

ASSOCIATION OF BAY AREA GOVERNMENTS
SUBAWARD AGREEMENT

This Agreement is made and entered into effective March 10, 2010 by and between the Association of Bay Area Governments (ABAG), a joint Exercise of Powers entity formed under California Government Code Section 6500, et. seq., and Contra Costa County, (Subawardee).

1. **Background.** ABAG desires to retain Contra Costa County to support implementation of the San Francisco Estuary Project's Comprehensive Conservation and Management Plan (CCMP) under the grant for Estuary 2100-2: San Francisco Bay Program-Building Partnerships for Resilient Watersheds.

2. **Project.** ABAG agrees to engage Contra Costa County and Contra Costa County agrees to undertake, carry out and complete the Project as set forth in the attached Exhibit A, Description of Project and Budget, subject to the approval of ABAG, and such approval shall not unreasonably be withheld. Contra Costa County shall comply with all requirements as set forth in Exhibit B, Insurance Requirements of this Agreement.

3. **Time of Performance.** The Project shall commence as soon as practicable after the execution of this Agreement and shall be undertaken and discharged in such sequence as to ensure their expeditious completion in the light of the purposes of this Agreement as defined under the Description of Project and Budget, Exhibit A and shall terminate not later than January 1, 2014.

4. **Compensation and Method of Payment.** Contra Costa County shall be compensated for the Project under this Agreement in a maximum sum not to exceed Four hundred ninety six thousand six hundred and forty-nine dollars (\$496,649.00). Within the limits of said maximum sum, Contra Costa County shall be compensated pursuant to the budget set forth in the attached Exhibit A.

5. **Method of Payment.** Contra Costa County shall submit invoices for payment no more frequently than monthly. Each invoice shall itemize all services performed under the appropriate task and list the names and hours worked of Contra Costa County personnel who worked under this agreement. ABAG shall review Contra Costa County invoices and approve or disapprove them for payment, which shall be made by ABAG as appropriate within fourteen (14) days of its receipt of payment from the U.S. Environmental Protection Agency (EPA). ABAG shall at all times act reasonably and shall evaluate Contra Costa County invoices pursuant to the tasks set forth in this agreement.

It is expressly understood and agreed that in no event will the total compensation for the services and reimbursement for allowable expenses under this agreement, if any, exceed the maximum sum of Four hundred ninety six thousand six hundred and forty-nine dollars (\$496,649.00).

6. **Hold Harmless.** Contra Costa County shall hold harmless, defend at its own expense and indemnify ABAG against any and all liability, claims, losses, damages, or expenses, including attorneys' fees, arising from all acts or omissions to act of Contra Costa County or its officers, agents or employees

in rendering services under this agreement.

7. **Subject to Environmental Protection Agency Disbursement.** This Agreement shall be subject to disbursement to ABAG by the EPA of funds previously set aside for ABAG in an amount necessary to cover the services set forth herein. ABAG agrees to inform Contra Costa County as soon as this condition has been satisfied.

8. **Equal Employment Opportunity.** In connection with the execution of this agreement, Contra Costa County shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin. Contra Costa County shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contra Costa County further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

9. **Changes.**

(a) ABAG may at any time, by written order, make changes within the general scope of this Agreement in the services or work to be performed. If such changes cause an increase or decrease in Contra Costa County cost or time required to perform services under tasks included in this agreement, whether or not changed by any order, ABAG and Contra Costa County shall agree to make an equitable adjustment and modify this Agreement in writing. Contra Costa County must assert any claim for adjustment under this clause in writing within thirty (30) days from the date it receives ABAG's notification of change, unless ABAG grants additional time before the date of final payment.

(b) No services for which Contra Costa County will charge an additional compensation shall be furnished without the written authorization of ABAG.

10. **Termination.**

(a) This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

(b) This Agreement may be terminated in whole or in part in writing by ABAG for its convenience, provided that Contra Costa County is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

(c) If termination for default is effected by ABAG, an equitable adjustment in the price provided for in this Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to Contra Costa County at the time of termination may be adjusted to cover any additional costs to ABAG because of Contra Costa County default. If termination for default is effected by Contra Costa County, or if termination for convenience is effected by ABAG, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to Contra Costa County for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by Contra Costa County relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination notice under paragraphs (a) or (b) above, Contra Costa County shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to ABAG copies of all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by Contra Costa County in performing this agreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, ABAG may take over the work and may award another party an Agreement to complete the work under this Agreement.

(f) If, after termination for failure of Contra Costa County to fulfill contractual obligations, it is determined that Contra Costa County had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of ABAG. In such event, adjustment of the Agreement price shall be made as provided in paragraph (c) of this clause.

11. **Remedies.** Unless otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between ABAG and Contra Costa County arising out of, or relating to, this Agreement or breach of it will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of California.

12. **Audit: Access to Records.** Contra Costa County shall maintain books, records, documents and other evidence directly pertinent to performance on EPA funded work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR Parts 30 or 31 in effect on the date of execution of this Agreement.

13. **Covenant Against Contingent Fees.** Contra Costa County assures that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contra Costa County for the purpose of securing business. For breach or violation of this assurance, ABAG shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the Agreement price or

consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

14. **Gratuities.**

(a) If ABAG finds after a notice and hearing that Contra Costa County or any of Contra Costa County agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of ABAG, the State or EPA in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, ABAG may, by written notice to Contra Costa County, terminate this Agreement. ABAG may also pursue other rights and remedies that the law or this Agreement provide. However, the existence of the facts on which ABAG bases such findings shall be in issue and may be reviewed in proceedings under the remedies clause of this Agreement.

(b) In the event this Agreement is terminated as provided in paragraph (a), ABAG may pursue the same remedies against Contra Costa County, as it could pursue in the event of a breach of the Agreement by Contra Costa County.

15. **Contra Costa County Conflict of Interest.** Contra Costa County covenants that presently there is no interest, and none shall be acquired, direct or indirect, which conflicts in any manner or degree with Contra Costa County performance of services as required under this Agreement. Contra Costa County further covenants that in the performance of this Agreement, no person having any interest shall be employed by it.

16. **ABAG 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, 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 subagreements.

17. **Rights in Data.** ABAG and the EPA each reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for public purposes:

- (a) any work developed under a grant, subgrant, or contract under a grant or subgrant; and
- (b) any copyrights which a grantee, subgrantee or a contractor acquires with grant support.

18. **Extension of Time.** The granting of or acceptance of extensions of time to complete performance by Contra Costa County will not operate as a release to Contra Costa County or otherwise modify the terms and conditions of this Agreement.

19. **Conservation.** Contra Costa County shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321, et seq.)

20. **Interest of Members or of Delegates to Congress.** No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this Agreement or to any benefit arising therefrom.

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

Contra Costa County
Contra Costa County Public Works Department
255 Glacier Drive
Martinez CA 94553
Attn: Nancy Stein, Project Manager
(925) 313-2285
Email: nstei@pw.cccounty.us

22. **Assignment.** This Agreement shall not be assigned, transferred, hypothecated or pledged by Contra Costa County without prior written consent of ABAG.

23. **Subcontracts.** Contra Costa County may not subcontract any part of the Project without the express written approval of ABAG, which approval shall not be unreasonably withheld. Upon termination of any subcontract, ABAG shall be notified immediately.

Contra Costa County and its subconsultant(s) and/or subcontractor(s) shall comply with the applicable regulation 40 CFR Part 30 (non-profits) or 40 CFR Part 31.36 (public agencies) for the procurement of goods and services which state that all procurement transactions shall be conducted in a manner providing full and open competition. 40 CFR Part 31.36 (i)(3) through (6) refer specifically to construction projects.

24. **Amendment.** This Agreement may be amended at any time, but only by a writing signed by both parties.

25. **Time of the Essence.** Time is of the essence in this Agreement.

26. **Waiver.** The waiver by ABAG of a breach by Contra Costa County of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of a different provision of this Agreement.

27. **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.

28. **Entire Agreement.** This Agreement is entire as to all of the performance to be rendered under it. It supersedes any and all other agreements, either oral or in writing, between ABAG and Contra Costa County with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to such matters. ABAG and Contra Costa County acknowledge that no representations, inducements, promises or agreements, 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 agreement, statement, or promise not contained in this Agreement shall be valid or binding.

29. **Controlling Law.** This Agreement and all matters relating to it shall be governed by the laws of the State of California.

30. **Independent Contractor.** Contra Costa County renders its services under this Agreement as an independent contractor. None of Contra Costa County's agents or employees shall be agents or employees of ABAG.

31. **Binding on Heirs, Etc.** This Agreement shall be binding upon the heirs, successors, assignees, or transferees of ABAG or Contra Costa County, 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.

32. **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.

33. **Attorney's Fees.** In the event either of the parties brings an action or legal proceeding due to an alleged breach of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs as determined by an arbitrator or by a court of competent jurisdiction.

35. **Other Contract Provisions.** This Agreement shall be subject to the Special Conditions as set forth in Exhibit C, which is incorporated herein by this reference.

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

Dated: _____

ENTITY: Contra Costa County

By: _____

Title: _____

Tax Identification Number: _____

Telephone Number: (925) 313-2285

Dated: _____

Association of Bay Area Governments _____
Ezra Rapport
Executive Director

Approved as to legal form and content:

Kenneth K. Moy, Legal Counsel

EXHIBIT A

DESCRIPTION OF PROJECT AND BUDGET

Introduction

Contra Costa County (County) & its subcontractor, San Francisco Estuary Institute (SFEI) will evaluate the possibility of diverting stormwater flows from North Richmond Pump Station to the nearby West County Wastewater District (WCWD) treatment plant for treatment prior to discharge to the Bay. Under contract with County, SFEI will sample these flows to the North Richmond pumping station in both wet and dry weather. The information gathered will guide the feasibility and design process for retrofitting the North Richmond pump station to divert polluted stormwater flows to the nearby West County Wastewater Treatment Plant for treatment. If treating stormwater is feasible, then the North Richmond pump station will be retrofitted to accomplish this task.

Tasks to Be Performed

Task 1. Project Management & Reporting

Task 1.1 Communication and Coordination

County shall provide project coordination to produce timely, on-budget, and on-target analyses, designs, and deliverables, and provide close coordination with SFEP on all project matters. All publications regarding this project shall publicly acknowledge the U. S. EPA San Francisco Bay Program and the San Francisco Estuary Partnership as the funding entity for the project under this award in both printed and web material or when asked by public entities, federal agencies or state and local agencies about the projects and ongoing results. SFEP and EPA staff shall be invited to all public outreach events.

Task 1.2 Project Schedule & Budget Tracking

Contra Costa County shall develop a detailed schedule of Project tasks and milestones. The Project Schedule will be tracked monthly and updated Project Schedules (if applicable) will be submitted as necessary to Jennifer Krebs, SFEP project manager. If major schedule changes are experienced, SFEP will be alerted immediately.

Task 1.3 Semi Annual Reporting

County shall prepare and submit semi-annual progress reports to SFEP within 10 calendar days after the end of each six-month reporting period (April 10 and October 10). Six month reporting periods run from October 1 to March 31 and from April 1 to September 30 each year of the project period. The semi-annual progress reports shall include a detailed description of Project activities conducted during the six-month period; document progress towards milestones; identify changes to the Project Schedule; and provide a summary of environmental outputs and outcomes, problems encountered and resolutions, and activities planned for the next interval.

Task 1.4 Draft Final and Final Project Reporting

As per the project schedule in Task 1.2, when the project is approaching completion, a draft final project report shall be submitted to the contract manager documenting activities over the entire

project period and include monitoring data, maps, plans, outreach materials, and discussion of environmental outputs and outcomes as well as an assessment of achievement of the project's purposes and objectives and lessons learned. Upon review and incorporation of review comments, a final project report will be submitted to the ABAG project manager.

Project Outcomes that must be documented in final project report include, but are not limited to, the following:

- 1) Reduced pollution to the Bay during dry weather flows – these will be measured by SFEI in early analytical report.
- 2) Feasibility of diversion of polluted stormwater for treatment prior to discharge – this will be documented in the feasibility report.
- 3) Treatment of dry weather polluted stormwater prior to discharge to the bay – this will be accomplished by the successful construction of the bypass and the treatment of polluted dry weather flows by the WCWD.

Description of Deliverables for Task 1	Due Date
Project Schedule with tasks and milestones (1 electronic copy)	December 2010
Semi-annual Progress Reports (1 electronic copy of each)	10 days after each semi-annual period
Draft Final Report (1 electronic and one hard copy)	November 1, 2013
Final Report (1 electronic and one hard copy)	December 1, 2013

Task 2. Develop Monitoring Protocols, Including QAPP

Contra Costa County with assistance from SFEI will develop a Quality Assurance Project Plan (QAPP) as required by US EPA guidance manuals for grant funded projects (available at <http://www.epa.gov/region9/qa/projplans.html>). The QAPP will consist of a sampling plan for characterizing stormwater pollutants and protocols for collecting representative stormwater samples. In addition to developing a QAPP as required by EPA, County shall submit draft QAPP to US EPA for review and approval, and revise the QAPP per EPA comments into a final QAPP.

Description of Deliverables for Task 2	Due Date
Draft QAPP (1 electronic copy)	October 2010
Final QAPP (1 electronic copy)	Within 120 days of receiving EPA comments

Task 3. Fieldwork

3.1 SFEI shall install automated sampling equipment at the North Richmond Pump Station including at least two (2) ICSO pumping samplers, supporting equipment, and infrastructure.

3.2 SFEI shall conduct field work, including a dry season component (two composite samples during June and August) and a wet season component (four samples during storm events) spread over one summer and two winters.

3.3 County shall finalize sampling design by reviewing rainfall and temperature records for the City of Richmond, reviewing existing County pump records for the North Richmond pump station, interviewing staff to learn about practical day-to-day operations under dry and wet season conditions, and completing a field reconnaissance to observe a dry season pump out event. The objective of this task is to understand the unique operations and constraints of the North Richmond pump station facility in relation to its catchment rainfall and flow conditions and design a sampling program that best characterizes water quality during dry and wet conditions in relation to County and WCWD needs.

Description of Deliverables for Task 3	Due Date
Install sampling equipment	October 2010
Sample Collection Wet Season	October 2010 – February 2011 October 2011 – February 2012
Sample Collection Dry Season	September-October 2010

Task 4. Laboratory Analysis

SFEI shall contract with reputable laboratories and have all water samples analyzed. All water samples will be analyzed for PCBs, PAHs, Mercury, Methyl Mercury and a suite of other possible stormwater contaminants. The full list is: Metals (As, Cd, Cr, Cu, Pb, Hg, Ni, Se, Ag, Zn and Sb, Ba, Be, Co, Mo, Tl, V); Cyanide; Phenol; pH; COD; TSS; Volatile Organics (624); Semi-Volatile Organics (625); 608; 610; TPH-Diesel; Ammonia; Total Nitrogen (TKN); Total Phosphorous; Alkalinity; DO.

Task 5. Reporting

SFEI shall prepare a report detailing the sampling and explaining the results of the water analysis. The report will include photographic documentation of the sampling equipment and procedures, and the raw (lab submittals) and quality assured tabular results.

Description of Deliverables for Tasks 4-5	Due Date
Water Quality Analysis Report	March 2012

Task 6. Feasibility Study

6.1 County shall prepare a feasibility study that will consist of two components: 1) An engineering report on the feasibility of diverting low flows to WCWD for treatment. The engineering feasibility study will include these design parameters: volume of diverted flows, pollutant loadings, and timing of discharges. Preliminary design will include: diversion pipe

system, connection to existing sewer main, rebuilding two electric pumps. 2) The consideration of all applicable permits, regulations, local ordinances, multi-agency agreements, state and federal laws, etc. that will need to be addressed in order to divert low flows from the North Richmond Pump Station to WCWD for treatment.

6.2 If the feasibility study (Task 6.1) determines that it will not be possible to divert low flows from the North Richmond Pump Station to WCWD for treatment, County will conduct an Alternatives Evaluation to compare technical options and costs for various alternatives for treating polluted stormwater. Options that may be considered include possible treatment plant modification and permitting, treating in a constructed wetland, reusing for industrial use, or other treatment alternatives. The evaluation of each option will include the consideration of all applicable permits, regulations, local ordinances, multi-agency agreements, state and federal laws, etc. that will need to be addressed.

Description of Deliverables for Task 6	Due Date
6.1 Feasibility Study	May 2012
6.2 Alternatives Evaluation (if necessary)	May 2013

Task 7. Implementation Preparedness, Including Project Permitting

County shall:

7.1 Develop an agreement with WCWD for diversion of low flows to their facility for treatment

7.2 Prepare NEPA and CEQA documentation

7.3 Work with Regional Board and WCWD to amend NPDES permit to allow for dry weather treatment of stormwater (if needed)

7.4 Develop final design for construction of low flow diversion selected alternative from Task 6.

Description of Deliverables for Task 7	Due Date
Agreement between WCWD and County for diversion	May 2012
Amendment/update of WCWD NPDES Permit	May 2012
NEPA/CEQA documents	April 2013
Final Construction Design	May 2012

Task 8. Construction

County shall obtain contractor to retrofit the North Richmond pump station, refurbish the pumps, upgrade the control equipment, and reinstall dual-fuel capacity. County staff shall monitor the construction and installation of the equipment.

Description of Deliverables for Task 8	Due Date
Pump Station Retrofit – As built construction drawings and photos	April 2013- September 2014

Items shall be completed by the dates in the following Deliverables Schedule

Task	Description	Due Date
1	Project Schedule with tasks and milestones (1 electronic copy)	December 2010
	Semi-annual Progress Reports (1 electronic copy of each)	10 days after each semi-annual period
	Draft Final Report (1 electronic and one hard copy)	November 1, 2013
	Final Report (1 electronic and one hard copy)	December 1, 2013
2	Draft QAPP (1 electronic copy)	October 2010
	Final QAPP (1 electronic copy)	Within 120 days of receiving EPA comments
3	Sampling Equipment Installation	October 2010
	Sample Collection Wet Season	Oct 2010 – Feb 2011 Oct 2011 – Feb 2012
	Sample Collection Dry Season	Sept 2010 – Oct 2010
4	N/A	
5	Water Quality Analysis	March 2012
6	Feasibility Study	May 2012
	Alternatives Evaluation (if necessary)	May 2013
7	Agreement between WCWD and County for diversion	May 2012
	Amendment/update of WCWD NPDES Permit	May 2012
	NEPA/CEQA documents	April 2013
	Final Construction Design	May 2012
8	Pump Station Retrofit – As built construction drawings and photos	April 2013- September 2014

Payment Limit

	Funding Source		Total
	EPA	County Match	
1) Project Management & Reporting	38,440	35,000	73,440
2) Develop Monitoring Protocols, Including QAPP	6,220		6,220
3) Fieldwork	47,600	1,383	48,983
4) Lab Analysis	71,878		71,878
5) Reporting	25,011		25,011
6) Feasibility Study	90,000	25,000	115,000
7) Implementation Preparedness		62,500	62,500
8) Construction	217,500	62,500	280,000
	496,649	186,383	683,032

Invoices from the County to ABAG/SFEP shall include a description of the work performed, identifying appropriate milestones, operating costs and subcontractor's name, if applicable. Copies of documentation supporting subcontractor's costs, such as paid invoices, payroll entries, or bills of materials must be included.

Other Direct Costs shall be invoiced at cost with supporting documentation (copies of receipts). No costs should exceed the limits delineated above without a contract amendment. No ineligible costs (such as food, entertainment, etc.) are allowed. Mileage shall be paid at the current federal reimbursement rate (210- 50 cents/mile).

Contra Costa County has committed to a project match of at least \$186,383 to contribute to the success of the project. Matching funds may be in-kind services by Contra Costa County or direct or indirect costs related specifically to the project incurred by either Contra Costa County or its subcontractor(s). Back-up documentation shown in project invoices is required to justify the amount claimed for matching funds during the invoice reporting period.

ABAG shall pay undisputed invoices within 14 days of receiving payment from US EPA.

TOTAL PAYMENT UNDER THIS AGREEMENT SHALL NOT EXCEED \$ 496,649.00.

EXHIBIT B

INSURANCE REQUIREMENTS

Subawardee shall procure and maintain for the duration of this agreement 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.

Minimum Scope of Insurance. Coverage shall be at least as broad as:

- (a) Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
- (b) Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
- (c) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (d) Errors and Omissions Liability insurance appropriate to the Subawardee's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance. Subawardee shall maintain limits no less than:

- (e) 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.
- (f) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- (g) Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- (h) Errors and Omissions Liability: \$1,000,000 per occurrence.

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 Subawardee 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.).

Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (i) 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.
- (j) 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.

- (k) 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.
- (l) 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.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to ABAG.

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 effecting the coverage required by these specifications at any time.

EXHIBIT C

SPECIAL CONDITIONS

- 1. Single Audit Act.** In accordance with OMB Circular A-133, Contra Costa County hereby agrees to obtain a single audit from an independent auditor if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine (9) months after the end of ABAG's fiscal year or thirty (30) days after receiving the report from the auditor, Contra Costa County shall submit a copy of the SF-SAC and a Single Audit Report Package. For fiscal periods 2008 and beyond Contra Costa County MUST submit a copy to the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. To complete the information on how to accomplish the 2008 and beyond Single Audit Submissions you will need to visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>
- 2. Matching funds.** The award includes matching non-federal third party contributions. Third party contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantees. As applicable, these records must reflect how the value is placed on third party contributions. The value of third party contributions must be applicable to the period to which the cost sharing or matching requirements apply (40CFR Part 31.24).
- 3. Compliance with Program for Utilization of Small, Minority and Women's Business Enterprise (DBE).** Contra Costa County agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprise (DBE) in procurement under this contract as set forth in 40 CFR Part 33. The EPA DBE rule can be accessed at <http://www.epa.gov/osbp>. In addition, Contra Costa County agrees to make good faith efforts whenever procuring construction, equipment, services and supplies under this contract, and to ensure that subcontractors also comply with 40 CFR Section 33.301 (six good faith efforts). Records documenting compliance with the six good faith efforts shall be retained.

The following are the six good faith efforts whenever procuring construction, equipment, services and supplies under this contract:

- a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government contractors, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
- c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government contractors, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- e) Use the services and assistance of the Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce.

- f) If Contra Costa County awards subcontracts, Contra Costa County shall be required to take the steps in paragraphs (a) through (e) of this section.

4. MBE/WBE Utilization Report. Contra Costa County agrees to complete and submit to the ABAG Contract Manager, a MBE/WBE Utilization Report (EPA Form 5700-52A) within 20 days after the end of the Federal fiscal year; i.e. by October 20 of each calendar year. Negative reports are required. Only procurements with certified MBE/WBEs are counted towards satisfying the MBE/WBE accomplishments. EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home page at www.epa.gov/osbp.

5. Procurement. Contra Costa County agrees when procuring services, equipment, and/or supplies under this agreement, Contra Costa County will follow the same policies and procedures used for procurements from its non-Federal funds. Contra Costa County will follow their own procurement policies and procedures provided that the policies and procedures conform with EPA regulations 40 CFR Part 31.36 or 30.44 (as applicable) which state that all procurement transactions will be conducted in a manner providing full and open competition.

Subrecipients/Vendors Determinations. Subawardee agrees to ensure that any subawards or subcontracts comply with the standards in Section 210(a-r) of OMB Circular A-133 and are not used to acquire commercial goods or services for subcontractors.

6. Payment to Consultants.

- a) Per 40 CFR Part 31.36(j), EPA's participation in the salary rate (excluding overhead and travel) paid to individual consultant retained by Contra Costa County or by Contra Costa County subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, to adjusted annually. This limit applies to consultation services of designated individuals with specialized skills and if the terms of the contract provide Contra Costa County with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. As of January 1, 2010, the rate is \$596 per day and \$74.50 per hour. This rate does not include overhead or travel costs and Contra Costa County may pay these in accordance with its normal travel practices.
- b) Subagreements with firms or individuals for services which are awarded using the procurement requirements of 40 CFR Parts 30-31, as applicable, are not affected by this limitation unless the terms of the contract provide Contra Costa County with responsibility for the selection, direction and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR Part 31.36(j)(2).

7. Indirect Costs. Indirect costs are authorized under this agreement in accordance with the cost principles of 2 CFR 230, 220, or 225 (formerly OMB Circular A-122, A-21, or A-87) and the indirect cost rate cost allocation plan completed by the consultant. The consultant agrees to retain and make available to ABAG and EPA a copy of the indirect cost allocation plan upon request, if necessary.

8. Lobbying and Litigation. Contra Costa County shall ensure that no grant funds awarded under this agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The subawardee shall abide by its respective 2 CFR 220, 225, or 230 (formerly OMB Circular A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or lobbying or other political activities.

Lobbying. Grant funds received by 501(c)(4) organizations (not-for-profit) shall not go to lobbying activities.

9. New Restrictions on Lobbying.

Contra Costa County agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying* by submitting the certification and disclosure forms.

In accordance with the Byrd Anti-Lobbying Amendment, any consultant who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

10. Resource Conservation and Recovery Act. In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423 (Strengthening Federal Environmental, Energy and Transportation Management dated January 24, 2007), Contra Costa County shall use recycled paper and double-sided printing for all reports which are prepared as a part of this agreement and delivered to ABAG. This requirement does not apply to reports prepared on forms supplied by EPA or ABAG, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

Any State agency or agency of a political subdivision of a State shall also comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962), which requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247. Regional issues under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds ten thousand dollars (\$10,000) or where the quantity of such items acquired in the course of the preceding fiscal year was ten thousand dollars (\$10,000) or more.

11. Conference, Meeting, Convention or Training Space. Contra Costa County agrees to ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Consultants may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

12. Drug Free Workplace. Contra Costa County must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200-36.230. Additionally, in accordance with these regulations, the organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award. The consequences for violating this condition are detailed under 40CFR 36.510. The Code of Federal Regulations (CFR) Title 40 Part 36 can be accessed at http://www.access.gpo.gov/nara/cfr/waisidx/06/40cfr36_06.html

13. Debarment and Suspension. Contra Costa County shall fully comply with Subpart C of 2 CFR 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Contra Costa County shall ensure that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR part 1532, entitled "Covered Transactions" includes a term or condition requiring compliance with Subpart C. Contra Costa County is responsible for further requiring the inclusion of a similar term or condition in

any subsequent lower tier covered transactions. Contra Costa County acknowledges that failing to disclose the information as required at 2 CRF 180.335 may result in delay or negation of this agreement, or pursuance of legal remedies, including suspension and debarment.

The Excluded Parties List System may be accessed at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

- 14. Management Fees.** Management fees or similar charges in excess of the direct costs and approved indirect cost rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.
- 15. Trafficking Victims Protection Act.** To implement requirements of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:
- a. The Federal awarding agency may unilaterally terminate this agreement, without penalty, if a subrecipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this agreement; or (b) imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)" as implemented by EPA at 2 CFR Part 1532. Any information received from any source alleging a violation of a prohibition in the Prohibition Statement below must immediately notify ABAG and EPA.
 - b. The EPA right to terminate unilaterally that is described in paragraph a: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available.

The requirements of the Prohibition Statement below must be included in any subaward made to a private entity.

Prohibition Statement- You as the recipient, your employees, subrecipients under this award, and subrecipients' employees, may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

- 16. Environmental Measurements.** This agreement includes the performance of environmental measurements. A Quality Assurance Project Plan (QAPP) will be drafted and submitted by Contra Costa County and ABAG and its relevant partners to EPA Region 9 Quality Assurance Office for review. Contra Costa County should consult with the Region 9 Quality Assurance Office to determine what type of QA documentation would be most appropriate and what QA guidance should be followed. ABAG will respond to comments on the draft plan when submitted within 120 days of receipt. The QA Plan must be approved by the EPA Project Officer, the Region 9 Quality Assurance Manager, and ABAG's Quality Assurance Officer before measurement activities are undertaken.

Emergency measurements may be taken without a QA Plan being prepared if the Region 9 Quality Assurance Manager agrees that the nature of the data collection activity required due to the emergency warrants an exemption. Contact the QA Office at 415/972-3411.

17. Acknowledgments. Contra Costa County should publicly acknowledge the U. S. EPA San Francisco Bay Program and the San Francisco Estuary Partnership as the funding entity for projects under this award in both printed and web material or when asked by public entities, federal agencies or state and local agencies about the projects and ongoing results.



EPA Project Control Number

CERTIFICATION REGARDING LOBBYING

**CERTIFICATION FOR CONTRACTS, GRANTS,
LOANS AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Typed Name & Title of Authorized Representative

Signature and Date of Authorized Representative