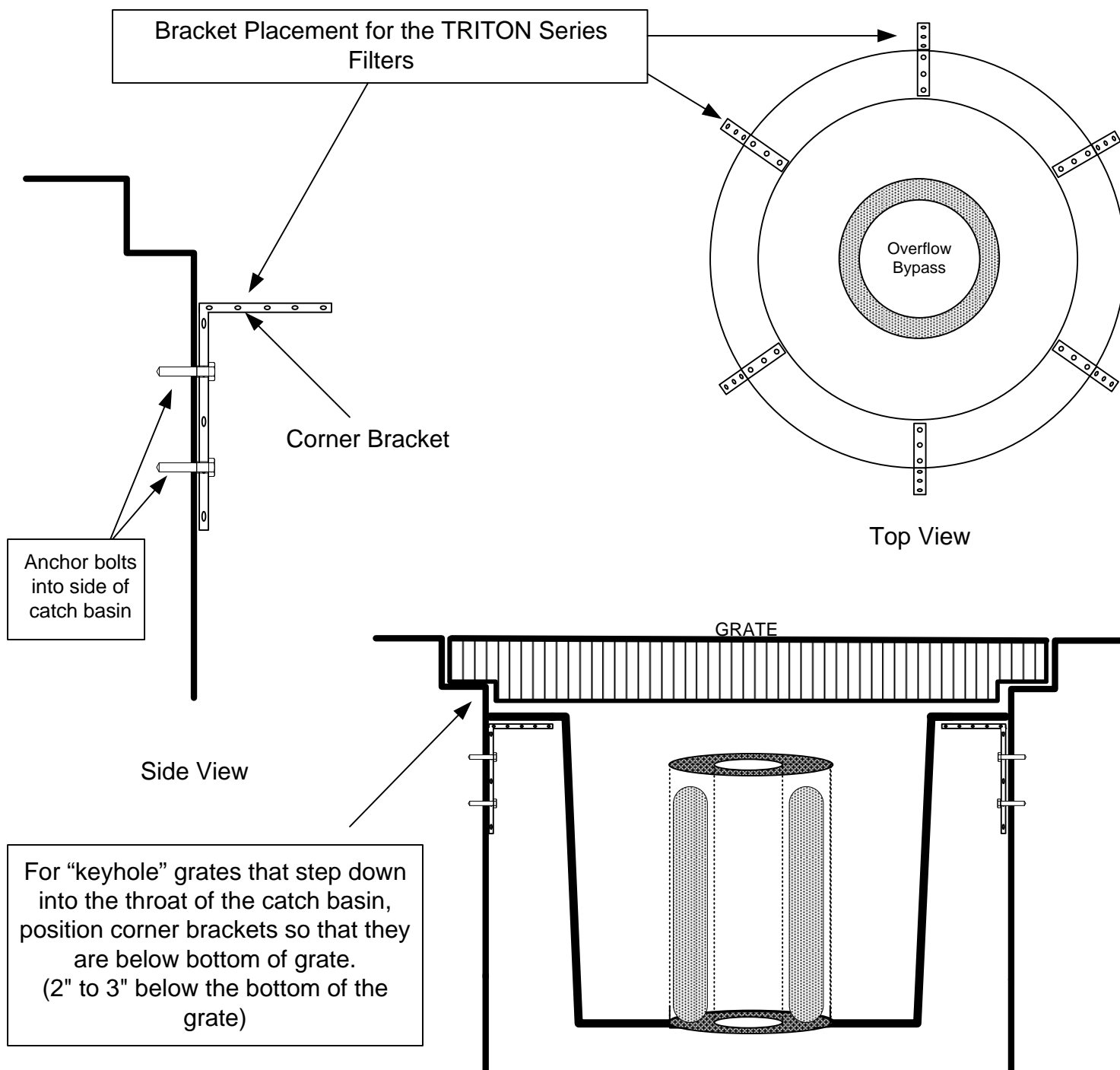
Southern California
2110 South Grand Avenue
Santa Ana, California 92705
P: (714) 557-2676
F: (714) 557-2679

TOOLS REQUIRED:

- 1) Hammer Drill, with 1/4" masonry drill bit.
- 2) Hammer.
- 3) Measuring Tape.
- 4) 1/4" X 2.25" Concrete Anchors. i.e. (Red Head)

TRITON Series Catch Basins

(Direction for installing Model TR36RD TR42RD TR48RD filters below the frame of the grate)



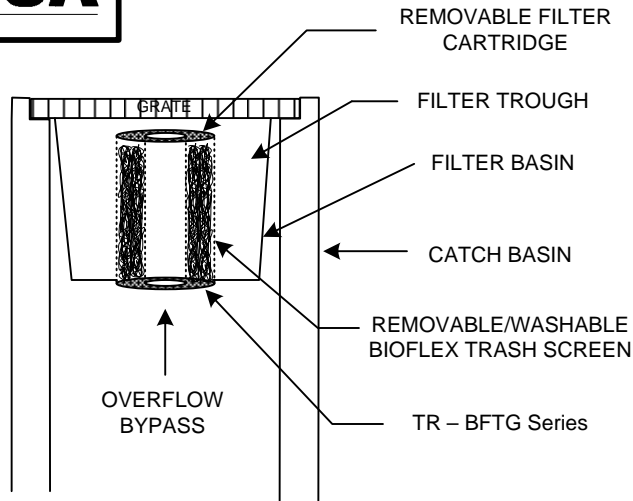
REM-1

**MADE IN
USA**

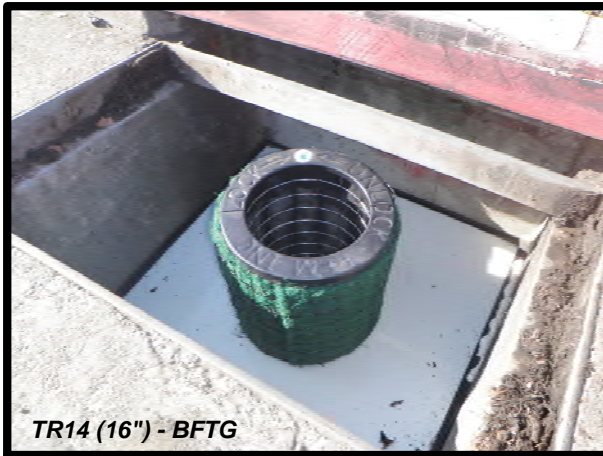
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TRITON BIOFLEX TRASH GUARDS by REM Inc.

TRITON Bioflex Trash Guards have been designed to be used universally in the many different and unique types of catch basins. They are designed to take advantage of each catch basin's dimensions and size, maximizing for the best flow and trash capture area possible.



SIDE VIEW



Notes:

- TRITON Bioflex Trash Guards Series are designed to be used universally in all different types of catch basins available today.
- Inserts are constructed using Non-reactive High Density Polyethylene Plastic (HDPE) with U.V. inhibitors added.
- The Bioflex Trash Guards are designed for high flows and the removal of trash both large and small. These filters will capture 100% of particles that are 5mm or greater in size. Optional Hydrocarbon (oil, grease, animal fats, etc.) removal is also available as an additional option for these filters.
- Filter media cartridges are easily removed from units for easy maintenance. A simple 1/6 turn will unlock cartridge from it's housing.
- Filter design requires storm events to be filtered through the Bioflex Trash Guard. This prevents flows from bypassing system, which filters out trash and other pollutants.
- The exterior cage of the cartridges shall be made of stainless steel Type 304, having 12 gauge welded 1.75" X 2" square openings.
- The use of REM BioFlex Trash Guards as pre-screens and as the main filter media are available to fit all sizes of REM Products. Custom sizes are also available to fit most applications.
- Bioflex screens are constructed using Polyester Fiber Mesh (Netting), a blend of coir fibers (fiber), and water based latex (as the binding agent).
- BioFlex shall be biodegradable and may often be washed and re-used.
- UV Resistance (ASTM D 4355 – 500 hour exposure)
- Tensile Properties (ASTM D 5035/ECTC).
- Sediment Control (ASTM D 5141).
- Made in the USA.
- Please refer to manufacture's recommendations for an approved maintenance program.

Revel Environmental Manufacturing, Inc. (REM Inc.)

BIOFLEX TRASH GUARD WITH REM FILTER CARTRIDGES (FLOW CHART)

Model:	Inside Dia.	Cartridge Heights			
		8" Height	16" Height	32" Height	34" Height
Drop Inlets					
TR6.5 - BFTG	3.5"	.65 (6"Height)	N/A	N/A	N/A
TR10 - BFTG	6.5"	1.6	3.2	6.4	N/A
TR14 - BFTG	10.5"	2.59	5.18	10.36	N/A
TR24 - BFTG	19.75"	N/A	10.75	N/A	21.5

BIOFLEX TRASH GUARD WITH REM FILTER CARTRIDGES (VOL. CAPACITY CHART)

Drop Inlets	Inside Dia.	8" Height	16" Height	32" Height	34" Height
TR6.5 - BFTG	3.5"	6.32	12.64	N/A	N/A
TR10 - BFTG	6.5"	5.9	11.8	23.8	N/A
TR14 - BFTG	10.5"	5.68	11.2	22.4	N/A
TR24 - BFTG	19.75"	N/A	12	N/A	24

Flow capacity based on CFS (Cubic Feet per Second).

Volume Capture Capacity based on CF (Cubic Feet).

Performance: Bioflex will capture 100% of particles 5 mm or greater in size.

Volume capacity is based on a 3' X 3' catch basin. Vol. will increase or decrease depending upon size of catch basin.

REM will use the cartridge system that maximizes each catch basins trash capture volume and flow rate.

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U.S. Patent Number: 6,217,757 B1

PH: (888) 526-4736

DIMENSIONS ARE IN INCHES UNLESS OTHERWISE NOTED.

REM Inc.

TRITON BIOFLEX TRASH GUARD (Multiple Applications for REM Filters)

SIZE	DRAWN BY:	FOR:	REV
SCA	C.F.	Trash-filtering and polishing	
1/4 : 1	DATE: 3/22/2009	SH	REM-1 OF 1



TRITON BIOFLEX Trash Guards for Drop Inlet Filters





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[Appendix V, p. 230]

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**TRITON BIOFLEX
Trash Guards for
Drop Inlet Filters**



REM 1



[Appendix V, p. 231]

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TRITON BIOFLEX Trash Guards for Drop Inlet Filters



REM 1

EXHIBIT A-4

SAMPLE NOTICE OF ACCEPTANCE

**[Do NOT use this form. Use the electronic version downloadable from
<http://www.sfestuary.org/projects/detail2.php?projectID=42>]**

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

Date: _____

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

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

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

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

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

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

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

Name (print) _____ Phone _____

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

Name (print) _____ Phone _____

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

Comments/Instructions:

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

EXHIBIT B

STANDARD CONTRACT PROVISIONS

1. Conflict of Interest. No employee, officer, or agent of ABAG shall participate in the 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.

[Appendix V, p. 235]

- 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 refabrication, repair or replacement of the damaged or destroyed parts of the Project or its larger system. Contractor shall begin such refabrication, repair, or replacement as expeditiously as possible and shall pay out of such net proceeds all costs and expenses in connection with such refabrication, repair or replacement so that the same shall be completed and the larger system shall be free of all claims and liens.

EXHIBIT C

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

ARTICLE I: DEFINITIONS –

“Contractor” as used in Exhibits C, C-1, C-2, and C-3 is Revel Environmental Manufacturing, Inc.

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

ARTICLE II: REPRESENTATIONS AND WARRANTIES

2.1 General Contractor Commitments.

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

2.2 Completion of Project.

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

2.3 [not applicable]

2.4 [not applicable]

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

- (a) Litigation, circulation of a petition to challenge rates, consideration of bankruptcy, dissolution, or disincorporation, or any other thing that could negatively affect or jeopardize the Contractor’s revenues used for operations, maintenance, and repairs of the Project during its useful life.
- (b) Any substantial change in scope of the Project. The Contractor agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to ABAG and ABAG has given written approval for such change;
- (c) Cessation of all major fabrication work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
- (d) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Fabrication for a period of ninety (90) days or more beyond the estimated date of Completion of Fabrication previously provided to the State Water Resources Control Board, Division of Financial Assistance (Division);
- (e) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during fabrication of the Project, the Contractor agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Contractor agrees to implement appropriate actions as directed by the Division;
- (f) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during fabrication of the Project, the Contractor agrees to promptly notify the ABAG Contract Manager. This notification is in addition to the Contractor’s obligations under the federal Endangered Species Act;
- (g) Any monitoring, demonstration, or other implementation activities such that the State Water Resources Control Board (State Water Board) and/or Regional Water Quality Control Board (Regional Water Board) staff may observe and document such activities;
- (h) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state and federal representatives with at least ten (10) working days

notice; and,

- (i) Completion of Fabrication of the Project, and actual Project Completion.

2.6 Project Access.

The Contractor 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 fabrication and thereafter for the life of the Project. The Contractor acknowledges that the Project records and locations are public records.

2.7 Project Completion.

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

2.8 [not applicable]

2.9 Reports.

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

2.10 Federal Disadvantaged Business Enterprise (DBE).

If Contractor qualifies as a Federal Disadvantaged Business Enterprise, Contractor shall provide proof of DBE certification by a qualified agency (Exhibit C-4).

2.11 Records.

(a) Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles the Contractor 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) [not applicable]

(b) The Contractor shall be required to maintain books, records and other material relative to the Project in accordance with generally accepted accounting principles. The Contractor 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 Contractor 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 Contractor

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 Contractor and at the cost of the Contractor. The audit shall be in the form required by the Division.

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

2.13 [not applicable]

ARTICLE III: [not applicable]

ARTICLE IV: MISCELLANEOUS PROVISIONS

4.1 Timeliness.

TIME IS OF THE ESSENCE IN THIS AGREEMENT.

4.2 Amendment.

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

4.3 Assignability.

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

4.4 Bonding.

The Contractor shall not begin fabrication until it has furnished a performance bond in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to (a) any trash capture device, installed or not, costing less than \$20,000.00 or (b) any trash capture device for which no progress payments are made.

.

4.5 Compliance with Law, Regulations, etc.

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

- (1) [not applicable];
- (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 Contractor.

4.6 Conflict of Interest.

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

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

(a) In the event that any breach of any of the provisions of this Agreement by the Contractor shall result in the loss of tax exempt status for any state bonds, or if such breach shall result in an obligation on the part of the State or ABAG to reimburse the federal government by reason of any arbitrage profits, the Contractor shall immediately reimburse the State through ABAG in an amount equal to any damages paid by or loss incurred by the State due to such breach.

(b) In the event that any breach of any of the provisions of this Agreement by the Contractor shall result in the failure of

Project Funds to be used pursuant to the provisions of ARRA, or if such breach shall result in an obligation on the part of the State Water Board or ABAG to reimburse the federal government, the Contractor shall immediately 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 Deputy Director of the Division or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Contractor and to the State Water Resources Control Board's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Contractor, the Contractor mails or otherwise furnishes a written appeal of the decision to the State Water Board's Executive Director. The decision of the State Water Board's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement.
- (b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
- (c) The Contractor shall continue with the responsibilities under this Agreement during any dispute.

4.9 Governing Law.

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

4.10 Income Restrictions.

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

4.11 Independent Actor.

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

4.12 Non-Discrimination Clause.

- (a) During the performance of this Agreement, Contractor and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
- (b) The Contractor, its contractors, and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (c) The Contractor, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- (d) The Contractor, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- (e) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

4.13 No Third Party Rights.

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

4.14 [not applicable]

4.15 Permits, Subcontracting, Remedies and Debarment.

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

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

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

4.16 Prevailing Wages.

The Contractor agrees to be bound by the provisions of the Davis-Bacon Act, as identified in Exhibit C-4. To the extent non-ARRA Project Funds are made available under this Agreement, the Contractor agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages.

4.17 Contractor's Responsibility for Work.

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

4.18 Related Litigation.

Under no circumstances may a Contractor use funds from any disbursement under this Agreement to pay costs associated with any litigation the Contractor 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 Contractor 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 Contractor agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State and ABAG shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the State and ABAG reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and

use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Contractor upon request. (40 CFR §§ 31.34, 31.36)

4.20 State, ABAG and Participating Entity Reviews and Indemnification.

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

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

The Contractor agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to ABAG, the participating entity, or the State Water Board as a result of breach of this Agreement by the Contractor, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by ABAG, the participating entity, or the State Water Board shall not preclude ABAG, the participating entity, or the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own filing costs and attorney fees.

4.22 Termination; Immediate Repayment; Interest.

(a) This Agreement will automatically terminate without written notice if the Contractor fails to meet the term of the Agreement specified in Exhibit A and the ARRA special conditions of Exhibit C-2. Under such circumstance, the Contractor 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 fabrication of the Project, or thereafter at any time prior to complete repayment by the Contractor, at the option of the State Water Board through ABAG, upon violation by the Contractor of any material provision of this Agreement after such violation has been called to the attention of the Contractor and after failure of the Contractor to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the Division. In the event of such termination, the Contractor 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 Contractor to the date of full repayment by the Contractor.

4.23 Unenforceable Provision.

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

4.24 Useful Life of the Project.

The useful life of the Project, commencing at Project Completion is at least 20 years or the term of this agreement, whichever is longer.

4.25 Venue.

[Appendix V, p. 242]

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

4.26 Waiver and Rights of the State Water Board.

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

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

EXHIBIT C-1

ENVIRONMENTAL, FINANCIAL, AND OTHER PROGRAM CONDITIONS

[THIS EXHIBIT INTENTIONALLY LEFT BLANK]

EXHIBIT C-2

FEDERAL ARRA SPECIAL CONDITIONS

1. ARRA Special Conditions.

- (a) ARRA Requirements. The Contractor understands and acknowledges that financing pursuant to this Agreement is provided according to the American Recovery and Reinvestment Act of 2009 (ARRA). The Contractor agrees to perform its obligations under this Agreement in compliance with the letter and the spirit of ARRA. The Contractor 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 Contractor will be due and payable immediately.
- (b) [not applicable]
- (c) Buy American. Unless the Contractor has obtained a waiver from USEPA on file with the State Water Board, the Contractor shall not use Project Funds to purchase iron, steel, and manufactured goods produced outside of the United States. Unless the Contractor has obtained a waiver from USEPA on file with the State Water Board, the Contractor hereby certifies that all iron, steel, and manufactured goods used in the Project were produced in the United States.
- (d) Waste, Fraud, & Abuse. The Contractor shall prevent fraud, waste, and the abuse of Project Funds.
- (e) Whistleblower Rights Notice. The Contractor 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 Contractor shall ensure that its contractors and subcontractors post such notices.
- (f) Reports. In addition to the reports specified in this Agreement, the Contractor may be asked for weekly reports related to the goals of ARRA, including jobs created or saved. The Contractor agrees to provide such reports in an expeditious fashion.
- (g) Land or Easement Acquisition. The Contractor shall not use Project Funds for the purchase of land, easements, or interests in land.
- (h) Davis Bacon. The Contractor 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 Contractor 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-3

DAVIS-BACON

The Contractor shall comply with the Davis-Bacon Act requirements listed in Exhibit H of the CWRSF Project Finance Agreement with ABAG for the Bay Area-Wide Trash Capture Demonstration Project, Agreement No. 09-823-550.

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

EXHIBIT C-4

FEDERAL DISADVANTAGED BUSINESS ENTERPRISE (DBE) CERTIFICATION

The undersigned certifies by his or her signature the following:

Revel Environmental Manufacturing, Inc. (Contractor) has been certified by:
_____ as a Disadvantaged Business Enterprise.

NAME OF FEDERAL AGENCY

Name of Contractor: _____
Federal EIN: _____
Address: _____
City: _____ State: _____ Zip: _____

Name of Certifying Agency: _____
Address: _____
City: _____ State: _____ Zip: _____
Contact person: _____

Signature Date

Print Name of Signer Position/Title

EXHIBIT A

SCOPE OF WORK

OVERVIEW

Contractor shall provide and install trash capture devices (TCDs) in Bay Area municipal separate storm sewer systems during the term of this agreement, May 1, 2010 through November 1, 2012. These devices will trap and remove trash that would otherwise wash downstream, impacting local creeks, San Francisco Bay, and the Pacific Ocean.

All trash capture devices installed as part of this project must meet the full trash capture definition: a device or series of devices capturing all particles larger than 5mm, and meeting a hydraulic design standard of not less than the peak flow rate resulting from a one-year, one-hour storm in the storm drainage catchment where the device is installed. In addition, devices must meet the following minimum operability standards: safely contain captured trash for removal during regular maintenance, and include overflow or bypass provision to avoid flooding.

Upon selection of a device described in Exhibit A-2 by a participating entity and approval of the selection by SFEP/ABAG, Contractor will fabricate, deliver and install the TCDs as described in Exhibit A-2 pursuant to a Purchase Order in the form attached as Exhibit A-3. Contractor shall work with Authorized Representative of the participating entity to size devices for specific storm drainage infrastructure and locations; or specify measurements staff of the participating entity must take in order to ensure successful installation.

Contractor shall provide the Authorized Representative of the participating entity the following items for each TCD model and size to be supplied under this contract:

- Specify the flow or range of flows the device can accept
- Specify materials, design life, availability of replacement parts, and warranty for each device
- Specify, in general terms, the length of time between receipt of device orders and installation
- Describe maintenance protocols and approximate maintenance intervals for the device
- Describe installation procedures, including duration, equipment required for installation, traffic control measures, etc.
- Technical manuals, if any, including, at minimum, the following: a table of contents, recommended adjustment, calibration and troubleshooting procedures, lubrication recommendation (if applicable), recommended preventative maintenance and maintenance procedures, complete parts list, recommended spare parts list and list of special tools required for operation and maintenance, and disassembly, overhaul, reassembly and realignment instructions

Contractor must hold throughout the term of this Contract a valid State of California Contractor's License of the type described in its proposal.

Exhibit A-1

LIST OF POTENTIAL PARTICIPATING ENTITIES

The list of the actual participants will be maintained at the following location:

<http://www.sfestuary.org/projects/detail2.php?projectID=42>

The list will be updated on an as needed basis.

Alameda County (Phase I)

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

Contra Costa County (Phase I)

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

Marin County (Phase II)

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

Napa County (Phase II)

American Canyon
Calistoga
Napa
St. Helena
Yountville

San Mateo County (Phase I)

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

Santa Clara County (Phase I)

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

Solano County

Benicia (Phase II)
Fairfield (Phase I)
Suisun City (Phase I)
Vallejo

Sonoma County (Phase II)

Petaluma
Sonoma

EXHIBIT A-4

SAMPLE NOTICE OF ACCEPTANCE

**[Do NOT use this form. Use the electronic version downloadable from
<http://www.sfestuary.org/projects/detail2.php?projectID=42>]**

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

Date: _____

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

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

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

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

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

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

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

Name (print) _____ Phone _____

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

Name (print) _____ Phone _____

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

Comments/Instructions:

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

EXHIBIT B

STANDARD CONTRACT PROVISIONS

1. Conflict of Interest. No employee, officer, or agent of ABAG shall participate in the 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.

[Appendix V, p. 252]

- 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 refabrication, repair or replacement of the damaged or destroyed parts of the Project or its larger system. Contractor shall begin such refabrication, repair, or replacement as expeditiously as possible and shall pay out of such net proceeds all costs and expenses in connection with such refabrication, repair or replacement so that the same shall be completed and the larger system shall be free of all claims and liens.

EXHIBIT C

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

ARTICLE I: DEFINITIONS –

“Contractor” as used in Exhibits C, C-1, C-2, and C-3 is Revel Environmental Manufacturing, Inc.

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

ARTICLE II: REPRESENTATIONS AND WARRANTIES

2.1 General Contractor Commitments.

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

2.2 Completion of Project.

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

2.3 [not applicable]

2.4 [not applicable]

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

- (a) Litigation, circulation of a petition to challenge rates, consideration of bankruptcy, dissolution, or disincorporation, or any other thing that could negatively affect or jeopardize the Contractor’s revenues used for operations, maintenance, and repairs of the Project during its useful life.
- (b) Any substantial change in scope of the Project. The Contractor agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to ABAG and ABAG has given written approval for such change;
- (c) Cessation of all major fabrication work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
- (d) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Fabrication for a period of ninety (90) days or more beyond the estimated date of Completion of Fabrication previously provided to the State Water Resources Control Board, Division of Financial Assistance (Division);
- (e) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during fabrication of the Project, the Contractor agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Contractor agrees to implement appropriate actions as directed by the Division;
- (f) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during fabrication of the Project, the Contractor agrees to promptly notify the ABAG Contract Manager. This notification is in addition to the Contractor’s obligations under the federal Endangered Species Act;
- (g) Any monitoring, demonstration, or other implementation activities such that the State Water Resources Control Board (State Water Board) and/or Regional Water Quality Control Board (Regional Water Board) staff may observe and document such activities;
- (h) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state and federal representatives with at least ten (10) working days

notice; and,

- (i) Completion of Fabrication of the Project, and actual Project Completion.

2.6 Project Access.

The Contractor 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 fabrication and thereafter for the life of the Project. The Contractor acknowledges that the Project records and locations are public records.

2.7 Project Completion.

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

2.8 [not applicable]

2.9 Reports.

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

2.10 Federal Disadvantaged Business Enterprise (DBE).

If Contractor qualifies as a Federal Disadvantaged Business Enterprise, Contractor shall provide proof of DBE certification by a qualified agency (Exhibit C-4).

2.11 Records.

(a) Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles the Contractor 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) [not applicable]

(b) The Contractor shall be required to maintain books, records and other material relative to the Project in accordance with generally accepted accounting principles. The Contractor 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 Contractor 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 Contractor

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 Contractor and at the cost of the Contractor. The audit shall be in the form required by the Division.

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

2.13 [not applicable]

ARTICLE III: [not applicable]

ARTICLE IV: MISCELLANEOUS PROVISIONS

4.1 Timeliness.

TIME IS OF THE ESSENCE IN THIS AGREEMENT.

4.2 Amendment.

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

4.3 Assignability.

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

4.4 Bonding.

The Contractor shall not begin fabrication until it has furnished a performance bond in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to (a) any trash capture device, installed or not, costing less than \$20,000.00 or (b) any trash capture device for which no progress payments are made.

.

4.5 Compliance with Law, Regulations, etc.

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

- (1) [not applicable];
- (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 Contractor.

4.6 Conflict of Interest.

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

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

(a) In the event that any breach of any of the provisions of this Agreement by the Contractor shall result in the loss of tax exempt status for any state bonds, or if such breach shall result in an obligation on the part of the State or ABAG to reimburse the federal government by reason of any arbitrage profits, the Contractor shall immediately reimburse the State through ABAG in an amount equal to any damages paid by or loss incurred by the State due to such breach.

(b) In the event that any breach of any of the provisions of this Agreement by the Contractor shall result in the failure of

Project Funds to be used pursuant to the provisions of ARRA, or if such breach shall result in an obligation on the part of the State Water Board or ABAG to reimburse the federal government, the Contractor shall immediately 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 Deputy Director of the Division or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Contractor and to the State Water Resources Control Board's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Contractor, the Contractor mails or otherwise furnishes a written appeal of the decision to the State Water Board's Executive Director. The decision of the State Water Board's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement.
- (b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
- (c) The Contractor shall continue with the responsibilities under this Agreement during any dispute.

4.9 Governing Law.

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

4.10 Income Restrictions.

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

4.11 Independent Actor.

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

4.12 Non-Discrimination Clause.

- (a) During the performance of this Agreement, Contractor and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
- (b) The Contractor, its contractors, and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (c) The Contractor, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- (d) The Contractor, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- (e) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

4.13 No Third Party Rights.

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

4.14 [not applicable]

4.15 Permits, Subcontracting, Remedies and Debarment.

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

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

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

4.16 Prevailing Wages.

The Contractor agrees to be bound by the provisions of the Davis-Bacon Act, as identified in Exhibit C-4. To the extent non-ARRA Project Funds are made available under this Agreement, the Contractor agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages.

4.17 Contractor's Responsibility for Work.

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

4.18 Related Litigation.

Under no circumstances may a Contractor use funds from any disbursement under this Agreement to pay costs associated with any litigation the Contractor 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 Contractor 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 Contractor agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State and ABAG shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the State and ABAG reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and

use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Contractor upon request. (40 CFR §§ 31.34, 31.36)

4.20 State, ABAG and Participating Entity Reviews and Indemnification.

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

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

The Contractor agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to ABAG, the participating entity, or the State Water Board as a result of breach of this Agreement by the Contractor, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by ABAG, the participating entity, or the State Water Board shall not preclude ABAG, the participating entity, or the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own filing costs and attorney fees.

4.22 Termination; Immediate Repayment; Interest.

(a) This Agreement will automatically terminate without written notice if the Contractor fails to meet the term of the Agreement specified in Exhibit A and the ARRA special conditions of Exhibit C-2. Under such circumstance, the Contractor 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 fabrication of the Project, or thereafter at any time prior to complete repayment by the Contractor, at the option of the State Water Board through ABAG, upon violation by the Contractor of any material provision of this Agreement after such violation has been called to the attention of the Contractor and after failure of the Contractor to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the Division. In the event of such termination, the Contractor 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 Contractor to the date of full repayment by the Contractor.

4.23 Unenforceable Provision.

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

4.24 Useful Life of the Project.

The useful life of the Project, commencing at Project Completion is at least 20 years or the term of this agreement, whichever is longer.

4.25 Venue.

[Appendix V, p. 259]

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

4.26 Waiver and Rights of the State Water Board.

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

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

EXHIBIT C-1

ENVIRONMENTAL, FINANCIAL, AND OTHER PROGRAM CONDITIONS

[THIS EXHIBIT INTENTIONALLY LEFT BLANK]

EXHIBIT C-2

FEDERAL ARRA SPECIAL CONDITIONS

1. ARRA Special Conditions.

- (a) ARRA Requirements. The Contractor understands and acknowledges that financing pursuant to this Agreement is provided according to the American Recovery and Reinvestment Act of 2009 (ARRA). The Contractor agrees to perform its obligations under this Agreement in compliance with the letter and the spirit of ARRA. The Contractor 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 Contractor will be due and payable immediately.
- (b) [not applicable]
- (c) Buy American. Unless the Contractor has obtained a waiver from USEPA on file with the State Water Board, the Contractor shall not use Project Funds to purchase iron, steel, and manufactured goods produced outside of the United States. Unless the Contractor has obtained a waiver from USEPA on file with the State Water Board, the Contractor hereby certifies that all iron, steel, and manufactured goods used in the Project were produced in the United States.
- (d) Waste, Fraud, & Abuse. The Contractor shall prevent fraud, waste, and the abuse of Project Funds.
- (e) Whistleblower Rights Notice. The Contractor 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 Contractor shall ensure that its contractors and subcontractors post such notices.
- (f) Reports. In addition to the reports specified in this Agreement, the Contractor may be asked for weekly reports related to the goals of ARRA, including jobs created or saved. The Contractor agrees to provide such reports in an expeditious fashion.
- (g) Land or Easement Acquisition. The Contractor shall not use Project Funds for the purchase of land, easements, or interests in land.
- (h) Davis Bacon. The Contractor 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 Contractor 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-3

DAVIS-BACON

The Contractor shall comply with the Davis-Bacon Act requirements listed in Exhibit H of the CWRSF Project Finance Agreement with ABAG for the Bay Area-Wide Trash Capture Demonstration Project, Agreement No. 09-823-550.

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

EXHIBIT C-4

FEDERAL DISADVANTAGED BUSINESS ENTERPRISE (DBE) CERTIFICATION

The undersigned certifies by his or her signature the following:

Revel Environmental Manufacturing, Inc. (Contractor) has been certified by:
_____ as a Disadvantaged Business Enterprise.

NAME OF FEDERAL AGENCY

Name of Contractor: _____

Federal EIN: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of Certifying Agency: _____

Address: _____

City: _____ State: _____ Zip: _____

Contact person: _____

Signature

Date

Print Name of Signer

Position/Title

ASSOCIATION OF BAY AREA GOVERNMENTS
First Amendment to
CONTRACT FOR TRASH CAPTURE DEVICES

This amends the contract made and entered into effective **May 1, 2010**, by and between the Association of Bay Area Governments (ABAG), a public entity formed under the California Joint Exercise of Powers Act, Government Code Section 6500, et seq. and **Revel Environmental Manufacturing, Inc.**, (Contractor).

1. Revised Prevailing Wage Provisions. ABAG and Contractor acknowledge that the provisions attached hereto and marked Attachment A was provided to Contractor as part of the Request for Proposals that resulted in the above-referenced contract. The U. S. Environmental Protection Agency (EPA) which is funding the purchase and installation of the Trash Capture Devices contemplated under the above-referenced contract (Project) requires that the language of Attachment A be included in the above-referenced contract but such language was inadvertently omitted. The parties further acknowledge that the failure to include such language will make the Project ineligible for EPA funding. The parties hereby (a) replace section 4.16 of Exhibit C of the above-referenced contract with Attachment A with the proviso that the term 'Recipient' in Attachment A refers to ABAG and (b) add Attachments B (Wage Determination) and C (Reporting Form).

IN WITNESS WHEREOF, the parties have executed this First Amendment to Contract for Trash Capture Devices on the dates set forth below.

Dated: _____

Contractor: Revel Environmental
Manufacturing, Inc.

Charles Fleischmann

Tax ID # 91-1778041

Dated: _____

Association of Bay Area Governments:

Ezra Rapport
Executive Director

Approved as to legal form and content:

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

Attachment A

4.16 Prevailing Wages/Davis-Bacon.

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

(1) Minimum wages.

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

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

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

- (ii)(A) The Recipient, on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and

which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA award official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

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

(3) Payrolls and basic records.

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

to each payroll copy received, the Recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Recipient for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Recipient.

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and Trainees

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

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

- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
 - (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- (5) Compliance with Copeland Act Requirements.

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

(6) Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by

appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract Termination: Debarment.

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

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

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

(9) Disputes Concerning Labor Standards.

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

(10) Certification of Eligibility.

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

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

(a) Contract Work Hours and Safety Standards Act.

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

(1) Overtime requirements.

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

(2) Violation; liability for unpaid wages; liquidated damages.

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

(3) Withholding for unpaid wages and liquidated damages.

The Recipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts.

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

- (b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in [29](#) CFR 5.1, the Recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the

work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS

CRAFT: #LABORER AND RELATED CLASSIFICATIONS

DETERMINATION: NC-23-102-1-009-2

ISSUE DATE: AUGUST 22, 2009

EXPIRATION DATE OF DETERMINATION: JUNE 30, 2010* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Division of Labor Statistics and Research at (415) 703-4774 after 10 days from the expiration date, if no subsequent determination is issued.

LOCALITY: ALL LOCALITIES WITHIN ALAMEDA, ALPINE, AMADOR, BUTTE, CALAVERAS, COLUSA, CONTRA COSTA, DEL NORTE, EL DORADO, FRESNO, GLENN, HUMBOLDT, KINGS, LAKE, LASSEN, MADERA, MARIPOSA, MARIN, MENDOCINO, MERCED, MODOC, MONTEREY, NAPA, NEVADA, PLACER, PLUMAS, SACRAMENTO, SAN BENITO, SAN FRANCISCO, SAN JOAQUIN, SAN MATEO, SANTA CLARA, SANTA CRUZ, SHASTA, SIERRA, SISKIYOU, SOLANO, SONOMA, STANISLAUS, SUTTER, TEHAMA, TRINITY, TULARE, TUOLUMNE, YOLO, AND YUBA COUNTIES

Classification ^a (Journey person)	Basic Hourly Rate ^b	Health and Welfare	Employer Payments				Straight-Time		Overtime Hourly Rate		
			Pension	Vacation and Holiday	Training	Other Payments	Hours ^f	Total Hourly Rate	Daily 1 1/2X	Saturday ^b 1 1/2X	Sunday/ Holiday 2X
AREA 1 ^c											
Construction Specialist	27.84	5.54	6.77	2.28	0.34	0.13	8	42.90	56.82	56.82	70.74
Group 1; Group 1(B) ^f	27.14	5.54	6.77	2.28	0.34	0.13	8	42.20	55.77	55.77	69.34
Group 1 (A)	27.36	5.54	6.77	2.28	0.34	0.13	8	42.42	56.10	56.10	69.78
Group 1 (C)	27.19	5.54	6.77	2.28	0.34	0.13	8	42.25	55.85	55.85	69.44
Group 1 (E)	27.69	5.54	6.77	2.28	0.34	0.13	8	42.75	56.60	56.60	70.44
Group 1 (F-1)	27.72	5.54	6.77	2.28	0.34	0.13	8	42.78	56.64	56.64	70.50
Group 1 (F-2)	26.74	5.54	6.77	2.28	0.34	0.13	8	41.80	55.17	55.17	68.54
Group 1 (G)	27.34	5.54	6.77	2.28	0.34	0.13	8	42.40	56.07	56.07	69.74
Group 2	26.99	5.54	6.77	2.28	0.34	0.13	8	42.05	55.55	55.55	69.04
Group 3; Group 3(A)	26.89	5.54	6.77	2.28	0.34	0.13	8	41.95	55.40	55.40	68.84
Group 4; Group 6(B)	20.58	5.54	6.77	2.28	0.34	0.13	8	35.64	45.93 ^d	45.93 ^d	56.22 ^d
Group 5 ^e	12.90	5.54	6.77	2.28	0.34	0.13	8	27.96	34.41	34.41	40.86
Group 6	28.10	5.54	6.77	2.28	0.34	0.13	8	43.16	57.21	57.21	71.26
Group 6 (A)	27.60	5.54	6.77	2.28	0.34	0.13	8	42.66	56.46	56.46	70.26
Group 6 (C)	27.01	5.54	6.77	2.28	0.34	0.13	8	42.07	55.58	55.58	69.08
Group 7 – Stage 1 (1 st 6 months)	18.82	5.54	6.77	2.28	0.34	0.13	8	33.88	43.29	43.29	52.70
Stage 2 (2 nd 6 months)	21.51	5.54	6.77	2.28	0.34	0.13	8	36.57	47.33	47.33	58.08
Stage 3 (3 rd 6 months)	24.20	5.54	6.77	2.28	0.34	0.13	8	39.26	51.36	51.36	63.46
AREA 2 ^c											
Construction Specialist	26.84	5.54	6.77	2.28	0.34	0.13	8	41.90	55.32	55.32	68.74
Group 1; Group 1(B) ^f	26.14	5.54	6.77	2.28	0.34	0.13	8	41.20	54.27	54.27	67.34
Group 1 (A)	26.36	5.54	6.77	2.28	0.34	0.13	8	41.42	54.60	54.60	67.78
Group 1 (C)	26.19	5.54	6.77	2.28	0.34	0.13	8	41.25	54.35	54.35	67.44
Group 1 (E)	26.69	5.54	6.77	2.28	0.34	0.13	8	41.75	55.10	55.10	68.44
Group 1 (F-1)	26.72	5.54	6.77	2.28	0.34	0.13	8	41.78	55.14	55.14	68.50
Group 1 (F-2)	25.74	5.54	6.77	2.28	0.34	0.13	8	40.80	53.67	53.67	66.54
Group 2	25.99	5.54	6.77	2.28	0.34	0.13	8	41.05	54.05	54.05	67.04
Group 3; Group 3(A)	25.89	5.54	6.77	2.28	0.34	0.13	8	40.95	53.90	53.90	66.84
Group 4; Group 6(B)	19.58	5.54	6.77	2.28	0.34	0.13	8	34.64	44.43 ^d	44.43 ^d	54.22 ^d
Group 5 ^e	12.90	5.54	6.77	2.28	0.34	0.13	8	27.96	34.41	34.41	40.86
Group 6	27.10	5.54	6.77	2.28	0.34	0.13	8	42.16	55.71	55.71	69.26
Group 6 (A)	26.60	5.54	6.77	2.28	0.34	0.13	8	41.66	54.96	54.96	68.26
Group 6 (C)	26.01	5.54	6.77	2.28	0.34	0.13	8	41.07	54.08	54.08	67.08
Group 7 – Stage 1 (1 st 6 months)	18.12	5.54	6.77	2.28	0.34	0.13	8	33.18	42.24	42.24	51.30
Stage 2 (2 nd 6 months)	20.71	5.54	6.77	2.28	0.34	0.13	8	35.77	46.13	46.13	56.48
Stage 3 (3 rd 6 months)	23.30	5.54	6.77	2.28	0.34	0.13	8	38.36	50.01	50.01	61.66

PLEASE GO TO PAGE 50 FOR CLASSIFICATIONS WITHIN EACH GROUP

INDICATES AN APPRENTICEABLE CRAFT. EFFECTIVE AS OF JULY 1, 2008, THE ISSUANCE AND PUBLICATION OF THE PREVAILING WAGE APPRENTICE SCHEDULES/APPRENTICE WAGE RATES HAVE BEEN REASSIGNED BY THE DEPARTMENT OF INDUSTRIAL RELATIONS FROM THE DIVISION OF LABOR STATISTICS AND RESEARCH TO THE DIVISION OF APPRENTICESHIP STANDARDS. TO OBTAIN ANY APPRENTICE SCHEDULES/APPRENTICE WAGE RATES, PLEASE CONTACT THE DIVISION OF APPRENTICESHIP STANDARDS OR REFER TO THE DIVISION OF APPRENTICESHIP STANDARDS' WEBSITE AT [HTTP://WWW.DIR.CA.GOV/DAS/DAS.HTML](http://www.dir.ca.gov/das/das.html).

- a. GROUP 1(D) - MAINTENANCE OR REPAIR TRACKMEN AND ROAD BEDS AND ALL EMPLOYEES PERFORMING WORK COVERED BY THIS CLASSIFICATION SHALL RECEIVE \$0.25 PER HOUR ABOVE THEIR REGULAR RATE FOR ALL WORK PERFORMED ON UNDERGROUND STRUCTURES NOT SPECIFICALLY COVERED HEREIN. THIS SHALL NOT APPLY TO WORK BELOW GROUND LEVEL IN OPEN CUT. THIS SHALL APPLY TO CUT AND COVER WORK OF SUBWAY CONSTRUCTION AFTER TEMPORARY COVER HAS BEEN PLACED.
- GROUP 1(H) - ALL LABORERS WORKING OFF OR WITH OR FROM BOS'N CHAIRS, SWINGING SCAFFOLDS, BELTS RECEIVE \$0.25 PER HOUR ABOVE THEIR APPLICABLE WAGE RATE. THIS SHALL NOT APPLY TO LABORERS ENTITLED TO RECEIVE THE WAGE RATE SET FORTH IN GROUP 1(A).
- b. SATURDAYS IN THE SAME WORK WEEK MAY BE WORKED AT STRAIGHT-TIME IF JOB IS SHUT DOWN DURING THE NORMAL WORK WEEK DUE TO INCLEMENT WEATHER, MAJOR MECHANICAL BREAKDOWN OR LACK OF MATERIALS BEYOND THE CONTROL OF THE EMPLOYER.
- c. **AREA 1** - ALAMEDA, CONTRA COSTA, MARIN, SAN FRANCISCO, SAN MATEO, AND SANTA CLARA COUNTIES
AREA 2 - ALPINE, AMADOR, BUTTE, CALAVERAS, COLUSA, DEL NORTE, EL DORADO, FRESNO, GLENN, HUMBOLDT, KINGS, LAKE, LASSEN, MADERA, MARIPOSA, MENDOCINO, MERCED, MODOC, MONTEREY, NAPA, NEVADA, PLACER, PLUMAS, SACRAMENTO, SAN BENITO, SAN JOAQUIN, SANTA CRUZ, SHASTA, SIERRA, SISKIYOU, SOLANO, SONOMA, STANISLAUS, SUTTER, TEHAMA, TRINITY, TULARE, TUOLUMNE, YOLO AND YUBA COUNTIES
- d. SERVICE LANDSCAPE LABORER ON NEW CONSTRUCTION MAY WORK ANY FIVE (5) DAYS WITHIN A WEEK.
- e. AN INDIVIDUAL EMPLOYER MAY EMPLOY TWO ENTRY LEVEL LABORERS FOR EVERY FOUR (4) REGULAR LABORERS ON EACH JOB OR PROJECT. ENTRY LEVEL LABORERS RECEIVE NO PREDETERMINED INCREASES. THIS RATIO OF ENTRY LEVEL LABORERS TO REGULAR LABORERS APPLIES ONLY TO WORK ON THE SAME JOB SITE.
- f. GROUP 1(B) RECEIVES AN ADDITIONAL AMOUNT EACH DAY. SEE PAGE 50 FOR DETAILS.
- g. WHEN THREE SHIFTS ARE EMPLOYED FOR FIVE (5) OR MORE CONSECUTIVE DAYS, SEVEN AND ONE-HALF (7 ½) CONSECUTIVE HOURS (EXCLUSIVE OF MEAL PERIOD), SHALL CONSTITUTE A DAY OF WORK, FOR WHICH EIGHT (8) TIMES THE STRAIGHT TIME HOURLY RATE SHALL BE PAID AT THE NON-SHIFT WAGE RATE FOR THE SECOND SHIFT. THE THIRD SHIFT SHALL BE SEVEN (7) HOURS OF WORK FOR EIGHT (8) HOURS PAY AT THE NON-SHIFT WAGE RATE.
- h. ZONE PAY AT THREE DOLLARS (\$3.00) PER HOUR, FACTORED AT THE APPLICABLE OVERTIME MULTIPLE, WILL BE ADDED TO THE BASE RATE FOR WORK PERFORMED OUTSIDE THE FREE ZONE DESCRIBED BY THE BOUNDARIES ALONG TOWNSHIP AND RANGE LINES. PLEASE SEE TRAVEL AND SUBSISTENCE PROVISION FOR MAP DESCRIPTION AND EXCEPTIONS.

RECOGNIZED HOLIDAYS: HOLIDAYS UPON WHICH THE GENERAL PREVAILING HOURLY WAGE RATE FOR HOLIDAY WORK SHALL BE PAID, SHALL BE ALL HOLIDAYS IN THE COLLECTIVE BARGAINING AGREEMENT, APPLICABLE TO THE PARTICULAR CRAFT, CLASSIFICATION, OR TYPE OF WORKER EMPLOYED ON THE PROJECT, WHICH IS ON FILE WITH THE DIRECTOR OF INDUSTRIAL RELATIONS. IF THE PREVAILING RATE IS NOT BASED ON A COLLECTIVELY BARGAINED RATE, THE HOLIDAYS UPON WHICH THE PREVAILING RATE SHALL BE PAID SHALL BE AS PROVIDED IN SECTION 6700 OF THE GOVERNMENT CODE. YOU MAY OBTAIN THE HOLIDAY PROVISIONS FOR THE CURRENT DETERMINATIONS ON THE INTERNET AT [HTTP://WWW.DIR.CA.GOV/DLSR/PWD](http://www.dir.ca.gov/DLSR/PWD). HOLIDAY PROVISIONS FOR CURRENT OR SUPERSEDED DETERMINATIONS MAY BE OBTAINED BY CONTACTING THE PREVAILING WAGE UNIT AT (415) 703-4774.

TRAVEL AND/OR SUBSISTENCE PAYMENT: IN ACCORDANCE WITH LABOR CODE SECTIONS 1773.1 AND 1773.9, CONTRACTORS SHALL MAKE TRAVEL AND/OR SUBSISTENCE PAYMENTS TO EACH WORKER TO EXECUTE THE WORK. YOU MAY OBTAIN THE TRAVEL AND/OR SUBSISTENCE REQUIREMENTS FOR THE CURRENT DETERMINATION ON THE INTERNET AT [HTTP://WWW.DIR.CA.GOV/DLSR/PWD](http://www.dir.ca.gov/DLSR/PWD).

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CONSTRUCTION SPECIALIST

ASPHALT IRONERS AND RAKERS
CHAINS
LASER BEAM IN CONNECTION WITH LABORER'S WORK
MASONRY AND PLASTER TENDER
CAST IN PLACE MANHOLE FORM SETTERS
PRESSURE PIPELAYERS
DAVIS TRENCHER – 300 OR SIMILAR TYPE (AND ALL SMALL TRENCHERS)
STATE LICENSED BLASTERS AS DESIGNATED
DIAMOND DRILLERS
MULTIPLE UNIT DRILLS
HYDRAULIC DRILLS
CERTIFIED WELDER

GROUP 1 (FOR CONTRA COSTA COUNTY ONLY, USE GROUP 1 (G) FOR SOME OF THE FOLLOWING CLASSIFICATIONS)

ASPHALT SPREADER BOXES (ALL TYPES)
BARKO, WACKER AND SIMILAR TYPE TAMPERS
BUGGYMOBILE
CAULKERS, BANDERS, PIPEWRAPPERS, CONDUIT LAYERS, PLASTIC PIPE LAYERS
CERTIFIED ASBESTOS AND MOLD REMOVAL WORKER
CERTIFIED HAZARDOUS WASTE WORKER (INCLUDING LEAD ABATEMENT)
COMPACTORS OF ALL TYPES
CONCRETE AND MAGNESITE MIXER AND ½ YARD
CONCRETE PAN WORK
CONCRETE SANDERS, CONCRETE SAW
CRIBBERS AND/OR SHORING
CUT GRANITE CURB SETTER
DRI PAK-IT MACHINE
FALLER, LOGLOADER AND BUCKER
FORM RAISERS, SLIP FORMS
GREEN CUTTERS
HEADERBOARD MEN, HUBSETTERS, ALIGNERS BY ANY METHOD
HIGH PRESSURE BLOW PIPE (1-1/2" OR OVER, 100 LBS PRESSURE/OVER)
HYDRO SEEDER AND SIMILAR TYPE
JACKHAMMER OPERATORS
JACKING OF PIPE OVER 12 INCHES
JACKSON AND SIMILAR TYPE COMPACTORS
KETTLEMEN, POTMEN, AND MEN APPLYING ASPHALT, LAY-KOLD, CREOSOTE, LIME, CAUSTIC AND SIMILAR TYPE MATERIALS (APPLYING MEANS APPLYING DIPPING, OR HANDLING OF SUCH MATERIALS)
LAGGING, SHEETING, WHALING, BRACING, TRENCH-JACKING, LAGGING HAMMER
MAGNESITE, EPOXY RESIN, FIBER GLASS AND MASTIC WORKERS (WET/DRY)
NO JOINT PIPE AND STRIPPING OF SAME, INCLUDING REPAIR OF VOIDS
PAVEMENT BREAKERS AND SPADERS, INCLUDING TOOL GRINDER
PERMA CURBS
PRECAST-MANHOLE SETTERS
PIPELAYERS (INCLUDING GRADE CHECKING IN CONNECTION WITH PIPELAYING)
PRESSURE PIPE TESTER
POST HOLE DIGGERS-AIR, GAS, AND ELECTRIC POWER BROOM SWEEPERS
POWER TAMPERS OF ALL TYPES, EXCEPT AS SHOWN IN GROUP 2
RAM SET GUN AND STUD GUN
RIPRAP-STONEPAVER AND ROCK-SLINGER, INCLUDING PLACING OF SACKED CONCRETE AND/OR SAND (WET OR DRY) AND GABIONS AND SIMILAR TYPE
ROTARY SCARIFIER OR MULTIPLE HEAD CONCRETE CHIPPING SCARIFIER
ROTO AND DITCH WITCH
ROTOTILLER
SAND BLASTERS, POTMEN, GUNMEN, AND NOZZLEMEN
SIGNALING AND RIGGING
SKILLED WRECKER (REMOVING AND SALVAGING OF SASH, WINDOWS, DOORS, PLUMBING AND ELECTRIC FIXTURES)
TANK CLEANERS
TREE CLIMBERS
TRENCHLESS TECHNOLOGY LABORER- PIPE INSTALLATION, BURSTING, RELINING, OR SIMILAR
TRENCHLESS LABORER'S WORK, CAMERA CONTROLLER
TURBO BLASTER
VIBRA-SCREED-BULL FLOAT IN CONNECTION WITH LABORER'S WORK
VIBRATORS

GROUP 1 (A)

ALL WORK OF LOADING, PLACING AND BLASTING OF ALL POWDER & EXPLOSIVES OF WHATEVER TYPE, REGARDLESS OF METHOD USED FOR LOADING AND PLACING
JOY DRILL MODEL TWM-2A
GARDENER-DENVER MODEL DH 143 AND SIMILAR TYPE DRILLS
TRACK DRILLERS
JACK LEG DRILLERS
WAGON DRILLERS
MECHANICAL DRILLERS-ALL TYPES REGARDLESS OF TYPE OR METHOD OF POWER
MECHANICAL PIPE LAYER-ALL TYPES REGARDLESS OF TYPE OR METHOD OF POWER
BLASTERS AND POWDERMAN
HIGH SCALERS (INCLUDING DRILLING OF SAME)
TREE TOPPER
BIT GRINDER

GROUP 1 (B) -- SEE GROUP 1 RATES

SEWER CLEANERS (ANY WORKMEN WHO HANDLE OR COME IN CONTACT WITH RAW SEWAGE IN SMALL DIAMETER SEWERS) SHALL RECEIVE \$4 00 PER DAY ABOVE GROUP 1 WAGE RATES THOSE WHO WORK INSIDE RECENTLY ACTIVE, LARGE DIAMETER SEWERS, AND ALL RECENTLY ACTIVE SEWER MANHOLES SHALL RECEIVE \$5 00 PER DAY ABOVE GROUP 1 WAGE RATES

GROUP 1 (C)

BURNING AND WELDING IN CONNECTION WITH LABORER'S WORK
SYNTHETIC THERMOPLASTICS AND SIMILAR TYPE WELDING

GROUP 1 (D)

SEE FOOTNOTE A ON PAGE 49

GROUP 1 (E)

WORK ON AND/OR IN BELL HOLE FOOTINGS AND SHAFTS THEREOF, AND WORK ON AND IN DEEP FOOTINGS (DEEP FOOTINGS IS A HOLE 15 FEET OR MORE IN DEPTH)
SHAFT IS AN EXCAVATION OVER FIFTEEN (15) FEET DEEP OF ANY TYPE

GROUP 1 (F-1)

ALIGNER OF WIRE WINDING MACHINE IN CONNECTION WITH GUNTING OR SHOT CRETE

GROUP 1 (F-2)

ALIGNER HELPER OF WIRE WINDING MACHINE IN CONNECTION WITH GUNTING OR SHOT CRETE

GROUP 1 (G) APPLIES ONLY TO WORK IN CONTRA COSTA COUNTY

PIPELAYERS (INCLUDING GRADE CHECKING IN CONNECTION WITH PIPELAYING), CAULKERS, BANDERS, PIPEWRAPPERS, CONDUIT LAYERS, PLASTIC PIPE LAYER, PRESSURE PIPE TESTER, NO JOINT PIPE AND STRIPPING OF SAME, INCLUDING REPAIR OF VOIDS, PRECAST MANHOLE SETTERS, CAST IN PLACE MANHOLE FORM SETTERS IN CONTRA COSTA COUNTY ONLY

GROUP 1 (H)

SEE FOOTNOTE A ON PAGE 49

GROUP 2

ASPHALT SHOVELERS
CEMENT DUMPERS AND HANDLING DRY CEMENT OR GYPSUM
CHOKE-SETTER AND RIGGER (CLEARING WORK)
CONCRETE BUCKET DUMPER AND CHUTEMAN
CONCRETE CHIPPING AND GRINDING
CONCRETE LABORERS (WET OR DRY)
DRILLERS HELPER, CHUCK TENDER, NIPPER (ONE CHUCKTENDER ON SINGLE MACHINE OPERATION WITH MINIMUM OF ONE CHUCKTENDER FOR EACH TWO MACHINES ON MULTIPLE MACHINE OPERATION JACKHAMMERS IN NO WAY INVOLVED IN THIS ITEM)
GUINEA CHASER (STAKEMAN), GROUT CREW
HIGH PRESSURE NOZZLEMAN, ADDUCTORS
HYDRAULIC MONITOR (OVER 100 LBS PRESSURE)
LOADING AND UNLOADING, CARRYING AND HANDLING OF ALL RODS AND MATERIALS FOR USE IN REINFORCING CONCRETE CONSTRUCTION
PITTSBURGH CHIPPER, AND SIMILAR TYPE BRUSH SHREDDERS
SEMI-SKILLED WRECKER (SALVAGING OF OTHER BUILDING MATERIALS) -- SEE ALSO SKILLED WRECKER (GROUP 1)
SLOPER
SINGLEFOOT, HAND HELD, PNEUMATIC TAMPER
ALL PNEUMATIC, AIR, GAS AND ELECTRIC TOOLS NOT LISTED IN GROUPS 1 THROUGH 1 (F)
JACKING OF PIPE-UNDER 12 INCHES

GROUP 3

CONSTRUCTION LABORERS INCLUDING BRIDGE LABORERS AND GENERAL LABORERS
DUMPMAN, LOAD SPOTTER
FLAGPERSON
FIRE WATCHER
FENCE ERECTORS
GUARDRAIL ERECTORS
GARDENER, HORTICULTURAL AND LANDSCAPE LABORERS (SEE GROUP 4, FOR LANDSCAPE MAINTENANCE ON NEW CONSTRUCTION DURING PLANT ESTABLISHMENT PERIOD)
JETTING
LIMBERS, BRUSH LOADERS, AND PILERS
PAVEMENT MARKERS (BUTTON SETTERS)
MAINTENANCE, REPAIR TRACKMEN AND ROAD BEDS
STREETCAR AND RAILROAD CONSTRUCTION TRACK LABORERS
TEMPORARY AIR AND WATER LINES, VICTAULIC OR SIMILAR
TOOL ROOM ATTENDANT (JOBSITE ONLY)

GROUP 3 (A) -- SEE GROUP 3 RATES

COMPOSITE CREW PERSON (OPERATION OF VEHICLES, WHEN IN CONJUNCTION WITH LABORER'S DUTIES)

GROUP 4

ALL FINAL CLEANUP WORK OF DEBRIS, GROUNDS AND BUILDING NEAR THE COMPLETION OF THE PROJECT INCLUDING BUT NOT LIMITED TO STREET CLEANERS
CLEANING AND WASHING WINDOWS (NEW CONSTRUCTION ONLY), SERVICE LANDSCAPE LABORERS (SUCH AS GARDENER, HORTICULTURE, MOWING, TRIMMING, REPLANTING, WATERING DURING PLANT ESTABLISHMENT PERIOD) ON NEW CONSTRUCTION
BRICK CLEANERS (JOB SITE ONLY)
MATERIAL CLEANERS (JOB SITE ONLY)

NOTE:

AN ADDITIONAL DETERMINATION FOR LANDSCAPE MAINTENANCE WORK AFTER THE PLANT ESTABLISHMENT PERIOD OR WARRANTY PERIOD IS PUBLISHED ON PAGE 57 OF THESE GENERAL DETERMINATIONS

GROUP 5

ENTRY LEVEL LABORERS (2000 HOURS) NOTE: ENTRY LEVEL LABORERS RECEIVE NO PREDETERMINED INCREASES

GROUP 6

STRUCTURAL NOZZLEMAN

GROUP 6 (A)

NOZZLEMAN (INCLUDING GUNMAN, POTMAN)
RODMAN
GROUNDMAN

GROUP 6 (B) -- SEE GROUP 4 RATES

GUNITE TRAINEE (ONE GUNITE LABORER SHALL BE ALLOWED FOR EACH THREE (3) JOURNEYMAN (GROUP 6, 6A, 6C, OR GENERAL LABORER) ON A CREW IN THE ABSENCE OF THE JOURNEYMAN, THE GUNITE TRAINEE RECEIVES THE JOURNEYMAN SCALE)
NOTE: THIS RATIO APPLIES ONLY TO WORK ON THE SAME JOB SITE

GROUP 6 (C)

REBOUNDMAN

GROUP 7

LANDSCAPE LABORER TRAINEE (RATIO FOR TRAINEES IS ONE IN THREE AT LEAST ONE SECOND PERIOD TRAINEE AND AT LEAST ONE THIRD PERIOD TRAINEE MUST BE EMPLOYED BEFORE EMPLOYING ANOTHER FIRST PERIOD TRAINEE)
NOTE: THIS RATIO APPLIES ONLY TO WORK ON THE SAME JOB SITE

**GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS
PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1
FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS**

CRAFT: #LABORER AND RELATED CLASSIFICATIONS (Special Single and Second Shift)

DETERMINATION: NC-23-102-1-2009-2A

ISSUE DATE: August 22, 2009

EXPIRATION DATE OF DETERMINATION: JUNE 30, 2010* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Division of Labor Statistics and Research at (415) 703-4774 after 10 days from the expiration date, if no subsequent determination is issued.

LOCALITY: ALL LOCALITIES WITHIN ALAMEDA, ALPINE, AMADOR, BUTTE, CALAVERAS, COLUSA, CONTRA COSTA, DEL NORTE, EL DORADO, FRESNO, GLENN, HUMBOLDT, KINGS, LAKE, LASSEN, MADERA, MARIPOSA, MARIN, MENDOCINO, MERCED, MODOC, MONTEREY, NAPA, NEVADA, PLACER, PLUMAS, SACRAMENTO, SAN BENITO, SAN FRANCISCO, SAN JOAQUIN, SAN MATEO, SANTA CLARA, SANTA CRUZ, SHASTA, SIERRA, SISKIYOU, SOLANO, SONOMA, STANISLAUS, SUTTER, TEHAMA, TRINITY, TULARE, TUOLUMNE, YOLO, AND YUBA COUNTIES

Classification ^a (Journey person)	Basic Hourly Rate ^g	Employer Payments					Straight-Time		Overtime Hourly Rate		
		Health and Welfare	Pension	Vacation and Holiday	Training Payments	Other	Hours	Total Hourly Rate	Daily	Saturday ^b	Sunday/ Holiday
									1 1/2X	1 1/2X	2X
AREA 1^c											
Construction Specialist	30 84	5 54	6 77	2 28	0 34	0 13	8	45 90	61 32	61 32	76 74
Group 1; Group 1(B) ^f	30 14	5 54	6 77	2 28	0 34	0 13	8	45 20	60 27	60 27	75 34
Group 1 (A)	30 36	5 54	6 77	2 28	0 34	0 13	8	45 42	60 60	60 60	75 78
Group 1 (C)	30 19	5 54	6 77	2 28	0 34	0 13	8	45 25	60 35	60 35	75 44
Group 1 (E)	30 69	5 54	6 77	2 28	0 34	0 13	8	45 75	61 10	61 10	76 44
Group 1 (F-1)	30 72	5 54	6 77	2 28	0 34	0 13	8	45 78	61 14	61 14	76 50
Group 1 (F-2)	29 74	5 54	6 77	2 28	0 34	0 13	8	44 80	59 67	59 67	74 54
Group 1 (G)	30 34	5 54	6 77	2 28	0 34	0 13	8	45 40	60 57	60 57	75 74
Group 2	29 99	5 54	6 77	2 28	0 34	0 13	8	45 05	60 05	60 05	75 04
Group 3; Group 3(A)	29 89	5 54	6 77	2 28	0 34	0 13	8	44 95	59 90	59 90	74 84
Group 4; Group 6(B)	23 58	5 54	6 77	2 28	0 34	0 13	8	38 64	50 43 ^d	50 43 ^d	62 22 ^d
Group 5 ^e	15 90	5 54	6 77	2 28	0 34	0 13	8	30 96	38 91	38 91	46 86
Group 6	31 10	5 54	6 77	2 28	0 34	0 13	8	46 16	61 71	61 71	77 26
Group 6 (A)	30 60	5 54	6 77	2 28	0 34	0 13	8	45 66	60 96	60 96	76 26
Group 6 (C)	30 01	5 54	6 77	2 28	0 34	0 13	8	45 07	60 08	60 08	75 08
Group 7 – Stage 1 (1 st 6 months)	21 82	5 54	6 77	2 28	0 34	0 13	8	36 88	47 79	47 79	58 70
Stage 2 (2 nd 6 months)	24 51	5 54	6 77	2 28	0 34	0 13	8	39 57	51 83	51 83	64 08
Stage 3 (3 rd 6 months)	27 20	5 54	6 77	2 28	0 34	0 13	8	42 26	55 86	55 86	69 46
AREA 2^c											
Construction Specialist	29 69	5 54	6 77	2 28	0 34	0 13	8	44 75	59 60	59 60	74 44
Group 1; Group 1(B) ^f	28 99	5 54	6 77	2 28	0 34	0 13	8	44 05	58 55	58 55	73 04
Group 1 (A)	29 21	5 54	6 77	2 28	0 34	0 13	8	44 27	58 88	58 88	73 48
Group 1 (C)	29 04	5 54	6 77	2 28	0 34	0 13	8	44 10	58 62	58 62	73 14
Group 1 (E)	29 54	5 54	6 77	2 28	0 34	0 13	8	44 60	59 37	59 37	74 14
Group 1 (F-1)	29 57	5 54	6 77	2 28	0 34	0 13	8	44 63	59 42	59 42	74 20
Group 1 (F-2)	28 59	5 54	6 77	2 28	0 34	0 13	8	43 65	57 95	57 95	72 24
Group 2	28 84	5 54	6 77	2 28	0 34	0 13	8	43 90	58 32	58 32	72 74
Group 3; Group 3(A)	28 74	5 54	6 77	2 28	0 34	0 13	8	43 80	58 17	58 17	72 54
Group 4; Group 6(B)	22 43	5 54	6 77	2 28	0 34	0 13	8	37 49	48 71 ^d	48 71 ^d	59 92 ^d
Group 5 ^e	15 75	5 54	6 77	2 28	0 34	0 13	8	30 81	38 69	38 69	46 56
Group 6	29 95	5 54	6 77	2 28	0 34	0 13	8	45 01	59 99	59 99	74 96
Group 6 (A)	29 45	5 54	6 77	2 28	0 34	0 13	8	44 51	59 24	59 24	73 96
Group 6 (C)	28 86	5 54	6 77	2 28	0 34	0 13	8	43 92	58 35	58 35	72 78
Group 7 – Stage 1 (1 st 6 months)	20 97	5 54	6 77	2 28	0 34	0 13	8	36 03	46 52	46 52	57 00
Stage 2 (2 nd 6 months)	23 56	5 54	6 77	2 28	0 34	0 13	8	38 62	50 40	50 40	62 18
Stage 3 (3 rd 6 months)	26 15	5 54	6 77	2 28	0 34	0 13	8	41 21	54 29	54 29	67 36

PLEASE GO TO PAGE 50 FOR CLASSIFICATIONS WITHIN EACH GROUP

INDICATES AN APPRENTICEABLE CRAFT. EFFECTIVE AS OF JULY 1, 2008, THE ISSUANCE AND PUBLICATION OF THE PREVAILING WAGE APPRENTICE SCHEDULES/APPRENTICE WAGE RATES HAVE BEEN REASSIGNED BY THE DEPARTMENT OF INDUSTRIAL RELATIONS FROM THE DIVISION OF LABOR STATISTICS AND RESEARCH TO THE DIVISION OF APPRENTICESHIP STANDARDS. TO OBTAIN ANY APPRENTICE SCHEDULES/APPRENTICE WAGE RATES, PLEASE CONTACT THE DIVISION OF APPRENTICESHIP STANDARDS OR REFER TO THE DIVISION OF APPRENTICESHIP STANDARDS' WEBSITE AT [HTTP://WWW.DIR.CA.GOV/DAS/DAS.HTML](http://www.dir.ca.gov/das/das.html).

a. GROUP 1(D) - MAINTENANCE OR REPAIR TRACKMEN AND ROAD BEDS AND ALL EMPLOYEES PERFORMING WORK COVERED BY THIS CLASSIFICATION SHALL RECEIVE \$0.25 PER HOUR ABOVE THEIR REGULAR RATE FOR ALL WORK PERFORMED ON UNDERGROUND STRUCTURES NOT SPECIFICALLY COVERED HEREIN. THIS SHALL NOT APPLY TO WORK BELOW GROUND LEVEL IN OPEN CUT. THIS SHALL APPLY TO CUT AND COVER WORK OF SUBWAY CONSTRUCTION AFTER TEMPORARY COVER HAS BEEN PLACED.

GROUP 1(H) - ALL LABORERS WORKING OFF OR WITH OR FROM BOS'N CHAIRS, SWINGING SCAFFOLDS, BELTS RECEIVE \$0.25 PER HOUR ABOVE THEIR APPLICABLE WAGE RATE. THIS SHALL NOT APPLY TO LABORERS ENTITLED TO RECEIVE THE WAGE RATE SET FORTH IN GROUP 1(A).

b. SATURDAYS IN THE SAME WORK WEEK MAY BE WORKED AT STRAIGHT-TIME IF JOB IS SHUT DOWN DURING THE NORMAL WORK WEEK DUE TO INCLEMENT WEATHER, MAJOR MECHANICAL BREAKDOWN OR LACK OF MATERIALS BEYOND THE CONTROL OF THE EMPLOYER.

c. **AREA 1** - ALAMEDA, CONTRA COSTA, MARIN, SAN FRANCISCO, SAN MATEO, AND SANTA CLARA COUNTIES

AREA 2 - ALPINE, AMADOR, BUTTE, CALAVERAS, COLUSA, DEL NORTE, EL DORADO, FRESNO, GLENN, HUMBOLDT, KINGS, LAKE, LASSEN, MADERA, MARIPOSA, MENDOCINO, MERCED, MODOC, MONTEREY, NAPA, NEVADA, PLACER, PLUMAS, SACRAMENTO, SAN BENITO, SAN JOAQUIN, SANTA CRUZ, SHASTA, SIERRA, SISKIYOU, SOLANO, SONOMA, STANISLAUS, SUTTER, TEHAMA, TRINITY, TULARE, TUOLUMNE, YOLO AND YUBA COUNTIES

d. SERVICE LANDSCAPE LABORER ON NEW CONSTRUCTION MAY WORK ANY FIVE (5) DAYS WITHIN A WEEK.

e. AN INDIVIDUAL EMPLOYER MAY EMPLOY TWO ENTRY LEVEL LABORERS FOR EVERY FOUR (4) REGULAR LABORERS ON EACH JOB OR PROJECT. ENTRY LEVEL LABORERS RECEIVE NO PREDETERMINED INCREASES. THIS RATIO OF ENTRY LEVEL LABORERS TO REGULAR LABORERS APPLIES ONLY TO WORK ON THE SAME JOB SITE.

f. GROUP 1(B) RECEIVES AN ADDITIONAL AMOUNT EACH DAY. SEE PAGE 50 FOR DETAILS.

g. ZONE PAY AT THREE DOLLARS (\$3.00) PER HOUR, FACTORED AT THE APPLICABLE OVERTIME MULTIPLE, WILL BE ADDED TO THE BASE RATE FOR WORK PERFORMED OUTSIDE THE FREE ZONE DESCRIBED BY THE BOUNDARIES ALONG TOWNSHIP AND RANGE LINES. PLEASE SEE TRAVEL AND SUBSISTENCE PROVISIONS FOR MAP DESCRIPTION AND EXCEPTIONS.

RECOGNIZED HOLIDAYS: HOLIDAYS UPON WHICH THE GENERAL PREVAILING HOURLY WAGE RATE FOR HOLIDAY WORK SHALL BE PAID, SHALL BE ALL HOLIDAYS IN THE COLLECTIVE BARGAINING AGREEMENT, APPLICABLE TO THE PARTICULAR CRAFT, CLASSIFICATION, OR TYPE OF WORKER EMPLOYED ON THE PROJECT, WHICH IS ON FILE WITH THE DIRECTOR OF INDUSTRIAL RELATIONS. IF THE PREVAILING RATE IS NOT BASED ON A COLLECTIVELY BARGAINED RATE, THE HOLIDAYS UPON WHICH THE PREVAILING RATE SHALL BE PAID SHALL BE AS PROVIDED IN SECTION 6700 OF THE GOVERNMENT CODE. YOU MAY OBTAIN THE HOLIDAY PROVISIONS FOR THE CURRENT DETERMINATIONS ON THE INTERNET AT [HTTP://WWW.DIR.CA.GOV/DLSR/PWD](http://www.dir.ca.gov/DLSR/PWD). HOLIDAY PROVISIONS FOR CURRENT OR SUPERSEDED DETERMINATIONS MAY BE OBTAINED BY CONTACTING THE PREVAILING WAGE UNIT AT (415) 703-4774.

TRAVEL AND/OR SUBSISTENCE PAYMENT: IN ACCORDANCE WITH LABOR CODE SECTIONS 1773.1 AND 1773.9, CONTRACTORS SHALL MAKE TRAVEL AND/OR SUBSISTENCE PAYMENTS TO EACH WORKER TO EXECUTE THE WORK. YOU MAY OBTAIN THE TRAVEL AND/OR SUBSISTENCE REQUIREMENTS FOR THE CURRENT DETERMINATION ON THE INTERNET AT [HTTP://WWW.DIR.CA.GOV/DLSR/PWD](http://www.dir.ca.gov/DLSR/PWD).

Attachment C: Sample form

(For Contractor's Optional Use; See Instructions at www.dol.gov/esa/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.



Rev. Dec. 2008

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☐

ADDRESS

OMB No.: 1215-0149
Expires: 12/31/2011

PAYROLL NO.		FOR WEEK ENDING		PROJECT AND LOCATION		PROJECT OR CONTRACT NO.												
(1)	(2)	(3)	(4) DAY AND DATE							(5)	(6)	(7)	(8) DEDUCTIONS				(9)	
NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	NO. OF WITHHOLDING EXEMPTIONS	WORK CLASSIFICATION	OT OR ST.	HOURS WORKED EACH DAY							TOTAL HOURS	RATE OF PAY	GROSS AMOUNT EARNED	FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS	NET WAGES PAID FOR WEEK
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

do hereby state:

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