



DATE: June 23, 2010

TO: Honorable Mayor and City Councilmembers

FROM: Economic and Community Development Department

SUBJECT: **EXEMPTION FROM COMPETITIVE BIDDING AND APPROVAL OF CONTRACT FOR THE REMEDIATION AND RESTORATION OF FRENCH FIELD A/K/A VISTA BURN DUMP**

SYNOPSIS

Staff recommends that the City Council adopt a resolution for exemption from competitive bidding for the Remediation and Restoration of French Field project located at the 1300 block of Lee Drive (APNs 161-501-09 and 161-501-10); approve a design-build agreement with Brickman Chargers, Inc., of San Diego, for the project in an amount not to exceed \$2,608,616, to be funded with existing grant funds and proceeds from the litigation settlement; and authorize the City Manager to execute the agreement upon receipt of all supporting documents.

BACKGROUND

In 1931 the Vista Sanitary District acquired the City of Oceanside-owned property commonly referred to as French Field (also referred to herein as the "Vista Burn Dump" and/or the "Site") from a private owner. The County of San Diego leased the site from Vista Sanitary District from July 1944, to September 1946, when the Vista Sanitary District was disbanded, at which time the County became the property owner. In June 1969, by a judgment in San Diego County Superior Court, title in the property became jointly held by the City of Oceanside and Vista Sanitation District (which was created in 1947), each acquiring an undivided one-half interest in the Site. On February 28, 1974, the Vista Sanitation District deeded its interest in the property to the City, at which time Oceanside became full owner of the Site.

Historical evidence shows that the Site was used as a possible disposal area as early as 1939. The County leased the property from Vista Sanitary District in 1944 and operated the Site as a burn dump accepting municipal waste from the area of the County which now includes the community of Vista. The waste that was deposited at the dump was burned and buried on-site and on the adjacent property to the east, now Lee's Metal Recycling. The County ceased dumping operations and closed the Vista Burn Dump in 1967, some two years prior to the City of Oceanside acquiring an interest in the property.

From 1974 to 1989 the Vista Bobby Sox Softball League and Vista Bobby Sox Little League constructed and utilized baseball fields at the Site under a lease with the City. The County furnished exported material from the Vista County Center and Courthouse complex that was used to fill depressions on the Site and additional fill dirt added to create pads for the ball fields. From 1993, through the suspension of the use of the Site in January 2005, the Vista American Little League used the ball fields under an agreement between the cities of Oceanside and Vista.

On June 20, 2002, the California Regional Water Quality Control Board issued Order No. R9-2002-0166 affirming the directive for Solid Waste Water Quality Assessment Test ("SWAT") proposal from the City of Oceanside, City of Vista and County of San Diego regarding the discharge of burn-ash wastes located adjacent to Loma Alta Creek associated with former waste-burning operations at the Vista Burn Site.

In December 2002, the County, with the concurrence of Oceanside and Vista, hired GeoSyntec Consultants to begin the SWAT in order to comply with the SWAT Order. Disagreement arose regarding the equitable distribution of the cost of the SWAT and distribution of the possible remediation expenses amongst the City, County and Vista. With the parties at an impasse over the cost-sharing formula, the County in January 2004 filed a claim with the City to recover monies it had expended and future costs for the preparation of the SWAT and remediation of the Site. Subsequent to filing the claim, the County filed a lawsuit in April 2004 (Superior Court Case No. GIN036570) against the City of Oceanside, City of Vista and the Vista Sanitation District for recovery of costs related to the SWAT. Subsequently, Lee's Recycling Center, adjacent to the Vista Burn Site, was added to the action as a defendant. The case is pending, and settlement negotiations have resulted in a tentative settlement agreement.

The Site is the subject of several site investigation reports and a voluntary cleanup agreement by the City and the Department of Toxic Substances Control ("DTSC"). In June 2008, the City received a Final Preliminary Endangerment Assessment Report/Site Summary Investigation for the Former Vista Burn Dump ("PEA") prepared by Tetra Tech, Inc. The findings of the PEA provided the basis of a Draft Removal Action Workplan ("RAW") also prepared by Tetra Tech, in May 2010, in consultation with DTSC. In summary the final conclusions and recommendations contained in the RAW are as follows:

- A one-foot layer of clean soil should be added to the ball field and parking areas to prevent exposure to contaminated soil and low levels of lead and other constituents and to physical hazards posed by small fragments of waste material.
- The upper portion of the banks of the Loma Alta Creek within the property boundary will be planted with erosion-resistant plants to reduce the potential of erosion of exposed waste.
- The slope area between the ball fields should be stabilized and concreted, shotcreted or paved to prevent erosion and exposure to the waste. The sloped areas will be covered with 4 inches of six-sack shotcrete and gunite with a brow ditch at the top to provide runoff around the face of the slope. In the future a

portion of the existing parking area may be paved with asphalt to facilitate parking. The parking lot will consist of flat asphalt at 4 inches thick with no curbing or gutters.

- No soil from the existing cap and slope stabilization is expected to be hauled off-site.
- Once the cap is installed and removal actions are complete, post-closure activities will be implemented to ensure that all potential hazards have been mitigated. Surveying will be completed before and after the cap installation to ensure all exposed one foot of soil is placed.
- Airborne dust monitoring will be conducted during construction activities to verify and document dust suppression efforts are successful.

On December 12, 2008, the City submitted a cost-sharing grant application to the California Integrated Waste Management Board ("CIWMB") to help fund the remediation of the Vista Burn Dump. On February 24, 2009, the CIWMB awarded the grant in the not-to-exceed amount of \$729,900, and a Grant Agreement was entered into with the CIWMB on March 12, 2009, under the 2008/2009 Illegal Dump Site and Land Fill Cleanup Remediation Matching Grants Program. This was the largest grant awarded by the CIWMB that year, based largely on the fact that the remediated Site would be put back into recreational use.

The Grant Agreement with CIWMB requires that all necessary contracts for the work be entered into by October 30, 2009. Because final DTSC approval of the RAW had not been granted and because of the pending litigation, the City requested, and the CIWMB has granted, extensions of the October 30, 2009 deadline. Upon granting the most recent extension request to June 29, 2010, the CIWMB advised the City that no further extensions of the deadline would be granted. Thus, the City is in jeopardy of losing the funds encumbered by the Grant unless a contract for the remediation of the Site is executed on or before June 29, 2010.

Bids were solicited from various firms to remediate the Site through the litigation process. An original estimate for the remediation work was submitted by Schmidt Design in the amount of \$3.9 million. The County obtained a bid from GeoSyntec Consultants at \$1.426 million, which has been subsequently adjusted to \$1.713 million. The Brickman Group Landscaping, Inc., in cooperation with Nowell & Associates, who were contacted jointly by Oceanside and Vista, provided an adjusted bid of \$2.608 million and is prepared to engage in additional value engineering to reduce the price further. As noted, the proposals were obtained in the context of litigation and, although they were all based on the most recent version of the RAW, they were not based on a well-developed set of plans and specifications. As such, price is not the sole deciding factor in staff's recommendation of the Brickman/Nowell proposal.

Oceanside, as property owner, has agreed to be the lead agency for the remediation of the Site, without accepting responsibility for the contamination on the Site caused by the use as a burn dump.

ANALYSIS

The proposal submitted by Brickman contains two phases of work at the Site. Phase 1 is the remediation portion of the project and Phase 2 is the restoration of the Little League ball fields and park. The CIWMB grant covers only costs associated with Site remediation and cleanup; therefore, only the work for Phase 1 of the Brickman proposal has been fully developed at this time. Further design and development of Phase 2 (ball fields) will occur following scoping and outreach meetings with stakeholders and other members of the public.

The components of the Brickman proposal for Phase 1 and the associated not-to-exceed amounts are as follows:

1. Design, construction documents and construction oversight:	\$304,600
2. Temporary facilities	\$25,000
3. Erosion control measures	\$10,000
4. Job safety and hazardous materials safety	\$40,000
5. Construction fencing	\$6,500
6. Removal of existing improvements	\$113,671
7. Weed abatement	\$117,599
8. Imported soil cap for future ball field areas	\$188,515
9. Imported soil cap for future parking areas	\$129,620
10. Placement and finish grading of imported soils	\$39,044
11. Drainage	\$22,153
12. Asphalt concrete paving	\$44,889
13. Shotcrete	\$110,051
14. Perimeter security fencing	\$97,676
15. Interior safety fencing	\$21,370
16. Gates	\$15,687
17. Temporary construction power	\$15,500
18. Irrigation	\$63,663
19. Hydroseeding	\$48,260
20. 90-day establishment period	\$3,596
21. Final completion	\$10,000
22. Contractor's general conditions 8.9%	\$127,038.07
23. Contractor's contingency 3.0%	\$42,821.82
24. Contractor's overhead, insurance, and fee 5.8%	\$82,788.85
25. Performance and payment bonds 1.2%	\$20,160.51

TOTAL PHASE 1 BID PRICE **\$1,700,203.25**

All work proposed is contingent upon the timely approval of the RAW by the DTSC. Significant amendments to the RAW by the DTSC may require negotiation of a change order to the contract to assure consistency with the RAW as approved. Tetra Tech will provide environmental oversight of all on-site construction activities. Nowell & Associates will provide the construction documents and specifications for the work.

The award of contract is also contingent upon securing funding for the project, which is expected to come from settlement of the litigation. The parties have reached a tentative settlement, which, when finalized, should provide sufficient monies, together with the CIWMB grant, to fund the project.

CIWMB's deadline for the release of the grant funds placed the City in a unique position with regard to awarding a contract to remediate the Site. The lack of an approved RAW prior to the CIWMB deadline places the City, timewise, in a state of emergency in the competitive bidding process. Typically, plans and specifications are drawn and prepared and formal request for proposals from contractors are sought and analyzed prior to an award of contract. That procedure is not available to the City in this case, if the CIWMB grant funds are to be available to fund the project.

Because of this short time frame to preserve the CIWMB grant funds, staff recommends that the City Council adopt a resolution pursuant to Public Contract Code sections 20168 and 22050 to exempt the project from competitive bidding requirements and to authorize the award of a design-build agreement for the project to Brickman Chargers, Inc.

The project will be issued a mitigated negative declaration under the California Environmental Quality Act. As the proposed project is currently envisioned, permits from the regulatory agencies should not be required to perform the remediation of the Site.

FISCAL IMPACT

Through the litigation process, the County, Oceanside and Vista have tendered the claims for cost-recovery to their respective insurance companies. The parties have reached a tentative settlement of the litigation, pursuant to which the various insurance carriers would contribute monies on behalf of the parties to fund the remediation and restoration of the Site. The City's and Brickman's obligations under the proposed design-build agreement are contingent on the City's receipt of such settlement proceeds and the CIWMB grant. The project will be funded completely with settlement proceeds and CIWMB matching grant funds.

On March 12, 2009 the City entered into a grant agreement for the \$729,900 in grant funds from the CIWMB. Based on the on-going litigation the grant funds, although awarded, require acceptance by the City Council. Once the restoration of French Field/Vista Burn Dump project is approved, staff will return to Council for approval and appropriation of the grant funds to the Development Services French Field Remediation account.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The resolution has been reviewed by the City Attorney and approved as to form. The design-build agreement has been reviewed by the City Attorney and approved in substantial form.

RECOMMENDATION

Staff recommends that the City Council adopt a resolution for exemption from competitive bidding for the Remediation and Restoration of French Field project located at the 1300 block of Lee Drive (APNs 161-501-09 and 161-501-10); approve a design-build agreement with Brickman Chargers, Inc., of San Diego, for the project in an amount not to exceed \$2,608,616, to be funded with existing grant funds and proceeds from litigation settlement; and authorize the City Manager to execute the agreement upon receipt of all supporting documents.

PREPARED BY:


William F. Marquis
Senior Property Agent

SUBMITTED BY:


Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Jane McVey, Economic and Community Development Director

Douglas E. Eddow, Real Property Manager

Teri Ferro, Financial Services Director





1 RESOLUTION NO.

2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
3 OCEANSIDE PURSUANT TO PUBLIC CONTRACT CODE
4 SECTIONS 20168 AND 22050 AUTHORIZING EXEMPTION
5 FROM COMPETITIVE BIDDING REQUIREMENTS FOR THE
6 REMEDIATION AND RESTORATION OF FRENCH FIELD
7 AKA FORMER VISTA BURN DUMP

8 WHEREAS, the former Vista Burn Dump site, located in Oceanside, California, near the
9 1300 block of Lee Drive (the "Site"), is currently owned by the City of Oceanside and is the
10 subject of pending environmental litigation, several site investigation reports and a voluntary
11 clean-up agreement with the California Department of Toxic Substances Control ("DTSC");

12 WHEREAS, the Site was improved with baseball fields, which Vista American Little
13 League used from 1993 until the Site was closed for environmental investigation in 2005;

14 WHEREAS, on February 24, 2009, the California Integrated Waste Management Board
15 ("CIWMB") awarded a matching grant of up to \$729,900.00 to the City of Oceanside to help
16 fund the remediation of the Site, and on March 12, 2009 the City entered a Grant Agreement
17 with CIWMB under the 2008/2009 Illegal Dump Site and Land Fill Cleanup Remediation
18 Matching Grants Program;

19 WHEREAS, the Grant Agreement requires the City of Oceanside to enter into all
20 necessary contracts for the work by October 30, 2009, which date has been extended twice, to a
21 firm and final date of June 29, 2010;

22 WHEREAS, the City of Oceanside expects to fund the Site remediation work pursuant
23 to a Removal Action Workplan ("RAW") approved by DTSC, using proceeds from settlement
24 of the pending litigation;

25 WHEREAS, a proposed RAW has been submitted to DTSC for review, and final
26 approval of the RAW by DTSC remains pending;

27 WHEREAS, a final settlement of the litigation remains pending;

28 WHEREAS, three proposals for remediation and restoration of the Site have been
obtained and evaluated in the context of the pending litigation, and the proposal from Brickman
Chargers, Inc. and Nowell & Associates has been determined to provide the highest value and

1 flexibility while maximizing use of the CIWMB matching grant funds;

2 WHEREAS, the CIWMB deadline for entering all necessary contracts for the Site
3 remediation work will not permit a delay resulting from a competitive solicitation for bids; and

4 WHEREAS, it is necessary to enter into a design-build agreement for remediation and
5 restoration of the Site before June 29, 2010, in order to preserve the availability of the CIWMB
6 grant funds.

7 NOW, THEREFORE, the City Council of the City of Oceanside does resolve as
8 follows:

9 SECTION 1. A design-build contract with Brickman Chargers, Inc. for remediation
10 and restoration of French Field in an amount not to exceed \$2,608,616.00, contingent upon
11 DTSC's approval of a final RAW and upon the City's receipt of sufficient proceeds from
12 settlement of the litigation, is hereby approved.

13 SECTION 2. The City Manager is authorized to sign the agreement upon receipt of all
14 supporting documentation.

15 PASSED AND ADOPTED by the City Council of the City of Oceanside, California,
16 this _____ day of _____, 2010, by the following vote:

- 17 AYES:
- 18 NAYS:
- 19 ABSENT:
- 20 ABSTAIN:

21
22 MAYOR OF THE CITY OF OCEANSIDE

23
24 ATTEST:

25 APPROVED AS TO FORM:

26 _____
27 City Clerk

28 
City Attorney

**DESIGN/BUILD AGREEMENT
FRENCH FIELD REMEDIATION AND RESTORATION**

This Agreement is made and entered into this _____ day of _____, 2010, by and between THE CITY OF OCEANSIDE (herein "City" or "Owner"), a California municipal corporation, and Brickman Chargers Inc. ("Design Builder or D/B") a California corporation. City and D/B are sometimes hereinafter referred to as Parties ("Parties").

RECITALS

WHEREAS, the project, the remediation and restoration of French Field, is located approximately at the 1300 block of Lee Avenue, in Oceanside, California, the site of the former Vista Burn Dump; and

WHEREAS, the environmental remediation of the project site is the subject of a voluntary cleanup agreement coordinated through the California Department of Toxic Substances Control ("DTSC"), and is the subject of litigation (the "Litigation") among former owners and/or operators of the burn dump, as well as Lee's Recycling, a business adjacent to the site; and

WHEREAS, on February 24, 2009, the California Integrated Waste Management Board ("CIWMB") awarded a matching grant of up to \$729,900 to the City to help fund remediation of the site, and on March 12, 2009 the City entered into a Grant Agreement with CIWMB under the 2008/2009 Illegal Dump Site and Land Fill Cleanup Remediation Matching Grants Program (the "CIWMB Grant Agreement"); and

WHEREAS, on June 23, 2010, the Oceanside City Council adopted a resolution pursuant to Public Contract Code sections 20168 and 22050, thereby allowing the immediate expenditure of funds for this project without strict compliance with competitive bidding statutes; and

WHEREAS, estimates for the work were obtained from three (3) consultants in response to informal bidding procedures; and

WHEREAS, Design Builder was selected as the respondent who best met the City's criteria for performing the scope of work outlined in the Removal Action Workplan ("RAW") submitted to DTSC for approval.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein:

THE PARTIES AGREE:

Section 1: General Scope of Work to Be Performed by D/B

- 1.1 In accordance with the terms set forth in this Agreement, D/B shall design and perform the site remediation work (Phase I) and the restoration of a Little League ball park (Phase II), in accordance with the RAW as approved by DTSC and as more fully set forth in Exhibit 1, attached hereto and incorporated herein. The parties' obligations under this Agreement are expressly contingent upon:
 - 1.1.1 the City's receipt of sufficient funds pursuant to a separate settlement agreement among the parties to the Litigation; and
 - 1.1.2 approval of a final RAW by the DTSC.
- 1.2 The services to be provided by D/B are generally to be performed in phases, as outlined and described in Exhibit 1.
- 1.3 The D/B shall:
 - 1.3.1 Perform all services, work and obligations to complete the Project, as described herein and in Exhibit 1, for the not to exceed amount of \$2,573,616.00.
 - 1.3.1.1 Any costs incurred by D/B in excess of said Guaranteed Maximum Price ("GMP") shall be the sole responsibility of the D/B. All funds remaining in the GMP at the completion of the project shall belong to the City.
 - 1.3.1.2 The GMP includes a "D/B Contingency Fund," which may be used by the D/B with City approval. The D/B Contingency Fund will be available to provide additional funds for Change Orders as provided for in Section 14 of this Agreement. This Contingency Fund will not be available for: (1) Work required due to D/B's and/or Contractors/subcontractors failure to perform according to the terms of this Agreement and/or in compliance with the Construction Documents, or (2) uninsured losses resulting from the negligence of D/B or its Contractors/subcontractors. All change orders, including zero dollar change orders, which require the use of the D/B Contingency Fund, shall require City approval.
 - 1.3.2 Substantial Completion: Achieve "Substantial Completion" of Phase 1: Remediation (as defined in §16.1) no later than April 15, 2011.
 - 1.3.3 Achieve "Final Completion" of Phase 1: Remediation (as defined in §16.2) no later than May 15, 2011; Phase 2: Restoration of ballfields to be completed as expeditiously as possible as mutually agreed following completion of Phase 1.

Section 2: General Obligations of City

- 2.1 City shall be obligated as follows:

2.1.1 Designate a representative (or representatives) who is/are authorized to act on behalf of City with respect to the Project, except as to those decisions specified herein or by law that require authorization by the Oceanside City Council;

2.1.2 Make decisions with reasonable promptness to avoid delay in the orderly progress of D/B's services per the schedule in Exhibit 2;

2.1.4 At the request of D/B, City will use its best efforts to provide D/B with any available information about the Project Site geotechnical soil conditions; it will, however, be the responsibility of D/B to take all reasonable steps to verify all such information as it deems necessary to perform its services under this Agreement. City does not warranty to D/B the accuracy or completeness of any such information;

2.1.5 Cooperate with D/B in identifying, processing and securing required permits, licenses and inspections in a timely fashion; however, this duty to cooperate does not relieve D/B of its primary obligations to identify, apply for and secure all necessary permits, licenses and inspections in a timely manner;

2.1.6 Make payments to D/B in the amounts and in accordance with the terms set forth below;

2.1.7 Issue Certificate of Substantial Completion when City reasonably determines the Project has achieved Substantial Completion as defined below in Section 16.1;

2.1.8 Issue a Notice of Acceptance when City reasonably determines the Project has achieved Final Completion as defined in Section 16.2.

2.2 City Review Process. City shall review 30% Schematic Drawings (SDs), 50% Design Development Drawings (DDs), 90% Construction Drawings (CDs), and 100% CDs, which shall allow construction of the Project in conformity with the approved RAW and according to the performance specifications set forth in this agreement.

2.2.1 For each D/B submittal, the City shall have fifteen (15) working days to review, approve, conditionally approve or deny said set of documents.

Section 3: General Obligations of D/B

3.1 D/B shall be obligated as follows:

3.1.1 At all times in performing its services under this Agreement to design and deliver the best possible Project consistent with standard of care in Section 3.3 that satisfies the time, monetary, quality and design parameters set forth in this Agreement;

3.1.2 Design and construct the Project on time, consistent with time frames set forth in the schedule in Exhibit 2, and in such a manner that the GMP or Contract Time of the Project shall not be exceeded, but if D/B reasonably believes that any action, inaction, decision or direction by City or agent for the City will likely result in the GMP or

Contract Time being exceeded or the Project being completed late, D/B will notify City at Project Team meeting and in writing within five (5) calendar days of discovering such action, inaction, decision, or direction. Included in such notice will be an estimate of the cost and time impact resulting from such action, inaction, decision or direction. D/B shall provide complete and accurate pricing within ten (10) calendar days of said discovery.

3.1.3 Perform, or obtain the prior written consent of the City to subcontract all design services for the Project utilizing qualified, licensed and sufficiently experienced architects, engineers and other professionals (herein jointly "Design Consultants") as identified in Exhibit 3. D/B shall not be permitted to substitute any Design Consultant unless authorized by City. The fact that the City approves the subcontracting of any such services will in no way relieve the D/B of any of its obligations or responsibilities under this Agreement;

3.1.4 Perform all construction on the Project utilizing subcontractors appropriately licensed by the California Contractors State License Board or other required agency;

3.1.5 Perform all services as expeditiously as is consistent with reasonable skill and care and shall complete the services within each and all of the time periods set forth in this Agreement and the schedule (Exhibit 2);

3.1.6 Comply with the California Fair Employment and Housing Act and all other State, Federal and local laws including, but not limited to, those prohibiting discrimination, on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation;

3.1.7 Study all applicable laws, codes, ordinances, rules, orders, regulations, and statutes affecting the Project, including but not limited to, zoning, environmental, building, fire and safety codes and coverage, density and density ratios and lien laws, and comply with them in performance of its services. D/B shall ensure that the Project design conforms to all applicable federal, state and local laws, statutes, ordinances, rules, regulations, orders or other legal requirements, (collectively "Governmental Requirements") existing as of the date of this Agreement. However, the City recognizes that Governmental Requirements and their interpretations by governmental officials ("Code Authority") are often subject to change at any time, even after issuance of a building permit. If, after the date of this Agreement, modifications to the Project are required because of a change in Governmental Requirements or their interpretation by a Code Authority which had not previously been given, or which if given, was different from a prior interpretation of a Code Authority, D/B shall make the required modifications to comply with the same. However, in the event of such an occurrence the compensation to D/B and the associated design and pre-construction schedule may be subject to an adjustment. Nothing contained in this paragraph shall relieve D/B of its obligations to modify the Project at its own expense where D/B has failed to design the Project in compliance with Governmental Requirements applicable as of the date of this Agreement.

3.1.8 To obtain and pay for all permits necessary to complete the Project.

3.1.9 Conform its design to the requirements of the Americans With Disabilities Act Accessibility Guidelines (“ADAAG”) and the Americans With Disabilities Act (“ADA”). The ADA provides that alterations to a facility must be made in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to persons with disabilities. The City acknowledges that the requirement of the ADA will be subject to various and possibly contradictory interpretations. The D/B, therefore, will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project. The D/B, however, cannot and does not warrant or guarantee that the City’s project will comply with all future interpretations of the ADA requirements and/or the requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project.

3.1.10 Seek and obtain written approval from the City of the drawings for each of the following phases: (1) 30% SD (2) 50% DDD (3) 90% CD’s (4) 100% CD’s and specifications. Said approval shall be evidenced by written notice to proceed with the subsequent phase.

3.1.11 Provide cost estimating and value engineering services, which take into consideration long-range maintenance costs, energy efficiency, and impact operation of the Project. Provide cost estimates to the City at 30% SDs, 50% DDDs, 90% CDs, and 100% CDs. Two copies of the final cost estimate (100% CDs) shall be provided to the City with Final Construction Documents.

3.1.12 Perform Quality Control (“QC”). Review the drawings and specifications in order to identify and correct errors and omissions and reduce the quantity of Change Orders during the course of construction. Include a detailed review of drawings and designs relative to Code Compliance laws.

3.1.13 Take all reasonable steps during the course of the Project so as not to interfere with the ongoing operation of the adjacent residences, businesses and facilities, including but not limited to the following:

3.1.13.1 Not interfere with pedestrian and vehicular access;

3.1.13.2 Control dust and noise in accordance with the provisions in the 2009 Edition of the Standard Specifications for Public Works Construction, City Ordinances and this Agreement.

3.1.14 Use reasonable care to avoid damaging existing buildings, equipment and vegetation on the Project Site and adjacent to the Project Site. If D/B causes damage to any of this property, D/B shall replace or repair said property at no expense to City and shall not be a basis for seeking an adjustment to the GMP or Contract Time. D/B agrees to indemnify City for any and all fines, penalties, liabilities, cost imposed upon City, its officers, employees and agents as a result of this Project;

3.1.15 Review soils and geotechnical reports relating to the Project Site; and determine and advise City if any further subsurface investigations are warranted. If such further investigations are authorized by City, D/B shall perform said investigations. The costs of said investigations will be included in the GMP;

3.1.16 Be fully responsible for all additive costs, damages, and liabilities resulting from errors or omissions beyond the standard of care defined in Section 3.3 by D/B or D/B's agents, employees, design support consultants and contractors; such costs, damages and liabilities shall not be chargeable to the City nor shall they be a basis for seeking an adjustment in the GMP or Contract Time;

3.2 With the understanding that the D/B has based its proposal on the assumption that the Draft R.A.W. will be approved without substantial changes by the DTSC, D/B agrees to fully assume all risks, and costs associated with such risks, in performing the services and meeting the obligations under this Agreement, with the exception that unanticipated subsurface site conditions not addressed by the Draft R.A.W. are subject to Change Order, as further described in Section 14 of this Agreement.

3.3 D/B shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations. Compliance with this section by D/B shall not in any way excuse or limit D/B's obligations to fully comply with all other terms in this Agreement;

3.3.1 D/B is to provide a list of the responsible people within their organizations performing services, which shall include their qualifications and their function, for approval by the City prior to start of construction. City and D/B shall establish "key personnel" who shall remain on the Project until Final Completion. If any such "key personnel" leave the employment of D/B, City shall have the right to approve the replacement personnel assigned to this Project. D/B shall comply with all licensing requirements of the State of California Contractors License Board, County of San Diego, and City of Oceanside.

3.3.2 Project Manager. Throughout all phases of the Project hereunder, the individual project manager shall be as reflected in Exhibit 3. So long as the Individual Project Manager remains in the employ of the D/B, such persons shall not be changed or substituted from the Project, or cease to be fully committed to the Project as deemed necessary by the City in its reasonable discretion, without the prior written consent or instruction of the City. Any violation of the terms and provisions of this Section shall constitute a Material Default.

3.3.3 City Right to Remove Project Manager. Notwithstanding the foregoing provisions of Section 3.3.2 if the Individual Project Manager proves not to be satisfactory to the City, upon written notice from the City to the D/B, such person or person shall be promptly replaced by a person who is acceptable to the City in accordance with the procedures set forth below.

3.3.4 Replacement Selection of Project Manager. Within five (5) working days after receipt of a notice from the City requesting the replacement of any Individual

Project Manager, or promptly following the discovery by the Design Build Team that any Individual Project Manager is leaving the employ of the D/B, as the case may be, the replacement/substitution (together with such person's resume and other information regarding such person's experience and qualifications) for approval by City. The replacement/substitution shall commence work on the Project no later than five (5) calendar days following the City's approval of such replacement, which approval shall not be unreasonably withheld. In the event that the City and Design Build Team cannot agree as to the substitution of replacement of the Individual, the City shall be entitled to terminate this Agreement for cause.

3.4 D/B shall cooperate with City in obtaining Environmental approvals and/or permits.

3.5 D/B agrees and acknowledges that the City Representative is the only person with authority to approve additions or modifications to Project. Any costs or delays resulting from or associated with additions or modifications implemented without the written authorization of City Representative shall be borne exclusively by D/B and not be grounds for an increase in GMP or Contract Time unless necessary to protect public health, safety or property.

3.6 D/B team is to provide progress photographs taken at regular intervals throughout the Project. Photographic documentation shall depict an overview of Project site showing work in progress. Dates and times to be documented. Copies of documentation shall be transmitted to the City monthly. The costs will be included in the GMP.

3.7 D/B shall fully cooperate with City Representative and any of its agents assigned to this project.

3.8 D/B shall comply with the State Labor Code Requirements set forth in Exhibit 4, which requirements are hereby incorporated and made a part of this Agreement.

3.9 D/B shall comply with all applicable provisions of the CIWMB Grant Agreement, a copy of which is attached as Exhibit 5 and hereby incorporated and made a part of this Agreement.

Section 4: Work Restriction and Bidding Requirement

4.1 D/B shall determine how best to package portions of the work for purposes of bidding. D/B shall be responsible for selectively bidding all construction work to others and for entering into subcontracts, in D/B's own name, with the bidder who in D/B's sole discretion best meets the monetary, time, and performance requirement of the Project. D/B is required to submit a summary of bid results for each bid package. D/B shall be responsible for ensuring that these contracts fully comply with all applicable local, state and federal laws, some but not all of which are listed below.

Section 5: D/B's Pre-Construction Services and Obligations

5.1 D/B's preconstruction services shall include, but are not limited to the following:

5.1.1 Continue to develop program and refine project requirements and review such requirements with the City.

5.1.2 Utilize the City required standard specifications except as modified by Exhibit 1, facility program requirements, approved master plans, Federal, State, and City performance and design criteria, concept drawings, and reports to prepare and provide schematic design, design development and construction drawings and specifications suitable for obtaining City approval and issuance of permits.

5.1.3 Complete the design for all elements of the Project, including but not limited to: architectural, civil, structural, landscape architectural, mechanical, plumbing, electrical, and specialty consulting areas that may be needed for the planning and construction of this type of facility.

5.1.4 Incorporate the requirements of permitting agencies as may become apparent in the course of design. The D/B shall apply for and secure all permits and provide all necessary reports, studies and support required to obtain the permits. In addition, the D/B shall research all Air Pollution Control District and noise abatement requirements, along with any hazardous materials management requirements of NFPA, Cal-OSHA and the City Fire Department. The D/B shall develop all appropriate environmental plans, including but not limited to, an air pollution control plan, a noise abatement plan and a hazardous materials management plan. The D/B shall submit, manage and obtain approval of an application for a Stormwater Management Permit to the appropriate authority. If required, the D/B shall incorporate appropriate facilities in the design.

5.1.5 Conduct site surveys and geotechnical investigations to the extent necessary for final design. Survey and geotechnical information to be provided by the City may be preliminary in nature and may not have sufficient accuracy or scope to support final design.

5.1.6 Perform value engineering reviews to reduce cost and/or add value, utilizing all team members and City resources. Prepare a Value Engineering Report of all considerations, recommendations and decisions. The goal is to maximize the quality of construction at a cost equal to or below the Project Budget.

5.1.7 Provide construction cost control estimates during the design to support value engineering and constructability reviews. Revise these cost control estimates once accepted value engineering recommendations and other review comments have been incorporated.

5.1.8 Prepare and submit to City detailed cost estimates with SDs and DDDs.

5.1.10 Prepare complete SDs and DDDs such that the DDD include, as may be applicable, the following:

5.1.10.1 Site plan with pertinent notes and dimensions indicating property line; existing public streets, sidewalks, curb cuts, other public improvements; required setbacks; service, trash, fire lane and truck access, adjacent buildings, building outline; landscape and site elements;

5.1.10.2 Floor plans including graphically demonstrating interior and exterior walls and fenestration with notes, dimensions and gridlines; room names, critical dimensions and area calculations;

5.1.10.3 Roof plans including detailed notes, dimensions, mechanical equipment locations, define material for mechanical screens, skylights and roof access, roof materials, and roof drainage;

5.1.10.4 Building sections including vertical dimensions, floor assembly thickness showing known structural elements, notes and dimensions;

5.1.10.5 Exterior elevations including material references and extent; visible roof top elements; existing and new line of grade; indicate of floors with leader lines; and vertical dimensions; notes, dimensions and grid lines;

5.1.10.6 Wall sections including all wall sections, dimensions, horizontal element offsets, and guide to exterior face of wall; dimensions, vertical floor to floor, floor to window head and sill and floor to ceiling; structural elements and assemblies; interior and exterior wall finishes; and wall and roof assembly;

5.1.10.7 Outline specifications, written description of building systems and components including site work, room finishes, product cut sheets, and special equipment;

5.2 Submit completed SD and DDD to City in accordance with 3.1.10. Obtain comments from City and make revisions to DDD as required. Obtain written approval or conditional approval from City to proceed to Construction Documents Services. If conditional approval granted, D/B shall address all City comments or issues in the next set of drawings developed. City retains the right to withhold approval and require resubmittal of the DDD. Any delay or additional costs resulting from the re-submittal shall be borne exclusively by D/B and not be grounds for an increase in the fees or schedule in this Agreement.

5.3 D/B shall prepare a detailed Critical Path Method schedule for all design and pre-construction components showing all major milestones.

Section 6: D/B's Services and Obligations – Construction Documents

6.1 Following City's approval of SD and DDD's, D/B's services shall include, as applicable, the following:

6.1.1 D/B shall continue to develop and refine project requirements and review such requirements with City;

6.1.2 D/B shall prepare CDs which shall include, as applicable, the following:

6.1.2.1 Architectural plans and details, including:

6.1.2.1.1 Site plan indicating general location and nature of on-site and the necessary off-site improvements.

6.1.2.1.2 Floor plans, including roof, showing space assignments, sizes, and location of installed or fixed and movable equipment which affects the design of the spaces.

6.1.2.1.3 Building elevations indicating exterior design elements and features, including fenestration arrangements, materials, mechanical and electrical features appearing on the walls, roofs, and adjacent areas.

6.1.2.1.4 Interior elevations to establish functional requirements, equipment, and all systems locations.

6.1.2.1.5 Typical building sections showing primary structural members, dimensions, and accommodation of functional systems.

6.1.2.1.6 Typical wall sections sufficient to indicate materials, openings, and major features.

6.1.2.2 Structural drawings including plans and sections of sufficient clarity and detail to show the extent and type of structural system and dimensions, final structural design criteria, foundation design criteria, preliminary sizing of major structural components, critical coordination clearances and applicable material lists.

6.1.2.3 Mechanical plans and details (optional);

6.1.2.4 Landscape and irrigation plans and details;

6.1.2.5 Electrical plans and details;

6.1.2.6 Plumbing plans and details;

6.1.2.7 Plans showing installation of major systems, equipment, fixed furnishings, and graphics;

6.1.2.8 Technical specifications;

6.1.2.9 All other technical drawings, schedules, diagrams and specifications, to set forth in detail the requirements for construction of the Project, including:

6.1.2.9.1 Provide information customarily necessary for the use of those in the building trades;

6.1.2.9.2 Include documents customarily required to obtain regulatory agency approvals;

6.1.2.9.3 Provide color board(s) and architectural rendering(s) for required presentations.

6.1.2.10 Mechanical design documentation consisting of continued development and expansion of schematic mechanical design.

6.1.2.11 Electrical design documentation consisting of continued expansion of the schematic electrical design.

6.1.2.12 Sections through critical areas showing coordination of architectural, structural, mechanical, and electrical elements.

6.1.2.13 Final specifications, including but not limited to architectural, mechanical, electrical, landscape and other site work.

6.1.2.14 Plumbing drawings including location and quantity of fixtures, equipment sizes, room sizes for plumbing equipment, and final specifications as appropriate.

6.1.3 Utilizing the 2009 Edition of the Standard Specifications for Public Works Construction, and design criteria, concept drawings, and reports incorporated herein by reference, D/B shall:

6.1.3.1 Prepare CDs and specifications suitable for obtaining City-approved permits and to allow construction. Preparation of technical materials and equipment specifications for pre-purchase will be the responsibility of the D/B.

6.1.3.2 Develop a construction phase Quality Assurance/Quality Control Plan ("QA/QC Plan") and submit to City for written approval. QA/QC Plan shall not be implemented without prior written approval by the City. The QA/QC Plan shall include but not be limited to:

6.1.3.2.1 A statement and definition of QA/QC goals;

6.1.3.2.2 An identification of QA/QC criteria and elements;

6.1.3.2.3 An implementation plan;

6.1.3.2.4 Development of the QA/QC materials, components, equipment and system testing plans; and

6.1.3.2.5 Enforcement of the plans and specifications.

6.1.3.3 Identify all permit requirements and prepare applications and support documents necessary for obtaining all permits.

6.1.3.4 Submit Construction Documents to the City for plan check, and make any changes therein as may be lawfully required. Obtain general building permit and all ancillary permits and licenses, including but not limited to, demolition permits, improvement permits and grading permits, as necessary.

6.1.3.5 Complete the design for all elements of the Project, including, as applicable: civil, structural, architectural, mechanical, electrical, and specialty consulting areas.

6.1.3.6 Throughout the design process, evaluate alternative structural and construction approaches to ensure economical designs, which optimize constructability yet meet all codes, architectural concepts, schematic designs, and standard specifications of the Project. Design and construction shall also meet all ADAAG Guidelines and California code requirements.

6.1.3.7 Provide additional site surveys and geotechnical investigations as necessary for final design.

6.1.3.8 Furnish support to a City constructability review team at the 50% and 90% design completion stage. Incorporate the results of this review into the design.

6.1.3.9 Prepare and submit updated detailed construction cost estimates at 30% SD, 50% DDD, 90% CDs and 100% CDs to support Value Engineering (VE) and constructability reviews.

6.2 D/B shall determine and establish the sequence of construction, and if appropriate, identify separate bid packages to accomplish phased construction of the Project.

6.2.1 Provide constructability review with City participation at all stages of design completion. Incorporate results of the team's review into the design.

6.2.2 Provide construction cost control estimates during the design to support VE and constructability reviews. Revise these cost control estimates once accepted VE recommendations and other review comments have been incorporated.

6.2.3 Identify all permit requirements and prepare applications and support documents necessary for obtaining all permits.

6.3 Review as needed the CDs with the governmental authorities having jurisdiction over the Project.

6.4 Perform Quality Control (QC) Review of the Drawings and Specifications in order to correct errors and omissions and reduce the quantity of Change Orders during the course of construction.

6.5 At 90 percent construction documents, provide updated cost estimate for rebuilding the Little League ball fields (Phase II of the Project). Any savings at the end of the project will be deducted from the GMP and returned to the owner.

6.6 D/B shall develop and submit to City for approval prior to implementation a Project Management Plan and Procedures to include the following:

6.6.1 Project status reports

6.6.2 Coordination/interface with the City and its other consultants/contractors

6.6.3 Project Safety Plan, which shall include a requirement that all accidents, claims and other on-going safety related issues be reported to the City immediately.

6.6.4 Progress meetings

6.6.5 Interface and communications with other agencies

6.6.6 Vendors and subcontractors management

6.6.7 Document control

6.6.8 Schedule and budget control, including a project-specific plan for defining, tracking and reporting cash flow activity requirements, schedule of values.

6.6.9 Quality assurance and quality control

6.6.10 Throughout the design phase, the D/B shall provide scheduling and cost control reports monthly.

6.7 Submit 100% CDs to City for approval.

6.8 Submit and obtain approval from City of items described in this Section 6. Provide written confirmation that the project is still within the GMP and can be built in accordance with the schedule. Said written confirmation shall include an accounting of all costs and expenses incurred to date against the GMP. Obtain written approval from City to proceed to Construction Services.

6.9 City and D/B may mutually agree in writing that D/B may contract for or perform certain construction services during earlier phases to expedite completion of the Project, for such tasks as, for example, demolition of the buildings and relocation of utilities, and other critical path activities to meet the Project Construction Schedule. However,

absent such written agreement, D/B shall not proceed with any construction services until the City issues a written Notice to Proceed with construction services.

Section 7: D/B's Construction Services

7.1 After City formally approves any required cost estimates, 100% Construction Documents and Construction Schedule, City shall issue to D/B a written Notice to Proceed with Construction Services. The D/B shall construct the Project in accordance with City-approved plans and specifications prepared by the D/B to meet or exceed all requirements of the City provided program, schematic design and the performance criteria. The D/B's Construction Services shall include but are not limited to:

7.1.1 Execute subcontracts, in D/B's own name, with the bidder best meeting the monetary, time, and performance requirements of the Project in the professional opinion of the D/B.

7.1.2 Perform construction management and administration services during the construction of the Project;

7.1.3 Be responsible for and coordinate all construction means, methods, techniques, sequences and procedures;

7.1.4 Coordinate scheduling, submittals, and all design and construction of the Project to ensure the efficient and orderly sequence of the construction of the Project. Monitor and report to the City on actual performance compared to schedule;

7.1.5 Give all notices and comply with laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project;

7.1.6 All change orders, including zero dollar change orders which require the use of D/B Contingency Fund, irrespective of impact on GMP and Contract Time shall require City approvals, however City shall not unreasonably withhold approval for use of contingency funds for changes normally encountered due to unforeseen omissions in the work packages and minor clarifications of the drawings;

7.1.7 Establish and maintain a quality control program with appropriate reviews and independent testing procedures to ensure compliance with the Construction Documents;

7.1.8 Coordinate all required inspections in such a manner that the progress of construction is not affected or impacted;

7.1.9 Correct any work which does not conform to the Construction Documents;

7.1.10 Keep City informed of the progress and quality of the design and construction of the Project;

7.1.11 Pay royalties and license fees, if applicable. D/B shall defend suits or claims for infringement of patent rights and shall defend and hold City and City's agents harmless from loss on account thereof; except that City shall be responsible for such loss when a particular design, process or product of a particular manufacturer is required by City. However, if D/B has reason to believe the use of a required design, process or product is an infringement of a patent, D/B shall be responsible for such loss unless such information is promptly given to the City in writing.

7.1.12 Ensure the Project site is maintained in a clean, neat, sanitary and safe condition free from accumulation of waste materials or rubbish. Prior to Final Completion, D/B shall cause to be removed from and about the Project site all tools, construction equipment, machinery, surplus materials, waste materials and rubbish;

7.1.13 Develop a mutually agreed upon program to abate and minimize noise, dust, and disruption to access for parking and services at all times for adjacent business entities and residences;

7.1.14 Provide City with a detailed construction schedule using an approved software within fourteen (14) working days after receiving Notice to Proceed with Construction Services, provide updated versions of construction schedule on a monthly basis, and provide immediate notice of any impact on critical path items;

7.1.15 Conduct and prepare minutes for regularly-scheduled Project team meetings with City and appropriate design and construction members;

7.1.16 Maintain a complete and up-to-date set of Construction Documents in the Project's field office at all times during construction which reflect all changes and modifications, and at the end of construction prepare for City a complete set of Project documents, along with four reproducible, and one electronic set of drawings depicting As-Built conditions for the Project;

7.1.17 Notify City in writing when D/B believes that the Project has achieved Substantial Completion, participate with City in inspecting the completed construction, prepare punchlist, and cause the punchlist items to be performed and/or corrected in accordance with the Construction Documents;

7.1.18 Notify City in writing when D/B believes that the Project has achieved Final Completion. Assemble and deliver to City upon Final Completion all records, documents, warranties, bonds, guarantees, maintenance/ service contracts, and maintenance and operating manuals;

7.1.19 Inspect the Project during the one-year general building warranty period, identify items requiring repair, and oversee those repairs. Inspect the each component at 180 and 360 days after Final Completion of Project and prepare reports to City, develop budgets and direct all repairs.

7.1.20 Conduct contractor meetings, as necessary, to provide technical input.

7.1.21 Assist during final acceptance process by furnishing final walk-through(s) and comments.

7.1.22 The D/B shall be responsible for complete management, supervision, and reporting of all aspects of the construction of this Project.

7.1.23 The D/B shall provide resident management and contract administration, including specialists necessary for the functional, safe, on-budget and on-schedule completion of the Project, starting with the issuance of a Notice to Proceed, upon receipt of final construction drawings, from the City and extending through issuance of Notice of Completion and Acceptance. D/B shall be responsible for contracting for and scheduling specialty inspections to verify compliance with the plans, specifications and contract documents. City staff will perform standard building code inspections.

7.1.24 The D/B resident staff shall ensure construction compliance with applicable local, state, and federal codes, building and environmental permit requirements, construction mitigation documents and enforcement of the Contract Documents.

7.1.25 The D/B is responsible for the construction and all contract administration services during the construction of the Project in accordance with all applicable laws, regulations, and codes, including, but not limited to, the 1990 Americans with Disabilities Act (ADA) and Title 24 California Code of Regulations (Building Code) as defined in Section 18910 of California Health and Safety Code. The D/B is responsible as an employer and City representative to comply with all portions of Title 24 and the ADA.

7.1.26 The D/B shall provide surveying, and other contracted services as required to complete project construction inspection and testing tasks. The D/B will be responsible for contracting for special inspection services and City will be responsible for periodic building inspections. D/B is responsible for scheduling and coordinating all inspections and paying for all re-inspections.

7.1.28 The D/B shall implement and maintain an internal records management and document control system as required to support project operations. The D/B shall provide records management and document control information in a manner consistent with the City's reporting system.

7.1.28 The D/B shall administer and coordinate the project contract closeout process and shall resolve any warranty provision issues. The D/B shall report progress of project contract closeout to the City in a manner consistent with the City's reporting system.

7.1.29 The D/B shall administer and enforce the Environmental Mitigation Monitoring and Reporting Plan for the Project, if any. The DB shall report a record of environmental issues to the City in a manner consistent with the City's reporting system.

7.2 Unless the D/B receives the City's prior approval to substitute equal or better quality materials, the D/B warrants to City that materials and equipment incorporated in the Project will be new, unless otherwise specified, and that the Project will be of good quality, free from faults and defects, and in strict conformance with the Construction Documents and in accordance with Section 22.

Section 8: Intentionally Omitted

Section 9: Intentionally Omitted

Section 10: Bonds

10.1 D/B shall furnish performance and payment bonds with the names of the obligees designated as the City in the amount set forth below, as security for the faithful performance and payment of all D/B's obligations under the Agreement. These bonds shall remain in effect at least until thirty (30) days after the filing date of Notice of Completion, except as otherwise provided by law or regulation or by this Agreement. D/B shall also furnish such other bonds as are required by this Agreement.

10.1.1 The performance bond shall be in the amount of 100% of the GMP.

10.1.2 The payment bond shall be in the amount of 100% of the GMP amount.

10.2 All bonds shall be in the form prescribed by City and by such sureties which are authorized to transact such business in the State of California, listed as approved by the United States Department of Treasury Circular 570, and whose underwriting limitation is sufficient to issue bonds in the amount required by this agreement and which also satisfy the requirements stated in Section 995.660 of the Code of Civil Procedure, except as provided otherwise by laws or regulations. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act. Surety companies must be duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits so required.

10.3 If the surety on any bond furnished by D/B is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, D/B shall within seven (7) days thereafter substitute another bond and surety, which must be acceptable to City.

Section 11: Insurance

11.1 The insurance provisions herein shall not be construed to limit D/B's indemnity obligations contained in this Agreement.

11.2 D/B shall procure and maintain for the duration of the 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 D/B, his agents, representatives, employees or subconsultants. All subconsultants shall be required to comply with the applicable insurance provisions. The maintenance of proper coverage

is a material element of the contract and that failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.

11.3 Minimum Scope of Insurance

11.3.1 Coverage shall be at least as broad as:

11.3.1.1 Commercial General Liability, including contractual liability, business automobile liability, and products and completed operations, all of which shall include coverage for both bodily injury and property damage, with a combined single limit of not less than one million dollars covering D/B and all of D/B's subcontractors (auto not required for subcontractors) and also provide:

11.3.1.2 Insurance Services Office Form Number CA 0001, or equivalent, covering Automobile Liability, Code 1 (any auto).

11.3.1.3 Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

11.3.1.4 Errors and Omissions Insurance from architect and all professional sub-consultants for services performed by Design contractors and subcontractors performing design services. In the event coverage under this policy is terminated or not renewed for any reason, extended reporting period coverage shall be purchased for not less than two years.

11.3.1.6 Contractor and its Subcontractors will be solely responsible for any loss or damage to their personal property including contractor's tools and equipment owned, used, leased, or rented by the Contractor or Subcontractor.

11.3.1.7 Any policy deductible amount will be the responsibility of Contractor and/or Subcontractor.

11.4. Minimum Limits of Insurance

11.4.1 Contractor or appropriate subcontractor shall maintain limits no less than:

11.4.1.1	General Liability: \$1,000,000 (Including operations, products and completed operations.)	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.
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11.4.1.2	Automobile Liability:	\$1,000,000	per accident for bodily injury and property damage.
11.4.1.3	Workers' Compensation Employer's Liability:	\$1,000,000	Per accident for bodily injury, disease-policy limit and disease-each employee.
11.4.1.4	Errors and Omissions:	\$1,000,000 \$2,000,000	per occurrence policy aggregate

11.5 Deductibles and Self-Insured Retentions

11.5.1 Any deductible or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the D/B shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

11.6 Other Insurance Provisions

11.6.1 The general liability policy shall contain, or be endorsed to contain, the following provisions:

11.6.1.1 The City, its officers, officials, employees, and volunteers are to be covered as additional insureds using ISO Form CG 2010 or its equivalent, with respect to liability arising out of work or operations performed by or on behalf of the D/B including materials, parts or equipment furnished in connection with such work or operations.

11.6.1.2 For any claims related to this project the D/B's insurance coverage shall be the primary insurance as respects the City, its officers, officials, employees, and volunteers; to the extent permitted by law. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the D/B's insurance and shall not contribute with it.

11.6.1.3 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 Sections 2782 of the Civil Code.

11.6.1.4 D/B's insurer will provide a Waiver of Subrogation in favor of the City for each required policy providing coverage during the life of this contract (with the exception of Professional Liability coverage).

11.7 Verification of Coverage

11.7.1 D/B shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City 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.

11.8 Subcontractors

11.8.1 All coverages for subcontractors or subconsultants shall be subject to all of the requirements stated herein. Subcontractors and Subconsultants shall be protected against risk of loss by maintaining insurance in the categories and at the limits required herein. Subcontractors and Subconsultants shall name City and D/B as additional insureds under its policies.

11.9 Cooperation. The D/B and its Contractors shall cooperate fully with and provide any information or records requested by the City or regarding all aspects of the insurance and project, including but not limited to claims, audit, payroll, insurance records and safety. Delays in reporting information to the City may result in delays in progress payments to the D/B.

11.10 Prior to beginning Work under the Agreement, each and every Contractor of any tier shall furnish Certificates of Insurance satisfactory to the City. All such Certificates shall contain at least the following provisions:

11.10.1 Thirty (30) days written notice to the City prior to any cancellation, non-renewal or material reduction in coverage.

11.10.2 The words "will endeavor" and "but failure to mail such notice shall impose no such obligation or liability of any kind upon the company, its agents or representatives" will be deleted from the Certificates.

11.10.3 Throughout the life of the Agreement, each and every Contractor of any tier shall pay for and maintain in full force and effect, with Insurers authorized by the California Insurance Commissioner to do business in the State of California, any policies required by this Agreement.

11.10.4 Any insurance provided for this project is to be placed with licensed insurers admitted to transaction business in the State of California with a current A.M. Best Rating of not less than A-:V. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A:X. Any exceptions are at the sole discretion of the City and subject to written approval of the City.

11.11 Questions concerning the insurance requirements of this Agreement shall be directed to the City Representative.

Section 12: Inspection

12.1 D/B shall be responsible for all specialty inspection and material testing and inspections. The City shall perform building inspection with its own forces. It shall be the responsibility of D/B, however, to call for, coordinate and schedule all inspections.

12.2 City, its consultants, subcontractors, independent testing laboratories as well as other governmental agencies with jurisdictional interests will have access at reasonable times for this observation, inspecting and testing. D/B shall provide them proper and safe conditions for such access and advise them of D/B's safety procedures and programs so that they may comply.

12.3 D/B will make, or have made, such inspections and tests, as the City deems necessary to see that the Work is being accomplished in accordance with the requirements of the Construction Documents or shall in any way limit or modify D/B's indemnity obligations as provided for within this agreement. Unless otherwise specified, the cost of such inspection and testing will be bid out and carried as a line item in the construction cost. In the event such inspections or tests reveal non-compliance with the requirements of the Construction Documents, D/B shall bear the cost of corrective measures deemed necessary by City, as well as the cost of subsequent re-inspection and re-testing. Neither observations by the City nor inspections, tests, or approvals by others shall relieve D/B from D/B's obligations to perform the Work in accordance with the Construction Documents. D/B shall give City timely notice of readiness of the Work for all required building inspections and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. D/B shall give at least 24 hours notice for building inspections.

12.4 City has the right to stop or suspend Work activities which will conceal or cover up D/B Work product which is to be inspected or tested, or which will interfere with the inspection or testing activities, for a reasonable time and D/B will have no right to additional cost or time it may incur as a result of the Work stoppage.

Section 13: Intentionally Omitted

Section 14: Changes to the Work

14.1 The parties agree and understand that the D/B shall not be entitled to an increase in the GMP. In the event that unforeseen site conditions or other events warrant a change in the work, the parties agree that the scope of work and/or the Contract Time may be adjusted as necessary to accommodate the condition, but the GMP shall not be increased.

14.2 The following procedure shall be followed for the issuance of Change Orders:

14.2.1 Upon the occurrence of any event that gives rise to a Change Order, D/B shall give the City notice of the same with 5 days. D/B shall not proceed with any such services or work until such notice has been given to the City except if such services or work are necessary to protect public health, safety or property.

14.2.2 Unless otherwise directed by the City Representative in writing, before proceeding with any Change Order work D/B shall promptly provide the City with a detailed and complete estimate of the impacts associated with the Change Order.

14.2.3 Upon submission of the detailed estimates by the D/B, the Parties will attempt to negotiate an appropriate adjustment in scope of work and/or Contract Time. If an agreement is reached, a Change Order reflecting the agreement will be executed by the Parties. If an agreement is not reached, the City shall have the option to direct the D/B to proceed with the subject services and/or work, during which time the D/B shall contemporaneously maintain accurate and complete records of all labor, material and equipment utilized in performing the subject services and/or work. These records shall be submitted to the City and shall become the basis for continued negotiations between the Parties for an equitable adjustment to the scope of work and/or Contract Time.

14.2.4 In the event there is any disagreement or dispute between the Parties as to whether the D/B is entitled to a Change Order or the amount of the Change Order, the matter shall be resolved in accordance with Section 33. D/B shall not have the right to stop or delay in the prosecution of any services or work, including services or work that is the subject of the Change Order, pending this resolution process. Instead, D/B shall continue diligently prosecuting all such services and work.

14.2.5 City may, in its sole discretion, adjust the scope of work or Contract Time for any undisputed issues.

Section 15: Payment Terms

15.1 D/B shall submit certificate and application for payment to the City on a monthly basis for services rendered under this Agreement. The monthly payment shall be based upon percentage of completion of the Schedule of Values, less any payments previously made by the City and subject to the receipt of unconditional lien releases for all prior payments. If the invoiced amount is not disputed by City, it shall pay D/B ninety percent (90%) of payment application based upon the percentage complete of the Schedule of Values and 100% of the reimbursable costs within thirty (30) days after receipt of the fully documented invoice. City will withhold the remaining 10% as security for D/B's full performance.

15.2 Subject to Section 15.4, City shall pay D/B the ten percent (10%) retention being withheld pursuant to Section 15.1 as part of the "Final Payment" to D/B. Final Payment will be made thirty-five (35) days after Final Completion of each Phase.

15.3 The City Manager will consider the release of the entire retention for subcontractors upon completion of the subcontractors' work and execution of a disclaimer and unconditional final lien release by the subcontractor.

15.4 In lieu of withholding retention under this Agreement, at the election of D/B, City will deposit retention amounts into escrow and/or the substitution of securities for money as provided in California Public Contract Code Section 22300.

15.5 Retentions do not apply to work of Design Professionals on D/B team.

Section 16: Project Completion

16.1 Substantial Completion shall be that stage in the progress of the construction when all Work on the Project is sufficiently complete in accordance with the Construction Documents so that City can fully utilize entire Project; Substantial Completion shall further mean that all goods, services and systems to be provided under the terms and conditions of the Construction Documents are in place and have been initially tested, and are operationally functional, subject only to final testing, balancing and adjustments and normal Final Completion punchlist Work.

16.2 Final Completion shall be deemed to occur on the last of the following events: (1) recordation of a Notice of Completion for the Project; (2) acceptance of the Project by the City; (3) issuance of a final Certificate of Occupancy for the Project; (4) submission of all documents required to be supplied by D/B to City under this Agreement, including but not limited to As-Built Drawings and warranties; (5) and delivery to City of a Certificate of Completion duly verified by D/B.

16.3 D/B shall provide City with a Certificate of Completion, certifying to City under penalty of perjury that the Project has been completed in accordance with the Construction Documents, all applicable building codes and regulations, all permits, licenses, and certificates of inspection, use and occupancy, and ordinances relating to the Project.

16.4 D/B shall provide one set of City final record drawing documents at the end of construction, one reproducible copy and one copy in electronic format ("As-Built Drawings"). As-Built Drawings are to be accurate and legible records showing exact location by dimensions, and the exact depth by elevation of underground lines, valves, plugged tees, wiring and utilities.

16.5 D/B shall provide a copy of, or make available before destruction, all records (which includes all writings as defined in Evidence Code Section 250) to the City upon receipt or generation, which shall include a copy of D/B's filing protocol.

Section 17: Contract Time

17.1 The "Contract Time" shall be the time provided for in Section 1 for D/B to achieve Substantial Completion.

17.2 "Time is of the essence" with regard to Contract Time and all milestones listed in the detailed construction schedule.

17.3 The Contract Time may only be changed by a Change Order as set forth in Section 14.

17.4 Further, an extension in Contract Time will not be granted unless D/B can demonstrate through an analysis of the Project Schedule that the increases in the time to perform or complete the Project, or specified part of the Project, beyond the corresponding Contract Time arise from unforeseeable causes beyond the control and without the fault or negligence of D/B, its Design Consultants, and subcontractors or suppliers, and that such causes in fact lead to performance or completion of the Project, or specified part in question, beyond the corresponding Contract Time, despite D/B's reasonable and diligent actions to guard against those effects.

17.5 D/B carries the burden of proving an entitlement to an increase in the Contract Time. Delays attributable to and within the control of Design Support Consultants, or subcontractor or supplier shall be deemed to be delays within the control of D/B. No time extension will be allowed for such delays.

Section 18: Intentionally Omitted

Section 19: Right to Modify Work

19.1 Without invalidating the Agreement and without notice to any surety, City may at any time or from time to time, order additions, deletions, or revisions in the Project; these will be authorized by a written Change Order prepared and issued by City. Upon receipt of any such document, D/B shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Construction Documents (except as otherwise specifically provided).

19.2 When City desires a change in the Project, City may issue a Request for Proposal to D/B. D/B will be required to respond within the time indicated by City.

Section 20: Intentionally Omitted

Section 21: Work By Others

21.1 City may perform other work related to the Project at the Project Site by City's own forces, or let other direct contracts ("City Contractor"). The City will give D/B reasonable notice of its intent to do such other work. D/B's work shall take priority over the City Contractors; but the Parties will use their best efforts to coordinate their work so as to minimize the disruption to each other's work and to allow City Contractor to proceed expeditiously.

21.2 If the proper execution or results of any part of D/B's work depends upon the work by the City or City Contractor, D/B shall promptly inspect and report to City in writing any apparent delays, defects, or deficiencies in the City's work that render it

unavailable or unsuitable for such proper execution and results. D/B's failure to promptly report such delays, defects, or deficiencies in writing before commencement of the affected work, will constitute an acceptance of the City's work as fit and timely for integration with D/B's Work except for latent defects and deficiencies in the City's work for which D/B will not be responsible.

21.3 If D/B or any person or entity working for D/B causes damage to the City's or City Contractor's work, property, or person, or if any claim arising out of D/B's performance of the Project by any other contractor is made against D/B, by City, any other contractor, or any other person, D/B shall promptly repair and/or resolve said claim at no cost to City.

Section 22: Warranties and Guarantees

22.1 D/B warrants and guarantees to City that materials and equipment incorporated into the Project will be new unless otherwise specified and that all work will be in strict accordance with the Construction Documents and will not be defective. Prompt notice of defects known to City shall be given to D/B. All Defective Work, whether or not in place, may be rejected, corrected, or accepted as reasonably directed by City, provided D/B shall not be entitled to an extension in Contract Time or increase in GMP because of any delay or increase in cost attributable to the rejection, correction or acceptance of said work. Defective work may be rejected even if approved by prior inspection.

22.2 The warranty period shall commence when the Certificate of Final Completion is issued or at beneficial use by City prior to Final Completion, whichever occurs earlier, and extend one (1) year after that date or whatever longer period may be prescribed by laws or regulations or by the terms of any applicable special guarantee or specific provision of the Construction Documents. Warranty on shrubs, turf, and groundcovers shall be ninety (90) days.

22.3 D/B is to provide any extra material for maintenance at the completion of the Project, including items such as carpeting, base, floor tile, ceiling tile, paint, and filters.

22.4 D/B is to provide City one (1) set of operating and maintenance data manuals, fully bound and indexed, warranties, guarantees, and bonds.

22.5 Correction of Defective Work - If within the designated warranty period, or such longer period as may be required by laws or regulations, the Project or any part of the Project, is discovered to contain defective work, D/B shall promptly, without any reimbursement or adjustment in the GMP, and in accordance with City's written instructions, either correct that defective work, or if it has been rejected by City remove it from the Project and replace it with work which is not defective. If circumstances warrant it, including but not limited to, in an emergency, City or D/B may have the defective work corrected or the defective work removed and replaced. In that event, D/B shall not be allowed to recover any associated costs, and D/B shall reimburse City for all direct, and indirect costs of City, and City shall be entitled to an appropriate decrease in the GMP, to withhold a setoff against amount recommended for payment, or make a claim on D/B's bond if D/B has been paid in full.

22.6 With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for Work performed and materials furnished under this Agreement, the D/B shall:

22.6.1 Obtain all warranties that would be given in normal commercial practice and as required by the City;

22.6.2 Require all warranties to be executed, in writing, for the benefit of City;

22.6.3 Enforce all warranties for the benefit of City, if directed by City;

22.6.4 In the event D/B's warranty under section 22.2 has expired, City may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty;

22.6.5 D/B shall assign all subcontractor, supplier and manufacturer warranties including maintenance contracts from the installer for specialized equipment, such as elevators, escalators, movable partitions, equipment etc., to cover the limited warranty period to City at the expiration of the one year warranty.

Section 23: Use and Possession Prior to Completion

23.1 City shall have the right to take possession of or use any completed or partially completed part of the Work if mutually agreed upon by the parties. Before taking possession of or using any Work, City shall furnish D/B a list of items of Work remaining to be performed or corrected on those portions of the Work that City intends to take possession of or use. However, failure of City to list any item of Work shall not relieve D/B of responsibility for complying with the terms of this Agreement. City's possession or use shall not be deemed an acceptance of any Work under this Agreement, nor relieve the D/B of any of its obligations under this Agreement.

23.2 While City has such possession or use, D/B shall be relieved of the responsibility for the loss of or damage to the Work resulting from City's possession or use. If prior possession or use by City delays the progress of the Work or causes additional expense to D/B, an equitable adjustment shall be made in the GMP or the Contract Time, and the Agreement shall be modified in writing accordingly.

Section 24: Personal Services and Non-Assignability

24.1 This is a personal services Agreement and, therefore, D/B shall not alter the key employees or Design Consultants nor assign or transfer, voluntarily or involuntarily, any of its rights, duties or obligations under this Agreement except upon the prior written consent of City. Any such change, assignment or transfer without the prior written consent of the City shall be deemed null and void and constitute a material breach under this Agreement.

Section 25: Indemnification

25.1 To the fullest extent permitted by the law, D/B shall indemnify, defend, protect and hold harmless City, its elected and appointed officers, agents, employees, consultants, (collectively herein the "Indemnitees"), from and against all claims, demands, causes of action, damages, injuries, liabilities, losses and expenses (including, without limitation, reasonable attorneys' and consultants' fees and expenses) of any kind whatsoever, arising in whole or in part out of or resulting from D/B's performance of this Agreement, D/B's breach of this Agreement, or the alleged negligent acts or omissions of D/B, its architects, engineers, other professionals and consultants, Contractors, suppliers or anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable. The obligations of the D/B under this paragraph for errors or omissions, including those of the design professional subcontractors, which includes the D/Bs Design Subcontractors, consultants, agents and employees thereof ("Design Subcontractors"), which arise from (1) the preparation or approval of maps, drawings, opinions, reports, surveys, designs or specifications by the D/B, or (2) the giving of or the failure to give directions or instructions shall not be limited to the amount of coverage provided for in the professional liability insurance policy. If City is fully reimbursed by DB's insurance for any loss covered by this paragraph, D/B shall have no further obligation for such loss.

25.2 D/B's obligation to indemnify under section 25.1 shall not extend to such claims, demands, causes of action, damages, injuries, liabilities, losses and expenses, to the extent that such is the result of the active negligence or the willful misconduct of an Indemnitee. D/B's obligation to defend under section 25.1, if not covered by the insurance to be provided on the Project, shall not extend to such claims, demands, causes of action, damages, injuries, liabilities, losses and expenses, or causes of actions, to the extent that such are caused by the active negligence or the willful misconduct of the Indemnitee, and from no other cause.

Section 26: Right to Terminate and Suspend Work

26.1 Archaeological and Paleontological Discoveries: If a discovery is made of an archaeological or paleontological interest, D/B shall immediately cease operations in the area of the discovery and shall not continue until ordered by City. When resumed, operations within the area of the discovery shall be as directed by City.

26.1.1 Discoveries which may be encountered may include, but are not be limited to, dwelling sites, stone implements or other artifacts, animal bones, human bones, fossils or any item with cultural significance.

26.1.2 D/B shall be entitled to an extension of time in accordance with the provisions of this Agreement.

26.2 Termination of Agreement by City for Cause: If, through any cause, D/B shall fail to fulfill in a timely and proper manner D/B's obligations under this Agreement, or if D/B shall violate any of the covenants, agreements or stipulations of this Agreement, City shall have the right to terminate this Agreement by giving written notice to D/B of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. All finished or unfinished documents, data, studies,

drawings, maps, plans, specifications, reports and other materials prepared by D/B, or any of its agents, Design Consultants or Subcontractors, shall, at the option of the City, become the property of the City, and D/B shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and other materials up to the effective date of Notice of Termination, not to exceed amounts payable hereunder, and less any damages caused by D/B's breach.

26.2.1 In the event the Agreement is terminated in accordance with this Section, City may take possession of the Project and may complete the Project by whatever method or means City may select.

26.2.3 Rights of City Preserved: Where D/B's services have been so terminated by City, the termination will not affect any rights or remedies of City against D/B then existing or which may thereafter accrue. Any retention or payment of moneys due D/B by City will not release D/B from liability. It is agreed that termination hereafter will not in any way release, waiver, or abridge any rights the City has against D/B's performance bond surety.

26.2.4 Any dispute as to the amount due or owed to D/B upon termination under this section shall be resolved in accordance with Section 33.

26.3 Termination for Convenience by City: City may terminate this Agreement at any time and for any reason, by giving specific written notice to D/B of such termination and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. In that event, all finished and unfinished documents and other materials described hereinabove shall, at the option of the City, become City's sole and exclusive property. If the Agreement is terminated by City as provided in this paragraph, D/B shall be entitled to receive just and equitable compensation for any satisfactory Work completed, including reasonable demobilization costs, to the effective date of such termination. D/B hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth herein.

26.3.1 Records and Documents Relating to Termination: Unless otherwise provided in the Agreement or by statute, D/B shall maintain all records and documents relating to the terminated portion of this Agreement for three (3) years after final settlement. This includes all books and other evidence bearing on D/B's costs and expenses under this Agreement. D/B shall make these records and documents available to City, at D/B's office, at all reasonable times, without any direct charge. If approved by the City Manager, photographs, electronic files, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

26.4 Upon receipt of the Notice of Termination, D/B shall take any action that may be necessary, or that the City Manager may direct, for the protection and preservation of the property related to this Agreement that is in the possession of D/B and in which City has or may acquire an interest.

26.5 Payment to D/B Due to Termination - D/B and the City Manager may agree upon the whole or any part of the amount to be paid because of the termination. The amount

may include a fee proportional to the percentage of work satisfactorily completed. However, the agreed amount, exclusive of costs shown in section 26.9 below, may not exceed the total dollar amount authorized by City as reduced by the amount of payments previously made.

26.6 Failure to Agree on Payment - If D/B and City fail to agree on the whole amount to be paid because of the termination of Project, City shall pay D/B the fair and reasonable amounts determined in good faith by City as follows, but without duplication of any amounts agreed to above:

26.6.1 The price for completed services accepted, including any retention, by City not previously paid;

26.6.2 The costs incurred in the performance of the Project terminated, including initial costs and preparatory expense allocable thereto. These costs are only for Work completed and accepted by the City based on an audit of all Contractors' bills of materials and the timecards for Work actually performed;

26.6.3 A portion of the D/B overhead and profit based on the percentage of Work completed on the Project; however, if D/B would have sustained a loss on the entire Agreement had it been completed, City shall allow no profit under this section and shall reduce the settlement to reflect the indicated rate of loss;

26.6.4 D/B and Design Subcontractor services through the date of termination shall be paid based on actual time spent as documented on timecards. Expenses shall be paid based on invoice and receipts provided by D/B;

26.6.5 Under no circumstances will D/B be entitled to any consideration for lost profit or lost opportunity costs.

26.7 If D/B does not agree that the amount determined by the City Manager is fair and reasonable and if D/B gives notice of such disagreement to City within thirty (30) days of receipt of payment, then the amount due shall be as later determined pursuant to the Dispute Resolution procedures in Section 33.

26.8 Payment for Property Destroyed, Lost, Stolen or Damaged - Except to the extent that City expressly assumed the risk of loss, the City Manager shall exclude from the amounts payable to D/B under this Section, the fair value, as determined by the City Manager, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to City.

26.9 Deductions - In arriving at the amount due D/B under this section, there shall be deducted:

26.9.1 Any claim which City has against D/B under this Agreement; and

26.9.2 The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by D/B or sold under the provisions of this clause and not recovered by or credited to City.

26.10 Termination of Agreement by D/B:

26.10.1 D/B may terminate the Agreement upon ten (10) days written notice to City, whenever:

26.10.1.1 The Project has been suspended under the provisions of Section 26.1 or 26.2, for more than ninety (90) consecutive days through no fault or negligence of D/B, and notice to resume Work or to terminate the Agreement has not been received from City within this time period; or,

26.10.1.1 City should fail to pay D/B any monies due it in accordance with the terms of this Agreement and within ninety (90) days after presentation to City by D/B of a request therefor, unless within said 10-day period City shall have remedied the condition upon which the payment delay was based.

26.10.2 In the event of such termination, D/B shall have no claims against City except for those claims specifically enumerated in Section 26.9, herein, and as determined in accordance with the requirements of said Section.

Section 27: Independent Contractor

27.1 D/B and any Design Consultant, Contractor, Subcontractor, agent or employee of D/B, shall act as an independent contractor and not as an agent, officer or employee of City. Except as expressly provided in this Agreement, City assumes no liability for D/B's actions and performance; in particular, but without limitation, City assumes no responsibility for paying any taxes, bonds, payments or other commitments, implied or explicit, by or for D/B. D/B acknowledges that it is aware that because it is an independent contractor, City is making no deductions from the fees for services being paid to D/B and that City is not contributing to any fund on the behalf of D/B. D/B disclaims the right to any type of additional fee or benefits.

Section 28: Independent Judgment

28.1 Unless otherwise directed in writing by City, D/B shall, in providing the professional services required by this Agreement, arrive at conclusions with respect to the rendition of information, advice and recommendations, independent of the control and direction of City, other than normal contract monitoring; D/B, however, shall possess no authority with respect to any City decision beyond rendition of such information, advice and recommendations. D/B shall not have the authority to act as an agent on behalf of City unless specifically authorized to do so by City in writing.

Section 29: Maintenance of Records and Accounting

29.1 D/B shall maintain, during the Project and for a period of three (3) years after completion of the Project, accurate and organized records of all costs of any type and all services performed under this Agreement. City will have the right at any time, including during the performance of all Phases of the Project to audit and copy all such records.

Section 30: Ownership of Documents

30.1 Drawings, plans and specifications, and all reports, studies, tracings, maps, electronic files, and other documents prepared or obtained by D/B in the course of performing the work under this Agreement shall be the property of Owner, and D/B shall convey and transfer all copyrightable interests in such drawings, plans and specifications, documents, and in the Building to Owner. Basic survey notes, sketches, charts, computations and similar data prepared or obtained by D/B under this Agreement shall, upon request, be made available to Owner. Owner agrees to use the original plans and drawings for purposes of this construction project only and will not use the original plans or drawings in connection with any other construction project. Owner agrees to indemnify, defend and hold harmless D/B against any claims, losses, costs or damages as a result of Owner's reuse or misuse of such plans, drawings and specifications. In the event of the return of the plans, drawings, or specifications to D/B or its representative, D/B shall be responsible for their safe return to Owner. D/B shall be entitled to retain copies of the plans, drawings and specifications for their files. Under no circumstances shall D/B fail to deliver any draft or signed and sealed final plans, drawings or specifications to Owner upon written demand by Owner for their delivery, notwithstanding any disputes between D/B and Owner concerning payment, performance of Agreement, or otherwise. This covenant shall survive the termination of the Agreement.

30.2 Title to Intellectual Property. D/B shall represent that it has secured all necessary licenses, consents or approvals to use the components of any intellectual property, including computer software, used in the rendering of services and the production of the materials for the Project and that Owner has full legal title to and the right to reproduce such materials. D/B covenants to defend, indemnify and hold Owner harmless of any loss, claim or liability in any way related to a claim that Owner is violating, as a result of any services rendered by the D/B, either any contractual provisions or any federal, state or local law, relating to trade names, licenses, franchises, patents or other means of protecting interests in products or inventions.

Section 31: Force Majeure

31.1 Any party to this Agreement may be excused for any delay or failure to perform its duties and obligations under this Agreement, except for obligations to pay money, but only to the extent that such failure or delay is caused by an Event of Force Majeure as set forth in section 31.2. If an Event of Force Majeure set forth in section 31.2 causes a delay or failure in performance of only a portion of the obligations of a Party under this Agreement, then only that portion of performance which was delayed or prevented by such cause shall be deemed excused, and the performance of all other obligations of a Party not so delayed shall not be excused by an Event of Force

Majeure. Delay or failure in performance of all other obligations of a Party not so delayed shall not be excused by such Event of Force Majeure. Delay or failure in performance by a Party which is the result of an Event of Force Majeure set forth in section 31.2 shall be deemed excused for a period no longer than the delay or failure in performance caused by such Event.

31.2 An Event of Force Majeure means an occurrence beyond the control and without the fault or negligence of a Party, including but not limited to unusually severe weather, flood, earthquake, fire, lightning, and other natural catastrophes, acts of God or the public enemy, war, terrorist act, riot, insurrection, civil disturbance or disobedience, strike or labor dispute for which D/B is not responsible, expropriation or confiscation of facilities, changes of applicable law, or sabotage of facilities, so long as such Party makes good faith and reasonable efforts to remedy the delays or failures in performance caused thereby.

31.3 A Party shall give written notice to the other Party as soon after becoming aware of the delay or failure in performance caused by an Event of Force Majeure as is reasonably possible, but in any event within five (5) working days after Party becomes aware of such delay or failure.

31.4 No Event of Force Majeure shall be a basis for monetary adjustment to the GMP. Costs incurred by the D/B as a result of a Force Majeure Event will be reimbursed according to the terms of this Agreement from the D/B Contingency Fund.

Section 32: Hazardous Materials

32.1 In the event the D/B or any other party encounters asbestos or hazardous or toxic materials at the Project Site, or should it become known in any way that such materials may be present at the Project Site or any adjacent areas that may affect the performance of the D/B's services, the D/B may, at his or her option and without liability for consequential or any other damages, suspend performance of services on the Project until the City retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the hazardous or toxic materials, and warrant that the Project Site is in full compliance with applicable laws and regulations.

Section 33: Disputes

33.1 All claims, counterclaims, disputes, and other matters in question arising under, or relating to, the Agreement or the breach thereof shall be processed in accordance with the provisions of this Section, unless specifically addressed by another provision of this Agreement.

33.2 D/B shall submit its written request for a Change Order to City pursuant to Section 14. City shall make a determination on D/B's request in writing within 7 days of receipt of request and all supporting data. Said Change Order shall be made in good faith and accurately reflect the adjustment in GMP or Contract Time for which D/B believes City is liable, and covers all costs and delays to which D/B believes it is entitled as a result of the occurrence of the claimed event. All requests for adjustment in

Contract Time shall include an analysis of the Master Construction Schedule and the impact of the claimed work on specific activities on the Master Construction Schedule.

33.3 If D/B disagrees with City's determination, D/B may file a claim in writing in accordance with the procedures set forth in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code, as same may from time to time be amended.

33.4 Pending final resolution of any claim, including litigation, D/B shall proceed diligently with performance of the Project, and comply with any direction of City.

Section 34: Notices

34.1 All notices, demands or other communications hereunder shall be given or made in writing and shall be delivered personally or sent by courier or registered or certified mail, return receipt requested, postage prepaid, addressed to the Party to whom they are directed at the following addresses, or at such other addresses as may be designated by notice from such Party:

(i) To CITY:

City Manager
300 North Coast Highway
Oceanside, CA 92054

City Attorney
300 North Coast Highway
Oceanside, CA 92054

(ii) To D/B:

Brickman Chargers, Inc.
6218 Fairmount Avenue
San Diego, CA 92120

Any notice, demand or other communication given or made solely by mail in the manner prescribed in this Section shall be deemed to have been given and to be effective three (3) days after the date of such mailing; provided, however, that any notice, demand or other communication which would otherwise be deemed to have been given on a day which is not a working day shall be deemed to have been given on the next subsequent working day.

Section 35: Miscellaneous Terms

35.1 Representations. Each Party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each Party further declares and represents that this Agreement is being made without reliance upon any statement or representation of any other Party not contained herein, or any representative, agent or attorney of any other Party.

35.2 Severability. If any term or condition of this Agreement is held to any extent to be invalid or unenforceable, all the remaining terms and conditions shall be enforceable to the fullest extent permitted by law.

35.3 Entire Agreement. This Agreement contains the entire agreement, between the Parties and supersedes all prior negotiations, discussions, obligations and rights of the Parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the Parties. No modification, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the Parties hereto.

35.4 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the Parties hereto. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

35.5 Applicable Law. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for mediation, arbitration and/or actions arising out of this Agreement shall be in the City of Oceanside, California.

35.6 Waiver. Unless otherwise expressly provided herein, no delay or omission by the Parties hereto in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy, nor shall it be construed as a bar to or a waiver of any such right or remedy on any future occasion.

35.7 Effect of Headings. Headings appearing in this Agreement are inserted for convenience of reference only, and shall in no way be construed to be interpretations of the provisions hereof.

35.8 Amendments. This Agreement may be modified, amended or supplemented only by the mutual written agreement of the Parties hereto.

35.9 Authorization and Compliance. Each Party represents that it is duly authorized to execute and carry out the provisions of this Agreement.

35.10 Further Assurances. The Parties agree to do such further acts and things and execute and deliver such additional agreements and instruments as the other may

reasonably require to consummate, evidence or confirm the agreements contained herein in the manner contemplated hereby.

35.11 Counterparts. This Agreement may be executed by the Parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. The facsimile signatures of the Parties shall be deemed to constitute original signatures, and facsimile copies hereof shall be deemed to constitute duplicate original counterparts.

35.12 Exhibits and Glossary of Terms. All Exhibits and Glossary of Terms are incorporated herein by reference into this Agreement.

35.13 Third Party Beneficiary. Nothing within this Agreement shall create a contractual relationship between the City and any third party.

**SIGNATURE PAGE TO
DESIGN/BUILD AGREEMENT**

**CITY OF OCEANSIDE, a California
municipal corporation**

**BRICKMAN CHARGERS INC.,
a California corporation**

By: _____
City Manager

By: _____

**ATTEST:
City Clerk**

By: _____

By: _____

**Approved as to form:
City Attorney**

By: _____

EXHIBIT LIST (1 - 5)

1. Scope of Work
2. Design and Construction Schedule
3. Identification of Design Build Team Members
4. State Labor Code Requirements
5. California Integrated Waste Management Board Grant Agreement

EXHIBIT 1

French Fields

CITY OF OCEANSIDE, CA

June 21, 2010

**DESIGN-BUILD BID PROPOSAL
 FOR
 PHASE 1: SITE REMEDIATION WORK
 PHASE 2: RESTORATION OF LITTLE LEAGUE BALL PARK**

The undersigned hereby proposes and agrees that upon award by the City under this Bid, and in accordance with the provisions therein stated, to execute a Contract, to furnish and install any and all labor, materials, equipment, transportation, and services including any and all applicable taxes for the construction of the project, in accordance with the Plans and Specifications and at the prices named in this Bid Proposal and Unit Price Schedule.

All bid prices shall include applicable taxes.

The undersigned also warrants that he/she has visited the project site and has made himself/herself familiar with the particular and unique characteristics of the site and vicinity and has incorporated this knowledge and understanding into the bid prices named in the Bid Proposal and Unit Price Schedule.

Item	Description of Item	Items of Work	Total
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PHASE 1: SITE REMEDIATION WORK

PROFESSIONAL SERVICES

1. **DESIGN, CONSTRUCTION DOCUMENTS, & CONSTRUCTION OVERSIGHT - Complete**
 Work includes, but is not limited to: Public participation and preparation of Draft Final Remedial Action Workplan (RAW); 2) public participation and preparation of Final RAW; 3) engineering design for cap; 4) oversight of construction remedy implementation of the capping plan; 5) preparation of Cap Completion Report for the subject site; 6) overall scope of work and capping plan; 7) grading and drainage plan; 8) erosion control plan; 9) planting plan for hydroseeding and bank planting on Loma Alta Creek; 10) specifications and details as required; professional oversight of all construction work; 11) surveying of property lines and site grade checking during import and grading of new soils; and 12) geotechnical services.
ASSUMPTIONS:
 Drawings will be submitted for normal City permitting, except environmental approvals.
 Electrical work, irrigation system, and fencing will be design-build, and will be permitted through normal City permit application and approval processing.
 Securing and paying for permits is included.

MOBILIZATION & FIELD SERVICES DURING CONSTRUCTION

2. **CITY FEES, PERMITS, & INSPECTIONS - Complete**
 Work includes, but is not limited to: Cost of obtaining and paying for City permits and inspection fees.
ASSUMPTIONS:
 None.
3. **EROSION CONTROL MEASURES - Complete**
 Work includes, but is not limited to: Installation of proper BMP's to include silt fencing, straw waddles, and other required erosion control measures required per plan, and as required by City Engineering Department.

ASSUMPTIONS:

No unusual conditions or installation required other than normal industry standards for erosion control. Erosion control measures will be maintained in place and repaired if necessary until completion of construction.

Contractor shall be required to obtain and pay for permits for BMP's and erosion control measures through outside agencies, if required.

4. JOB SITE SAFETY / HAZARDOUS MATERIALS SAFETY - Complete

Work includes, but is not limited to: Conformance with the Health and Safety Plan (HSP) prepared by Tetra Tech. Includes required training of all field personnel expected to come in direct contact with burn ash, including 40-Hour (HAZWOPER) certification.

ASSUMPTIONS:

Tetra Tech and subcontractor training records to be verified, trenching and/or excavation not to be performed without prior assessment by Tetra Tech. Dust control to be monitored, wind speed and wind direction as well as water to be sprayed during any excavation and grading. Traffic Control to be monitored to minimize impacts to Lee's Metal Recycling during regular business hours. Temporary stock piling of soils shall be sprayed with water and covered. Site will be secured and only authorized personnel will be allowed on-site. Tetra Tech to monitor all safety measures during construction. Tetra Tech will provide oversight of construction activities. Tetra Tech will conduct airborne dust monitoring to verify and document dust suppression efforts are successful

Dust control measures shall be limited to light surface watering. Water will be sprayed during soil placement and grading to control dust.

5. CONSTRUCTION FENCING - Complete

Work includes, but is not limited to: Use of existing perimeter fencing on site for public safety. Portion of existing fencing to be relocated to westerly property line of Lee's Metal Recycling, and new construction gates added at south end of existing concrete area.

ASSUMPTIONS:

All of Lee's Metal Recycling equipment, storage containers, trash and debris to be removed by others prior to move-on.

Lee's Metal Recycling to remain open during construction, and temporary fencing and gate to be placed at PL on East side of property near Lee's Yard.

DEMOLITION

6. REMOVAL OF EXISTING IMPROVEMENTS - Complete

Work includes, but is not limited to: Demolition and removal of all existing improvements, including fencing, bleachers, masonry restroom building, concrete slabs and foundations, snack bar building, dug outs, light poles, telephone poles, and miscellaneous site concrete, trash, and existing debris. Water will be sprayed during and after demolition activities as appropriate to control dust.

ASSUMPTIONS:

Tetra Tech shall monitor demolition work to identify any hazardous materials that may be uncovered, and recommend proper safety measures as needed. All demolition debris will be loaded and hauled off-site and disposed of at closest County landfill.

Water cleaning of trucks exiting site will not required.

No special transportation permits required to haul demolition materials on public roads other than normal City hauling permit.

Existing asphalt concrete and concrete paving to remain in place.

7. WEED ABATEMENT - Complete

Work includes, but is not limited to: Clearing of all existing plant material, except as noted in assumptions below. All weeds and any remaining existing turf to be cut to ground level; root systems to remain and be capped over with soil. Removed plant material will be loaded and hauled off-site and disposed of at closest County landfill. Water will be sprayed after clearing activities as appropriate to control dust.

ASSUMPTIONS:

- Existing larger trees and palms to remain. Palm trunks to be cleaned of dead fronds.
- Removal of large shrubs to be monitored by Tetra Tech.
- Water cleaning of trucks exiting site will not be required.
- No special transportation permits required to haul demolition materials on public roads.

SOIL IMPORT & GRADING

8. IMPORTED SOIL CAP FOR FUTURE BALLFIELD AREAS - Complete

Work includes, but is not limited to: Purchase, loading, trucking, and dumping of 7,412 CY (loose) of screened fill soil material. Fill soils shall be suitable for growth of hydroseeding and planting of future ballfields.

ASSUMPTIONS:

Additional soil of this type, if required, will be paid for at a unit price of \$24.22 / CY. This unit price includes all costs for purchase, loading, trucking, and dumping.

9. IMPORTED SOIL CAP FOR FUTURE PARKING AREAS - Complete

Work includes, but is not limited to: Purchase, loading, trucking, and dumping of 5,560 CY (loose) Class II base material, suitable as a base for future asphalt paving.

ASSUMPTIONS:

Bid price is based on a total imported quantity before compaction of 4,027 CY.

Additional soil of this type, if required, will be paid for at a unit price of \$30.65 / CY. This unit price includes all costs for purchase, loading, trucking, and dumping.

10. PLACEMENT & FINISH GRADING OF IMPORTED SOILS - Complete

Work includes, but is not limited to: Spreading, watering, and compacting soil caps to 90% relative compaction. Includes grade checker on-site at all times soil is being delivered and placed at the site and delivery of new soil cap in place to within 0.1 foot of elevations shown on grading plan. Water will be sprayed during soil placement and grading to control dust.

ASSUMPTIONS:

Bid price is based on a total imported quantity before compaction of 11,439 CY.

Placement and finish grading of additional soils, if required, will be paid for at a unit price of \$4.50 / CY. Unit price includes all costs for spreading and compaction.

No soils – contaminated or otherwise – will be removed from the site.

DRAINAGE

11. DRAINAGE - Complete

Work includes, but is not limited to: Provide and install 420 LF of 8 inch SDR-35 and 360 LF of 6 inch SDR-35 solid drain pipe and (8) - 24"x24" concrete catch basins with cast iron grates. Sand will be used for bedding pipe and immediate backfill. Remaining backfill will be reuse of soils excavated from trench. Additional clean backfill will be added cost.

ASSUMPTIONS:

The existing drain pipe at the northeast corner of the property is at sufficient depth to tie in the proposed drain lines with a minimum of 1% slope from end to end.

No export of excavated spoils from trenching operations.

ASPHALTIC CONCRETE PAVING

12. ASPHALT CONCRETE PAVING - Complete

Work includes, but is not limited to: Install and compact 17,152 SF. of 3 inch thick asphaltic concrete paving per Green Book spec's on steep portion of access road, per plan.

ASSUMPTIONS:

No asphalt curbs, striping, or slurry sealing are included.

SHOTCRETE

13. SHOTCRETE - Complete

Work includes, but is not limited to: Installation of 24,775 SF of 4 inch thick, 6-sack shotcrete mix with 6x6-#10 EWWM wire mesh reinforcement on existing 2:1 slopes. Shotcrete to have nozzle finish. Includes formed drainage swale at bottom of slope.

ASSUMPTIONS:

No surface preparation or soil capping are required prior to shotcrete application, except clearing of plant material, and minimal smoothing of soil surface.

No special finishing of shotcrete surfaces; no color additives.

Costs for special inspection or permits are not included; and shall be reimbursed to Contractor if required by City.

FENCING

14. PERIMETER SECURITY FENCING - Complete

Work includes, but is not limited to: Installation of 2,260 LF of 8'-0" high galvanized chain link fence w/ top rail.

ASSUMPTIONS:

Fencing per Green Book standards.

15. INTERIOR SAFETY FENCING - Complete

Work includes, but is not limited to: Installation of 712 LF of 6'-0" high galvanized chain link fence w/ top rail.

ASSUMPTIONS:

Fencing per Green Book standards. This fencing is a safety measure for new shotcrete slope.

No gates are included in this item.

16. GATES - Complete

Work includes, but is not limited to: 2 sets of 24' x 8' high double chain link gates; 1 set of 16' x 8' high double chain link gates. Gates to have full perimeter frames, and diagonal bracing.

ASSUMPTIONS:

Normal hardware per industry and Green Book standards, no special locking mechanisms, or motors.

ELECTRICAL

17. ELECTRICAL WORK FOR IRRIGATION CONTROLLER - Complete

Work includes, but is not limited to: Disconnect power from all existing light poles around baseball fields; provide permanent power to irrigation controller.

ASSUMPTIONS:

Power at light poles to be capped off for future use.

LANDSCAPING

18. IRRIGATION - Complete

Work includes, but is not limited to: Provide and install a complete automatic irrigation system for establishment and maintenance of erosion control hydroseeding.

ASSUMPTIONS:

Point of connection to be 2 inch water meter, supplied by City.

Installation shall be per CLCA industry standards, project will not be required to comply with City P&R Department standard details.

Installation shall be per CLCA industry standards; project will not be required to comply with City P&R Department standard details.

19. **HYDROSEEDING - Complete**

Work includes, but is not limited to: Finish grading and hydroseeding with seed mix to control erosion.

ASSUMPTIONS:

None.

20. **90-DAY ESTABLISHMENT PERIOD - Complete**

Work includes, but is not limited to: Provide ninety (90) days of maintenance to include weeding, fertilizing and monitoring of irrigation systems for establishment of erosion control hydroseeding.

ASSUMPTIONS:

None.

CLEAN-UP & DEMOBILIZATION

21. **FINAL COMPLETION - Complete**

Work includes, but is not limited to: Completion of punch list items from final walk-through of site with the City, Tetra Tech, Nowell & Associates. Removal of mobile office, left-over materials, construction debris, and all construction equipment from site. Removal of BMP measures when approved by City.

ASSUMPTIONS:

All environmental reports required by DTSC and other regulatory agencies shall be completed and approved by Tetra Tech prior to final walk-through.

This cost may be deferred until Phase 2 work is completed.

**PHASE 2: RESTORATION OF LITTLE LEAGUE BALL PARK
DESIGN-BUILD**

22. **RESTORATION OF LITTLE LEAGUE BALL PARK**

- At the conclusion of Phase 1, the City shall identify the maximum funding available for the restoration of the Little League Ball Park at French Field, following the remedial work described in Phase I. Upon identification of the available funding, the Contractor, aided by the Contractor's design team, shall convene a meeting of the stakeholders, including representatives of the Cities of Oceanside and Vista, as well as representatives of the Vista American Little League (VALL), to discuss a proposed restoration of the ball park and to prioritize the repair and/or restoration of existing improvements.
- The Contractor shall then design a restoration and repair plan that, to the greatest extent possible, rebuilds the fields with all of the existing fixtures and improvements, and identifying elements of the plan that can be eliminated or postponed if funding is not sufficient to implement the entire plan.
- Once the repair and restoration plan (and priorities for potential deduction of the identified improvements) is finalized, the Contractor shall implement the plan.
- The Contractor makes no representation or warranties regarding the structural integrity or compliance with code for any and all existing improvements that can be retained and incorporated into the final Phase II plan.



SUMMARY OF BID PRICING

ITEM	DESCRIPTION	BID PRICE
PHASE 1: SITE REMEDIATION WORK		
1	PROFESSIONAL SERVICES	\$436,860.00
MOBILIZATION & FIELD SERVICES DURING CONSTRUCTION		
2	CITY PERMIT & INSPECTION FEES	\$39,800.00
3	EROSION CONTROL MEASURES	\$54,457.00
4	JOB SITE SAFETY / HAZARDOUS MATERIALS SAFETY	\$33,753.00
5	CONSTRUCTION FENCING	\$7,150.00
DEMOLITION		
6	REMOVAL OF EXISTING IMPROVEMENTS	\$126,175.00
7	WEED ABATEMENT	\$131,711.00
SOIL IMPORT & GRADING		
8	IMPORTED SOIL CAP FOR FUTURE BALLFIELD AREAS	\$200,580.00
9	IMPORTED SOIL CAP FOR FUTURE PARKING AREAS	\$137,916.00
10	PLACEMENT & FINISH GRADING OF IMPORTED SOILS	\$41,543.00
DRAINAGE		
11	DRAINAGE	\$36,251.00
ASPHALTIC CONCRETE		
12	ASPHALT CONCRETE PAVING	\$50,276.00
CONCRETE		
13	SHOTCRETE	\$123,257.00
FENCING		
14	PERIMETER SECURITY FENCING	\$109,397.00
15	INTERIOR SAFETY FENCING	23,934.00
16	GATES	\$17,569.00
ELECTRICAL		
17	TEMPORARY CONSTRUCTION POWER	\$17,360.00
LANDSCAPING		
18	IRRIGATION	\$71,303.00
19	HYDROSEEDING	\$54,051.00
20	90-DAY ESTABLISHMENT PERIOD	\$4,028.00
CLEAN-UP & DEMOBILIZATION		
21	FINAL COMPLETION	\$15,000.00
TOTAL ALL PHASE 1 BID ITEMS		\$1,732,371.00
1.43%	PERFORMANCE & PAYMENT BONDS	\$24,772.91
5.00%	DESIGN-BUILDER'S CONTINGENCY	\$86,618.55
TOTAL PHASE 1 BID PRICE		\$1,843,762.46
PHASE 2: RESTORATION OF LITTLE LEAGUE BALL PARK		
22	DESIGN-BUILD PORTION OF PROJECT	\$685,759.00
TOTAL ALL PHASE 2 BID ITEMS		\$685,759.00
1.43%	PERFORMANCE & PAYMENT BONDS	\$9,806.35
5.00%	DESIGN-BUILDER'S CONTINGENCY	\$34,287.95
TOTAL PHASE 2 BID PRICE		\$729,853.30
TOTAL PROJECT PRICE (PHASE 1 + PHASE 2)		\$2,573,615.76

EXHIBIT 2



French Fields

CITY OF OCEANSIDE, CA

June 21, 2010

EXHIBIT 2 PROJECT SCHEDULE

COMMENCEMENT OF DESIGN PHASE.....	As soon as practical after Council approval of D/B Agreement
COMMENCEMENT OF CONSTRUCTION	As soon as practical after DTSC approval of R.A.W.
SUBSTANTIAL COMPLETION OF PHASE 1:	
SITE REMEDIATION.....	April 15, 2011
FINAL COMPLETION OF PHASE 1	May 15, 2011
COMMENCEMENT OF PHASE 2:	
RESTORATION OF BALLFIELDS	To be determined by City and per approved Construction Schedule

french_fields_SCHEDULE 20100621

EXHIBIT 3



French Fields

CITY OF OCEANSIDE, CA

June 17, 2010

EXHIBIT 3 DESIGN-BUILD (D/B) TEAM

DESIGN PROFESSIONALS TEAM

PRIME DESIGN PROFESSIONAL

Nowell & Associates Landscape Architecture, Inc.
Gregory L. Nowell, LLA, ASLA, Senior Principal
2605 State Street
San Diego, CA 92103
T 619.325.1990
F 619.325.1997

DESIGN SUBCONSULTANTS

ENVIRONMENTAL ENGINEERING

TetraTech Environmental Consulting, Inc.
Steven Geyer, PE, Principal Engineer
1230 Columbia Street, Suite 1000
San Diego, CA 92101
T 619.321.6716
F 619.525.7186

CIVIL ENGINEERING & SURVEYING

Pasco Laret Suiter & Associates, Inc.
Justin Suiter, PLS, Principal Engineer
535 North Highway 101, Suite A
Solana Beach, CA 92075
T 858. 259-8212
F 858. 259-4812



STRUCTURAL ENGINEERING

Grim & Chen

Jeff Chen, PE, Principal Structural Engineer

17900 Skypark Circle, Suite 100

Irvine, CA 92614

T 949.250.3150

F 949.203.0450

GEOTECHNICAL SERVICES

Murbach Geotechnical, Inc.

Monte Murbach, PE, Principal Geotechnical Engineer

3130 North Evergreen Street

San Diego, CA 92110

T 619.222.2044

F 619.222.2044

DESIGN-BUILD CONTRACTOR TEAM

PRIME CONTRACTOR

Brickman Chargers, Inc.

Tom Smith, Branch Manager

6218 Fairmount Avenue

San Diego, CA 92120

T 619.280.8887

F 619. 280.2973

Scope: Contract administration, project oversight, safety, weed abatement, erosion control measures, drainage, soil preparation, planting, athletic field construction, and maintenance.

SUBCONTRACTORS

BUILDING(S) & GENERAL CONSTRUCTION

Precision Concrete Design, Inc.

Mr. Kenny Schindler, President

6626 Richard Street

San Diego, CA 92115

T 619.303.6074

F 619.303.6074

Scope: Demolition of structures, masonry, concrete paving, asphaltic paving, shotcrete, fencing, general building construction.



GRADING / EQUIPMENT RENTAL / IMPORT SOILS

Rentrac, Inc.

Mr. John Bremer, President

1700 Growest Avenue

Riverside, CA 92504

T 951.780.1552

F 951.780.6676

Scope: Grading and placement of soils, equipment rental, import soils.

HYDROSEEDING

Hydroplant, Inc.

Rob McGann, General Manager

356 South Pacific Street

San Marcos, CA 92078-3894

T 760.744.7360

F 760.744.6559

Scope: Hydroseeding of erosion control measures and turf areas.

french_fields_DB-TEAM 20100621

EXHIBIT 4

DESIGN/BUILD AGREEMENT

EXHIBIT 4: STATE LABOR CODE REQUIREMENTS

PROJECT: French Field Remediation and Restoration

Throughout Exhibit 4, the term "Labor Code" shall mean the "California Labor Code."

E1.1 Prevailing Wages

a. Pursuant to Labor Code Section 1774, the DESIGN BUILDER ("D/B"), and any contractor or subcontractor under him, shall pay all workers employed on this project not less than the wages specified in the General Prevailing Wage Determination Made By The Director Of Industrial Relations in effect on the date of the Agreement for this project. Copies of this determination are available at www.dir.ca.gov/dlsr and are on file with the Project Manager at the Engineering Division of the Development Services Department, 300 North Coast Highway, Oceanside, CA 92054, and shall be made available to any interested party on request.

b. Pursuant to Labor Code Section 1775, the D/B shall, as a penalty to the City, forfeit not more than fifty dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for such work or craft in which such worker is employed, for any public work done under the contract by him or her or by any subcontractor under him or her. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the D/B's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the D/B in meeting his or her prevailing wage obligations, or the D/B's willful failure to pay the correct rate of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the D/B had knowledge of his or her obligations under the Labor Code. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate shall be paid to each worker by the D/B.

c. To the extent that there is insufficient money due to D/B to cover penalties forfeited and amounts due, the City shall notify the Division of Labor Standards Enforcement of the violation. The Division of Labor Standards Enforcement, if necessary with the assistance of the City, may maintain an action in any court of competent jurisdiction to recover the penalties and the amounts due provided for herein. Such action shall be commenced not later than ninety (90) days after the filing of a valid notice

of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than ninety (90) days after acceptance of the public work, whichever last occurs. No issue other than that of the liability of the D/B for the penalties allegedly forfeited and amounts due shall be determined in the action, and the burden shall be upon the D/B to establish that the penalties and amounts demanded in such action are not due.

d. Out of any money withheld, recovered, or both, there shall first be paid the amount due each worker, and if insufficient funds are withheld, recovered, or both to pay each worker in full, the money shall be prorated among all workers.

E1.2 Legal Day's Work

a. Pursuant to Labor Code Section 1810 et seq., eight (8) hours labor on this project shall constitute a legal day's work.

b. Work performed by employees of D/B in excess of eight (8) hours during any one (1) calendar day, and forty (40) hours during any one (1) calendar week, shall be permitted on this project only upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one half (1½) times the basic rate of pay, and upon prior written consent of the Engineer.

c. The D/B shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the D/B or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week in violation of the Legal Day's Work requirements of Labor Code Section 1810 et seq.

d. To the extent that there is insufficient money due to D/B to cover penalties forfeited and amounts due, the City shall notify the Division of Labor Standards Enforcement of such violation. In the case of a worker claiming the difference between the prevailing wage rate and the amount paid him, the City shall first give the notice mentioned in Section 1190.1 of the Code of Civil Procedure. The Division of Labor Standards Enforcement, if necessary with the assistance of the City, may maintain an action in any court of competent jurisdiction to recover the penalties and the amount due provided for herein. Such action shall be commenced not later than ninety (90) days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part

thereof was performed, or not later than ninety (90) days after acceptance of such public work, whichever last occurs. No issue other than that of the liability of the D/B for the penalties allegedly forfeited and amounts due shall be determined in such action, and the burden shall be upon the D/B to establish that the penalties and amounts demanded in such action are not due.

e. Out of any money withheld or recovered or both, there shall first be paid the amount due each worker and if insufficient funds are withheld or recovered or both to pay each worker in full the money shall be prorated among all such workers.

E1.3 Payroll Records

Pursuant to Labor Code Section 1776, the D/B shall be responsible for compliance with the following requirements:

a. The D/B and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

b. The payroll records enumerated under subdivision (a) above, shall be certified and shall be available for inspection at all reasonable hours at the principal office of the D/B on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the City, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the

public shall be made through either the City, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs or preparation by the Division of Labor Standards Enforcement, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the D/B.

c. Each contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within ten (10) days after receipt of a written request.

d. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the City, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or performing the contract shall not be marked or obliterated.

e. The D/B shall inform the City of the location of the D/B's principal office for the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.

As of the date of this contract, the D/B's principal office is that which is set forth on the Design/Build Agreement.

f. The Director of Industrial Relations shall adopt rules consistent with the California Public Records Act (California Government Code Section 6250 et seq.) and the Information Practice Act of 1977 (California Civil Code Section 1798 et seq.) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

g. Pursuant to Labor Code Section 1777, any contractor, or subcontractor, or agent or representative thereof, doing public work who neglects to comply with any provision of the requirements of the Payroll Records section is guilty of a misdemeanor.

Additionally, any officer, agent, or representative of the City who willfully violates any provision of this article is guilty of a misdemeanor.

h. In the event that the D/B does not comply with the Payroll Record requirements stated above, the D/B shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in which respects the D/B must comply with the Payroll Requirements. Should noncompliance still be evident after the twenty (20) day period, the D/B shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

E1.4 Travel and Subsistence Pay

a. The D/B shall be responsible for compliance with the requirements of Labor Code Section 1773.8.

b. Pursuant to Labor Code Section 1773.8, each contractor and any subcontractor under him, shall pay all workers employed on this project such travel and subsistence payments as are defined in the applicable collective bargaining agreements executed by the representative of any craft, classification or type of worker needed to perform this Contract.

c. The D/B shall be responsible for contacting the Department of Industrial Relations in order to obtain copies of all applicable collective bargaining agreements which have been filed at least thirty (30) days prior to the call for bids on this project.

E1.5 Apprentices

a. Pursuant to Labor Code Section 1777.5, the D/B shall be responsible for compliance with all requirements in this "Apprentices" section.

- b. Nothing in this section shall prevent the employment of properly registered apprentices upon public works.

- c. Every such apprentice shall be paid the standard wage to apprentices under the regulations of the craft or trade at which he or she is employed only at the work of the craft or trade to which he or she is registered.

- d. Only apprentices, as defined in Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code are eligible to be employed on public works. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training.

- e. When the D/B or any subcontractor under him or her, in performing any of the work under the contract or subcontract, employs workers in any apprenticeable craft or trade, the D/B and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work for a certificate approving the D/B or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area of industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject D/B or subcontractor, shall arrange for the dispatch of apprentices to the D/B or subcontractor in order to comply with this section. Every contractor and subcontractor shall submit contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the craft or trade in the area of the site of the public work to ensure equal employment and affirmative action in apprenticeship for women and minorities. Contractors or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen who shall be employed in the craft or trade on the public work may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one (1) hour of apprentices work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the Land Surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

f. Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the Land Surveyor classification. The D/B shall employ apprentices for the number of hours computed as above before the end of the contract. However, the D/B shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

g. The D/B or subcontractor, if he or she is covered by this section, upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the D/B that he or she employs apprentices in such craft or trade in the state on all of his or her contracts on an annual average of one (1) hour of apprentice work for every five (5) journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1 to 5 hourly ratio as set forth in this section. This section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this section.

h. "Apprenticeable craft or trade," as used in the section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a contractor from the 1 to 5 ratio set forth in this section when it finds that any one (1) of the following conditions is met:

(1) Unemployment for the previous three (3) month period in the area that exceeds an average of fifteen percent (15%).

(2) The number of apprentices in training in such area exceeds a ratio of 1 to 5 (1:5).

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis, or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that, training cannot be provided by a journeyman.

i. When exemptions are granted to an organization which represents contractors in a specific trade from the 1 to 5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

j. The D/B, or any subcontractor under him or her, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any craft or trade in the area of the site of the public work, to which fund or funds other contractors in the area of the site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The D/B or subcontractor may add the amount of such contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Labor Code Section 227.

k. All decisions of the joint apprenticeship committee under this section are subject to the provisions of Labor Code Section 3081.

l. Pursuant to Labor Code Section 1777.7, in the event that a contractor willfully fails to comply with the apprenticeship requirements of Labor Code Section 1777.5, such contractor, both individually and in the name of the business entity under which the contractor or subcontractor is doing business, shall:

(1) Be denied the right to bid on any public works contract for a period of one (1) year from the date the determination of noncompliance is made by the Administrator of Apprenticeship, and;

(2) Forfeit as a civil penalty in the sum of fifty dollars (\$50.00) for each calendar day of noncompliance. Notwithstanding the provision of Labor Code Section 1727, upon receipt of such a determination the City shall withhold from contract progress payments then due or to become due such sum.

m. Any such determination shall be issued after a full investigation, a fair and impartial hearing, and reasonable notice thereof in accordance with reasonable rules and procedures prescribed by the California Apprenticeship Council.

n. Any funds withheld by the City pursuant to this section shall be deposited in the City's General Fund.

o. The interpretation and enforcement of Labor Code Sections 1777.5 and 1777.7 shall be in accordance with the rules and procedures of the California Apprenticeship Council.

E1.6 Discrimination Prohibited

Pursuant to Labor Code Sections 1735 and 1777.6, the D/B shall not discriminate in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of such persons, except as provided in Labor Code Section 3077 and California Government Code Section 12940.

EXHIBIT 5

GRANT AGREEMENT

CIWMB110 (Revised 10/07)

GRANT NUMBER
SWC26-08-2

NAME OF GRANT PROGRAM 2008/2009 Illegal Disp. Site & LF Cleanup Remediation Matching Grants	
GRANTEE NAME City of Oceanside	
TAXPAYER'S FEDERAL EMPLOYER IDENTIFICATION NUMBER	TOTAL GRANT AMOUNT NOT TO EXCEED \$729,900.00
TERM OF GRANT AGREEMENT FROM: March 1, 2009	TO: July 1, 2011

THIS AGREEMENT is made and entered into on this 12th day of March 2009, by the State of California, acting through the Executive Director of the California Integrated Waste Management Board (the "State") and City of Oceanside (the "Grantee"). The State and the Grantee, in mutual consideration of the promises made herein, agree as follows:

The Grantee agrees to perform the work described in the Work Plan attached hereto as Exhibit C according to the Budget attached hereto as Exhibit D.

The Grantee further agrees to abide by the provisions of the following exhibits attached hereto:

- Exhibit A - Terms & Conditions
- Exhibit B - Procedures & Requirements
- Exhibit C - Work Statement/Work Plan
- Exhibit D - Budget

Exhibits A, B, C and D attached hereto and the State approved application are incorporated by reference herein and made a part hereof.

The State agrees to fund work done by the Grantee in accordance with this Agreement up to the Total Grant Amount Not to Exceed specified herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates entered below.

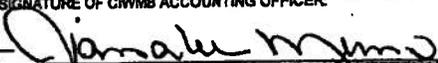
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD		GRANTEE NAME (PRINT OR TYPE) City of Oceanside	
SIGNATURE OF CIWMB'S AUTHORIZED SIGNATORY: Mark Leary, Executive Director		SIGNATURE OF GRANTEE: (AS AUTHORIZED IN RESOLUTION OR LETTER OF DESIGNEE AUTHORIZATION) _____	
DATE	TITLE (Authorized representative)	DATE	DATE
		GRANTEE ADDRESS (INCLUDE STREET, CITY, STATE AND ZIP CODE)	
CERTIFICATION OF FUNDING			
AMOUNT ENCUMBERED BY THIS AGREEMENT \$729,900.00	PROGRAM/CATEGORY (CODE AND TITLE) 2008/2009 Illegal Disp. Site & LF Cleanup Remediation Matching Grants		FUND TITLE SWDSCTF
PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT	(OPTIONAL USE)		
TOTAL AMOUNT ENCUMBERED TO DATE \$729,900.00	ITEM 3910-516-0386	CHAPTER 655	STATUTE 1993
	FISCAL YEAR 2008/2009		
	OBJECT OF EXPENDITURE (CODE AND TITLE) 1000-14390-418.03		
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.		T.B.A. NO.	B.R. NO.
SIGNATURE OF CIWMB ACCOUNTING OFFICER: 		DATE 3/13/09	

EXHIBIT A
TERMS AND CONDITIONS

EXHIBIT A
TERMS AND CONDITIONS

Solid Waste Disposal and Codisposal Site Cleanup Grant Programs
Fiscal Year 2008/09 (Cycles 26 and 27)

This grant may not be funded unless the proposed Grantee meets the following two conditions:

- 1) The proposed Grantee must pay or bring current all outstanding debts or scheduled payments owed to the California Integrated Waste Management Board (CIWMB) within ninety (90) days from the date of the grant award. The Grant Agreement will not be released by the CIWMB until all outstanding invoices have been paid.
- 2) The proposed Grantee must complete, sign, and return the Grant Agreement within ninety (90) days from the date recorded on the Grant Agreement package's cover letter.

The following terms used in this Grant Agreement (Agreement) have the meanings given to them below, unless the context clearly indicates otherwise:

- "CIWMB" means the California Integrated Waste Management Board.
- "Executive Director" means the Executive Director of the CIWMB or his or her designee.
- "Grant Agreement" and "Agreement" means all documents comprising the agreement between the CIWMB and the Grantee for this Grant.
- "Grant Manager" means the CIWMB staff person responsible for monitoring the grant.
- "Grantee" means the recipient of funds pursuant to this Agreement.
- "Program" means the Solid Waste Disposal and Codisposal Site Cleanup Grant Program.
- "State" means the State of California, including, but not limited to, the CIWMB and/or its designated officer.

1. ACKNOWLEDGEMENTS

The Grantee shall acknowledge the CIWMB's support each time projects funded, in whole or in part, by this Agreement are publicized in any medium, including, but not limited to, news media, brochures, or other types of promotional materials. The acknowledgement of the CIWMB's support must incorporate the CIWMB logo and state "Funded by a Grant from the California Integrated Waste Management Board." Initials or abbreviations for the CIWMB shall not be used. The Grant Manager may approve deviation from this prescribed language on a case-by-case basis where such deviation is consistent with the CIWMB's Communication Strategy and Outreach Plan. If, subsequent to this Agreement, the CIWMB adopts updated or new logos or language (language), the Grant Manager may require the Grantee to include this language in newly printed or generated materials.

2. ADVERTISING/ PUBLIC EDUCATION

The Grantee shall submit copies of all draft public education or advertising materials to the Grant Manager for review and approval prior to the Grantee's production of materials. Unless omission of the following copyright designation is pre-approved in writing by the Grant Manager, all public education and advertising materials shall state: "© {year of creation} by the California Integrated Waste Management Board (CIWMB). All rights reserved. This publication, or parts thereof, may not be reproduced without permission from CIWMB."

3. AIR OR WATER POLLUTION VIOLATION

Under the State laws, the Grantee shall not be:

- a. In violation of an order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;

-
- b. Subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
 - c. Finally determined to be in violation of provisions of federal law relating to air or water pollution.
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4. 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 into this Agreement is binding on any of the parties.

5. AMERICANS WITH DISABILITIES ACT

The Grantee assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. § 12101 et seq.).

6. ANTITRUST CLAIMS

The Grantee by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Grantee shall comply with the requirements of the Government Code Sections set out below:

- a. The Government Code Chapter on Antitrust claims contains the following definitions:
 - 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
 - 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
 - b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
 - c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
 - d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.
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**7. ASSIGNMENT,
SUCCESSORS AND
ASSIGNS**

- a. This Agreement may not be assigned by the Grantee, either in whole or in part, without the CIWMB's prior written consent.
- b. The provisions of this Agreement shall be binding upon and inure to the benefit of the CIWMB, the Grantee, and their respective successors and assigns.

8. AUDIT/RECORDS ACCESS

The Grantee agrees that the CIWMB, the Department of Finance, the Bureau of State Audits, or their designated representative(s) shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Grantee agrees to maintain such records for possible audit for a minimum of three (3) years after final payment date unless a longer period of records retention is stipulated, or until completion of any action and resolution of all issues which may arise as a result of any litigation, dispute, or audit, whichever is later. The Grantee agrees to allow the designated representative(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Grantee agrees to include a similar right of the State to audit records and interview staff in any contract or subcontract related to performance of this Agreement.

[You may find it helpful to share the Terms and Conditions and Procedures and Requirements with your finance department, contractors and subcontractors. Examples of audit documentation include, but are not limited to: expenditure ledger, payroll register entries and time sheets, personnel expenditure summary form, travel expense log, paid warrants, contracts, change orders, invoices, and/or cancelled checks.]

**9. AUTHORIZED
REPRESENTATIVE**

The Grantee shall continuously maintain a representative vested with signature authority authorized to work with CIWMB on all grant-related issues. The Grantee shall, at all times, keep the Grant Manager informed as to the identity and contact information of the authorized representative.

10. AVAILABILITY OF FUNDS

The CIWMB's obligations under this Agreement are contingent upon and subject to the availability of funds appropriated for this grant.

**11. CHILD SUPPORT
COMPLIANCE ACT**

For any agreement in excess of \$100,000, the Grantee acknowledges that:

- a. The Grantee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The Grantee, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

12. COMMUNICATIONS

All communications from the Grantee to the CIWMB shall be directed to the Grant Manager. All notices, including reports and payment requests, required by this Agreement shall be given in writing by E-mail, letter or FAX to the Grant Manager as identified in Exhibit B – Procedures and Requirements. If an original document is required, prepaid mail or personal delivery to the Grant Manager is required following the E-mail or FAX.

13. COMPETITIVE BIDDING

The CIWMB encourages Grantees to use a competitive bidding process, or to require and maintain on file a written justification for any exceptions thereto, when contracting for services required under this Agreement.

14. COMPLIANCE

The Grantee shall comply fully with all applicable federal, state, and local laws, ordinances, regulations, and permits. The Grantee shall provide evidence, upon request, that all local, state, and/or federal permits, licenses, registrations, and approvals have been secured for the purposes for which grant funds are to be expended. The Grantee shall maintain compliance with such requirements throughout the grant period. The Grantee shall ensure that the requirements of the California Environmental Quality Act are met for any approvals or other requirements necessary to carry out the terms of this Agreement. Any deviation from the requirements of this section shall result in non-payment of grant funds.

With each Payment Request (CIWMB 87), the Grantee's signature authority shall either initial and certify under penalty of perjury that the Grantee's General Checklist of Permits, Licenses, and Filings (CIWMB 669) on file with the CIWMB is current and complete, or submit an updated General Checklist of Permits, Licenses, and Filings (CIWMB 669) available at: www.ciwmb.ca.gov/Grants/Forms/CIWMB669.doc.

15. CONFLICT OF INTEREST

The Grantee needs to be aware of the following provisions regarding current or former state employees. If the Grantee has any questions on the status of any person rendering services or involved with this Agreement, the CIWMB must be contacted immediately for clarification. If the Grantee violates any provisions of the following paragraphs, such action by the Grantee shall render this Agreement void [Public Contracts Code (PCC) § 10420]:

Current State Employees (Public Contracts Code (PCC) § 10410):

- a. No officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity, or enterprise is required as a condition of regular state employment.
- b. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (PCC § 10411):

- a. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
 - b. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve month period prior to his or her leaving state service.
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**16. CONTRACTORS/
SUBCONTRACTORS/
VENDORS — DEFINITIONS**

Contractor: A person or entity that contracts with the Grantee to perform eighty percent (80%) or more of the work required by this Agreement, including, but not limited to, any requirements imposed by the CIWMB.

Subcontractor: A person or entity that contracts with the Grantee or Contractor to perform a portion (less than eighty percent [80%]) of the work required by this Agreement, including, but not limited to, any requirements imposed by the CIWMB.

Vendor: A person or entity that contracts to sell goods; the sale of services is expressly excluded from this definition.

**17. CONTRACTORS/
SUBCONTRACTORS**

The Grantee will be entitled to make use of its own staff and such contractors and subcontractors as are mutually acceptable to the Grantee and the CIWMB. Any change in contractors or subcontractors must be mutually acceptable to the parties. Immediately upon termination of any such (sub)contract, the Grantee shall notify the Grant Manager.

Nothing contained in this Agreement or otherwise, shall create any contractual relation between the CIWMB and any contractors or subcontractors of Grantee, and no agreement with contractors or subcontractors shall relieve the Grantee of its responsibilities and obligations hereunder. The Grantee agrees to be as fully responsible to the CIWMB for the acts and omissions of its contractors and subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Grantee. The Grantee's obligation to pay its contractors and subcontractors is an independent obligation from the CIWMB's obligation to make payments to the Grantee. As a result, the CIWMB shall have no obligation to pay or to enforce the payment of any moneys to any contractor or subcontractor.

**18. COPYRIGHTS AND
TRADEMARKS**

- a. To the extent the Grantee shall have the legal right to do so, Grantee shall assign to the CIWMB any and all rights, title, and interests to any copyrightable material or trademarkable material created or developed in whole or in any part as a result of this Agreement, but which originated from previously copyrighted or trademarked material. With respect to all other copyrightable and trademarkable materials, the CIWMB shall retain any and all rights, title and interests to any copyrightable material or trademarkable material created or developed in whole or in any part as a result of this Agreement. These rights, both assigned and retained, shall include the right to register for copyright or trademark of such materials. Grantee shall require that its contractors and subcontractors agree that all such materials shall be the property of the CIWMB. The Grantee is responsible for obtaining any necessary licenses, permissions, releases or authorizations to use text, images or other materials owned, copyrighted or trademarked by third parties and for assigning such licenses, permissions, releases, or authorizations to the CIWMB pursuant to this section. Copies of any licenses, permissions, releases or authorizations obtained pursuant for the use of text, images or other materials owned, copyrighted or trademarked by third parties shall be provided to the Grant Manager. Under unusual and very limited circumstances, where to do so would not conflict with the rights of the CIWMB and would serve the public interest, upon written request by the Grantee, the CIWMB may give, at the Executive Director's sole discretion, written consent to the Grantee to retain all or any part of the ownership of these rights.
 - b. The CIWMB hereby grants to the Grantee a royalty-free, nonexclusive, nontransferable world-wide license to reproduce, translate, and distribute copies of the copyrightable materials produced pursuant this Agreement, for nonprofit, non-commercial purposes, and to have or permit others to do so on the Grantee's behalf. This license is limited to the copyrightable materials produced pursuant to this Agreement and does not extend to any materials capable of being trademarked. The following shall appear on all intellectual property used by Contractor pursuant to this license, solely for the purpose of protecting the CIWMB's intellectual property rights therein: "© {year of
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creation) by the California Integrated Waste Management Board (CIWMB). Used pursuant to license granted by CIWMB. All rights reserved. This publication, or parts thereof, may not be reproduced without permission."

19. CORPORATION QUALIFIED TO DO BUSINESS IN CALIFORNIA

When work under this Agreement is to be performed in California by a corporation, the corporation shall be in good standing and currently qualified to do business in the State. "Doing business" is defined in Revenue and Taxation Code Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

20. DISCLAIMER OF WARRANTY

The CIWMB makes no warranties, express or implied, including without limitation, the implied warranties of merchantability and fitness for a particular purpose, regarding the materials, equipment, services or products purchased, used, obtained and/or produced with funds awarded under this Agreement, whether such materials, equipment, services or products are purchased, used, obtained and/or produced alone or in combination with other materials, equipment, services or products. No CIWMB employees or agents have any right or authority to make any other representation, warranty or promise with respect to any materials, equipment, services or products, purchased, used, obtained, or produced with grant funds. In no event shall the CIWMB be liable for special, incidental or consequential damages arising from the use, sale or distribution of any materials, equipment, services or products purchased or produced with grant funds awarded under this Agreement.

21. DISCRETIONARY TERMINATION

The Executive Director shall have the right to terminate this Agreement at his or her sole discretion at any time upon thirty (30) days written notice to the Grantee. Within forty-five (45) days of receipt of written notice, Grantee is required to:

- a. Submit a final written report describing all work performed by the Grantee;
 - b. Submit an accounting of all grant funds expended up to and including the date of termination; and,
 - c. Reimburse the CIWMB for any unspent funds.
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22. DISPUTES

Unless otherwise instructed by the Grant Manager, the Grantee shall continue with its responsibilities under this Agreement during any dispute.

23. DRUG-FREE WORKPLACE CERTIFICATION

The person signing this Agreement on behalf of the Grantee certifies under penalty of perjury under the laws of California, that the Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (GC § 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions that will be taken against employees for violations.
 - b. Establish a drug-free awareness program to inform employees about all of the following: (1) the dangers of drug abuse in the workplace, (2) the Grantee's policy of maintaining a drug-free workplace, (3) any available counseling, rehabilitation, and employee assistance programs, and (4) penalties that may be imposed upon employees for drug abuse violations.
 - c. Require that each employee who works on the grant: (1) receive a copy of the drug-free policy statement of the Grantee, and (2) agrees to abide by the terms of such statement as a condition of employment on the grant.
-

24. EFFECTIVENESS OF

This Agreement is of no force or effect until signed by both parties.

AGREEMENT

25. ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, oral or written, made with respect to the subject hereof and, together with all attachments hereto, contains the entire Agreement of the parties.

26. ENVIRONMENTAL JUSTICE

In the performance of this Agreement, Grantee shall conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the State.

27. EXPATRIATE CORPORATIONS

The person signing this Agreement on behalf of the Grantee certifies under penalty of perjury under the laws of California, that the Grantee is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

28. FAILURE TO PERFORM AS REQUIRED BY THIS AGREEMENT

The CIWMB will benefit from the Grantee's full compliance with the terms of this Agreement only by the Grantee's:

- a. Investigation and application of technologies, processes, and/or devices which support reduction, reuse, and/or recycling of wastes; or
- b. Cleanup of the environment; or
- c. Enforcement of solid waste statutes and regulations, as applicable.

Therefore, the Grantee shall be in compliance with this Agreement only if the work it performs results in:

- a. Application of information, a process, usable data or a partial product which can be used to aid in reduction, reuse, and/or recycling of waste; or
- b. The cleanup of the environment; or
- c. The enforcement of solid waste statutes and regulations, as applicable.

If the Grant Manager determines that the Grantee has not complied with the Grant Agreement, the Grantee may forfeit the right to reimbursement of any grant funds not already paid by the CIWMB, including, but not limited to, the ten percent (10%) withhold.

29. FORCE MAJEURE

Neither the CIWMB nor the Grantee, its contractors, vendors, or subcontractors, if any, shall be responsible hereunder for any delay, default, or nonperformance of this Agreement, to the extent that such delay, default, or nonperformance is caused by an act of God, weather, accident, labor strike, fire, explosion, riot, war, rebellion, sabotage, flood, or other contingencies unforeseen by the CIWMB or the Grantee, its contractors, vendors, or subcontractors, and beyond the reasonable control of such party.

30. FORFEIT OF GRANT FUNDS/REPAYMENT OF FUNDS IMPROPERLY EXPENDED

If grant funds are not expended, or have not been expended, in accordance with this Agreement, or if real or personal property acquired with grant funds is not being used, or has not been used, for grant purposes in accordance with this Agreement, the Executive Director, at his or her sole discretion, may take appropriate action under this Agreement, at law or in equity, including requiring the Grantee to forfeit the unexpended portion of the grant funds, including, but not limited to, the ten percent (10%) withhold, and/or to repay to the CIWMB any funds improperly expended.

31. GENERALLY ACCEPTED

The Grantee is required to use Generally Accepted Accounting Principles in

ACCOUNTING PRINCIPLES	documenting all grant expenditures.
32. GRANT MANAGER'S AUTHORITY	The Grant Manager does not have the authority to approve any deviation from or revision to the Terms and Conditions (Exhibit A) or the Procedures and Requirements (Exhibit B), unless such authority is expressly stated in the Procedures and Requirements (Exhibit B).
33. GRANTEE ACCOUNTABILITY	The Grantee is ultimately responsible and accountable for the manner in which the grant funds are utilized and accounted for and the way the grant is administered, even if the Grantee has contracted with another organization, public or private, to administer or operate its grant program. In the event an audit should determine that grant funds are owed to the CIWMB, the Grantee is responsible for repayment of the funds to the CIWMB.
34. GRANTEE'S INDEMNIFICATION AND DEFENSE OF THE STATE	The Grantee agrees to indemnify, defend and save harmless the State and the CIWMB, and their officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Grantee in the performance of this Agreement.
35. GRANTEE'S NAME CHANGE	A written amendment is required to change the Grantee's name as listed on this Agreement. Upon receipt of legal documentation of the name change, the CIWMB will process the amendment. Payment of Payment Requests presented with a new name cannot be paid prior to approval of the amendment.
36. LANDOWNER COMPENSATION FOR LABOR	The CIWMB will not compensate a landowner for the cost of the landowner's own labor, or the labor of the landowner's immediate family members (parents, spouse, children and siblings) in performing work necessary to clean up the landowner's property. This includes situations in which the landowner is a licensed contractor and/or owns a company or an interest in a company licensed or qualified to perform work needed to clean up the property.
37. LICENSED CONTRACTORS	In the performance of this Agreement, the Grantee shall use licensed, permitted and/or registered contractors for all work and/or services for which a license is required by local, state or federal statute, ordinance or regulation. Such services include, but are not limited to, earthwork and paving (16 CCR § 832.12), fencing (16 CCR § 832.13), landscaping (16 CCR § 832.27), sign installation (16 CCR § 832.61 – D-42), construction cleanup (16 CCR § 832.61 – D-63), land clearing (16 CCR § 832.61 – D-19), waste tire facility operators (14 CCR § 18420, PRC § 42820, et seq.) and waste tire haulers (14 CCR §§ 18454, 18455; PRC § 42951).
38. NATIONAL LABOR RELATIONS BOARD CERTIFICATION	The person signing this Agreement on behalf of the Grantee certifies under penalty of perjury under the laws of California that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Grantee within the immediately preceding two-year period because of the Grantee's failure to comply with an order of a federal court which orders the Grantee to comply with an order of the National Labor Relations Board. (Not applicable to public entities)
39. NO AGENCY RELATIONSHIP CREATED/ INDEPENDENT	The Grantee and the agents and employees of Grantee, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees

CAPACITY

or agents of the State.

40. NO WAIVER OF RIGHTS

The CIWMB shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by the CIWMB. No delay or omission on the part of the CIWMB in exercising any rights shall operate as a waiver of such right or any other right. A waiver by the CIWMB of a provision of this Agreement shall not prejudice or constitute a waiver of the CIWMB's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by the CIWMB, nor any course of dealing between CIWMB and Grantee, shall constitute a waiver of any of CIWMB's rights or of any of Grantee's obligations as to any future transactions. Whenever the consent of the CIWMB is required under this Agreement, the granting of such consent by the CIWMB in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of the CIWMB.

**41. NON-DISCRIMINATION
CLAUSE**

- a. During the performance of this Agreement, Grantee and its contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment on the bases enumerated in Government Code §§ 12900 et seq.
 - b. The person signing this Agreement on behalf of the Grantee certifies under penalty of perjury that the Grantee has, unless exempted, complied with the nondiscrimination program requirements [Government Code § 12990(a)-(f) and California Code of Regulations, Title 2, Section 8103]. (Not applicable to public entities.)
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**42. OWNERSHIP OF
DRAWINGS, PLANS, AND
SPECIFICATIONS**

The State shall have separate and independent ownership of all drawings, design plans, specifications, notebooks, tracings, photographs, negatives, reports, findings, recommendations, data, software, and memoranda of every description or any part thereof, paid for in whole or in any part with grant funds. Copies thereof shall be delivered to the CIWMB upon request. Grantee agrees, and shall require that its contractors, subcontractors, and vendors agree that the State shall have the full right to use said copies in any manner when and where it may determine without any claim to additional compensation.

43. PATENTS

The Grantee assigns to the CIWMB all rights, title, and interest in and to each invention or discovery that may be capable of being patented, that is conceived of or first actually reduced to practice in the course of or under this Agreement, or with the use of any grant funds. Such assignment shall include assignment of any patents registered with the United States Patent and Trademark Office. Grantee further agrees to cooperate with and assist the CIWMB in the preparation of any patent application. Under certain unusual and very limited circumstance, where to do so would not conflict with the rights of the CIWMB and would serve the public interest, upon written request by the Grantee, the CIWMB may give, at the Executive Director's sole discretion, written consent to the Grantee to retain all or any part of the ownership of these rights.

44. PAYMENT

- a. The Budget, if applicable, is attached hereto and incorporated herein by this reference and states the maximum amount of allowable costs for each of the tasks identified in the Work Plan, if applicable, which is attached hereto and incorporated herein by this reference. The CIWMB shall reimburse the Grantee for only the work and tasks specified in the Work Plan or the Grant
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Agreement at only those costs specified in the Budget and incurred in the term of the Agreement.

- b. The Grantee shall carry out the work described on the Work Plan or in the Grant Application in accordance with the Budget, and shall obtain the Grant Manager's written approval of any changes or modifications to the Work Plan, approved project as described in the Grant Agreement or the Budget prior to performing the changed work or incurring the changed cost. If the Grantee fails to obtain such prior written approval, the Executive Director, at his or her sole discretion, may refuse to provide funds to pay for such work or costs.
- c. The Grantee shall request reimbursement in accordance with the procedures described in the Procedures and Requirements.
- d. Ten percent (10%) will be withheld from each Payment Request and paid at the end of the grant term, when all reports and conditions stipulated in this Agreement have been satisfactorily completed. Failure by the Grantee to satisfactorily complete all reports and conditions stipulated in this Agreement may result in forfeiture of any such funds withheld pursuant to the CIWMB's ten percent (10%) retention policy.
- e. Lodgings, Meals and Incidentals: Grantee's Per Diem eligible costs are limited to the amounts authorized in the California *State Administrative Manual* (contact your Grant Manager for more information).
- f. Payment will be made only to the Grantee.
- g. Reimbursable expenses shall not be incurred unless and until the Grantee receives a Notice to Proceed as described in Exhibit B — Procedures and Requirements.

45. PERSONAL JURISDICTION

The Grantee consents to personal jurisdiction in the State of California for all proceedings concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties. Native American Tribal Grantees expressly waive tribal sovereign immunity as a defense to any and all proceedings concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties.

46. PERSONNEL COSTS

If there are eligible costs pursuant to Exhibit B, Procedures and Requirements, any personnel expenditures to be reimbursed with grant funds must be computed based on actual time spent on grant-related activities and on the actual salary or equivalent hourly wage the employee is paid for his or her regular job duties, including a proportionate share of any benefits to which the employee is entitled, unless otherwise specified in the Procedures and Requirements (Exhibit B).

47. REAL AND PERSONAL PROPERTY ACQUIRED WITH GRANT FUNDS

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- a. All real and personal property, including equipment and supplies, acquired with grant funds shall be used by the Grantee only for the purposes for which the CIWMB approved their acquisition for so long as such property is needed for such purposes, regardless of whether the Grantee continues to receive grant funds from the CIWMB for such purposes. In no event shall the length of time during which such property, including equipment and supplies, acquired with grant funds, is used for the purpose for which the CIWMB approved its acquisition be less than five (5) years after the end of the grant term, during which time the property, including equipment and supplies, must remain in the State of California.
 - b. Subject to the obligations and conditions set forth in this section, title to all real and personal property acquired with grant funds, including all equipment
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and supplies, shall vest upon acquisition in the Grantee. The Grantee shall execute all documents required to provide the CIWMB with a purchase money security interest in any real or personal property, including equipment and supplies, and it shall be a condition of receiving this grant that the CIWMB shall be in first priority position with respect to the purchase money security interest on any such property acquired with the grant funds, unless pre-approved in writing by the Grant Manager that the CIWMB will accept a lower priority position with respect to the purchase money security interest on the property. Grantee shall inform any lender(s) from whom it is acquiring additional funding to complete the property purchase of this grant condition.

- c. The Grantee may not transfer Title to any real or personal property, including equipment and supplies, acquired with grant funds to any other entity without the express authorization of the CIWMB.
- d. The CIWMB will not reimburse the Grantee for the acquisition of equipment that was previously purchased with CIWMB grant funds, unless the acquisition of such equipment with grant funds is pre-approved in writing by the Grant Manager. In the event of a question concerning the eligibility of equipment for grant funding, the burden will be on the Grantee to establish the pedigree of the equipment.

**48. RECYCLED-CONTENT
CERTIFICATION**

The Grantee shall certify the minimum, if not the exact, percentage of postconsumer and secondary material in the products, materials, goods, and supplies purchased with grant funds. This certification shall be provided to the CIWMB on the Recycled Content Certification Form (CIWMB 74G) available at www.ciwmb.ca.gov/Grants/Forms/CIWMB074G.doc.

**49. RECYCLED-CONTENT
PAPER**

All documents submitted by the Grantee must be printed double-sided on recycled-content paper containing one hundred percent (100%) post-consumer fiber. Specific pages containing full-color photographs or other ink-intensive graphics may be printed on photographic paper.

**50. RECYCLED-CONTENT
PRODUCT
PROCUREMENT**

In the performance of this Agreement, for purchases made with grant funds, the Grantee shall purchase recycled-content products (RCP), as defined by the State Agency Buy Recycled Campaign (SABRC) minimum recycled-content requirements, see www.ciwmb.ca.gov/BuyRecycled/StateAgency/. If the Grantee cannot purchase RCPs, the Grantee must document why it was unable to comply with this requirement and request written pre-approval from its Grant Manager to deviate from this policy.

51. REDUCTION OF WASTE

In the performance of this Agreement, grantee shall take all reasonable steps to ensure that materials purchased or utilized in the course of the project are not wasted. Steps should include, but not be limited to: the use of used, reusable, or recyclable products; discretion in the amount of materials used; alternatives to disposal of materials consumed; and, the practice of other waste reduction measures where feasible and appropriate.

**52. REDUCTION OF WASTE
TIRES**

Unless otherwise provided for in this Agreement, in the performance of this Agreement, for all purchases made with grant funds, including, but not limited to, equipment and tire-derived feedstock, the Grantee shall purchase and/or process only California waste tires and California waste tire-derived products. As a condition of final payment under this Agreement, the Grantee must provide documentation substantiating the source of the tire materials used during the performance of this Agreement to the Grant Manager.

53. REMEDIES	Unless otherwise expressly provided herein, the rights and remedies hereunder are in addition to, and not in limitation of, other rights and remedies under this Agreement, at law or in equity, and exercise of one right or remedy shall not be deemed a waiver of any other right or remedy.
54. RESOLUTION	A county, city, district, or other local public body must provide the CIWMB with a copy of a resolution, order, motion, or ordinance of the local governing body, which by law has authority to enter into an agreement, authorizing execution of this Agreement and designating the job title of the individual authorized to sign on behalf of the local public body.
55. SELF ASSESSMENT CHECKLIST	The Grantee shall submit with its Final Report a completed and signed Self Assessment Checklist Form, which is designed to aid the Grantee and the CIWMB in measuring compliance with administrative requirements.
56. SEVERABILITY	If any provisions of this Agreement are found to be unlawful or unenforceable, such provisions will be voided and severed from this Agreement without affecting any other provision of this Agreement. To the full extent, however, that the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement be deemed to be a valid and binding agreement enforceable in accordance with its terms.
57. SITE ACCESS	The Grantee shall allow the State to inspect sites at which grant funds are expended and related work being performed at any time during the performance of the work and for ninety (90) days after completion of the work, or until all issues related to the grant project have been resolved.
58. STOP WORK NOTICE	Immediately upon receipt of a written notice from the Grant Manager to stop work, the Grantee shall cease all work under this Agreement.
59. SWEATFREE CODE OF CONDUCT	<p>a. All Grantees contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies obtained with Grant funds have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Grantee further declares under penalty of perjury that it adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.</p> <p>b. The Grantee agrees to cooperate fully in providing reasonable access to the Grantee's records, documents, agents or employees, or premises if reasonably required by authorized officials of the CIWMB or its agents, the Department of Industrial Relations, or the Department of Justice to determine the Grantee's compliance with the requirements under paragraph (a).</p>
60. TERMINATION FOR CAUSE	The CIWMB may terminate this Agreement and be relieved of any payments should the Grantee fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the CIWMB may proceed with the work in any manner deemed proper by the

CIWMB. All costs to the CIWMB shall be deducted from any sum due the Grantee under this Agreement. Termination pursuant to this section may result in forfeiture by the Grantee of any funds retained pursuant to the CIWMB's ten percent (10%) retention policy.

- 61. TIME IS OF THE ESSENCE** Time is of the essence to this Agreement.
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- 62. TOLLING OF STATUTE OF LIMITATIONS** The statute of limitations for bringing any action, administrative or civil, to enforce the terms of this Agreement or to recover any amounts determined to be owing to the CIWMB as the result of any audit of the grant covered by this Agreement shall be tolled during the period of any audit resolution, including any appeals by the Grantee to the Executive Director and/or the Board.
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- 63. UNION ORGANIZING** By signing this Agreement, the Grantee hereby acknowledges the applicability of Government Code §§ 16645, 16645.2, 16645.8, 16646, 16647, and 16648 to this Agreement and hereby certifies that:
- a. No grant funds disbursed by this grant will be used to assist, promote, or deter union organizing.
 - b. If the Grantee makes expenditures to assist, promote, or deter union organizing, the Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.
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- 64. UNRELIABLE LIST** Prior to authorizing a contractor(s) to commence work under this Grant, the Grantee shall submit to the CIWMB a declaration from the contractor(s), signed under penalty of perjury, stating that within the preceding three (3) years, none of the events listed in Section 17050 of Title 14, California Code of Regulations, Natural Resources, Division 7, has occurred with respect to the contractor(s). See www.ciwmb.ca.gov/Regulations/Title14/ch1.htm#ch1a5. If a contractor is placed on the CIWMB Unreliable List after award of this Grant, the Grantee may be required to terminate that contract.
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- 65. VENUE/CHOICE OF LAW**
- a. All proceedings concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be held in Sacramento County, California. The parties hereby waive any right to any other venue. The place where the Agreement is entered into and place where the obligation is incurred is Sacramento County, California.
 - b. The laws of the State of California shall govern all proceedings concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties hereunder.
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- 66. WAIVER OF CLAIMS AND RECOURSE AGAINST THE STATE** The Grantee agrees to waive all claims and recourse against the State, its officials, officers, agents, employees, and servants, including, but not limited to, the right to contribution for loss or damage to persons or property arising out of, resulting from, or in any way connected with or incident to this Agreement. This waiver extends to any loss incurred attributable to any activity undertaken or omitted pursuant to this Agreement or any product, structure, or condition created pursuant to, or as a result of, this Agreement.
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- 67. WORK PRODUCTS** The Grantee must provide the CIWMB with copies of all final products identified in the Work Plan.
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**68. WORKERS'
COMPENSATION/LABOR
CODE**

The Grantee is aware of Labor Code section 3700, which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the Labor Code, and the Grantee affirms to comply with such provisions before commencing the performance of the work of this Agreement.

EXHIBIT B
PROCEDURES AND REQUIREMENTS

EXHIBIT B
PROCEDURES AND REQUIREMENTS
SOLID WASTE DISPOSAL AND CODISPOSAL SITE CLEANUP GRANT PROGRAMS
FISCAL YEAR 2008/09 (SWC26 & 27)

SECTION I

- 1.01 Notification Prior to Initiation of Cleanup Activities. At least two weeks prior to the initiation of the cleanup activities of each site, Grantee shall send to the California Integrated Waste Management Board (CIWMB) Grant Manager written notification of the scheduled start date. Cleanup activities may not commence unless and until Grantee has received a Notice to Proceed, which shall be issued by the CIWMB upon receipt of a fully executed Grant Agreement.
- 1.02 Grant Term, Grant Performance Period and Report Preparation Period. The Grant Performance Period begins on the date indicated in the Notice to Proceed letter that the Grantee will receive from the CIWMB. Eligible Grant expenditures may start no earlier than the date indicated in the Notice to Proceed. In all cases, all eligible Program costs must be incurred no later than May 15, 2011.
- The Grant Term starts on the same date as the Grant Performance Period and ends on July 1, 2011, the date the Final Report and Final Payment Request are due to the CIWMB. The period from May 16, 2011, and July 1, 2011, is referred to as the Report Preparation Period. *Costs incurred to prepare the Final Report and Final Payment Request are the only costs that are eligible for reimbursement during the Report Preparation Period.*
- 1.03 Public Information. All documents submitted in relation to the Grant, including, but not limited to, Payment Requests and Reports, become the property of the CIWMB and are subject to disclosure under the Public Records Act. Do not submit confidential information.
- 1.04 Deadlines. Time is of the essence in this Agreement. Grantee shall enter into all necessary contracts for the work by October 30, 2009, and shall cause all work to be completed by the end of the Grant Performance Period, May 15, 2011.
- 1.05 Site Access. Grantee shall allow the CIWMB and other State Agency representatives to inspect the site cleanup and related work being performed at any time during the performance of the work, and shall provide full access to all project records.
- 1.06 Change of Financial Condition. The Grantee agrees to immediately notify the CIWMB Grant Manager (Grant Manager) of any changes in the financial condition or circumstances that would make the owner and/or responsible party financially able to accomplish the required site cleanup without CIWMB funds. This notification shall be required during the term of this Agreement. Changes in the financial condition of the owner and/or responsible party may negate the need for grant funds.
- 1.07 Interdepartmental Agreements. Agreements between departments or divisions of the same local jurisdiction or between jurisdictions participating in a regional grant agreement will not be recognized as subcontracts.
- 1.08 Cost Recovery. The Grantee agrees to pursue cost recovery for funds expended on private properties to the extent possible, unless waived by the CIWMB. The Grantee agrees to repay the CIWMB any funds collected through cost recovery, sale of lien properties, special tax

assessments, or other methods of collection, less any reasonable administrative costs incurred by the Grantee in obtaining repayment.

- 1.09 Sale of Property. If any of the public property(ies), remediated with grant funds, are sold within twelve (12) months of completion of the cleanup, a portion of the proceeds from the sale shall be remitted to the CIWMB in an amount commensurate with that expended by the CIWMB to remediate the site.

SECTION II

- 2.01 **Prior to Commencing Work. GRANT SELF ASSESSMENT CHECKLIST FORM** Prior to commencing work under this Grant the Grantee's Grant Manager and authorized Signature Authority should review the Grant Self Assessment Checklist Form so as to identify key administrative requirements. Evaluation of the Grantee's compliance with these requirements is a major part of all grant audit reviews.

As set forth more fully in the Terms and Conditions (Exhibit A), the Grantee shall submit with its Final Report a completed and signed Form. To obtain the Grant Self Assessment Checklist Form (CIWMB 641) see <http://www.ciwmb.ca.gov/Grants/Forms/CIWMB641.doc> or contact your Grant Manager.

RELIABLE CONTRACTOR DECLARATION. Prior to authorizing a contractor(s) to commence work under this Grant, the Grantee shall submit to the CIWMB Grant Manager a declaration from the contractor(s), signed under penalty of perjury, stating that within the preceding three (3) years, none of the events listed in Section 17050 of Title 14, California Code of Regulations, Natural Resources, Division 7, has occurred with respect to the contractor(s) and the subcontractor(s), respectively. See www.ciwmb.ca.gov/Regulations/Title14/ch1.htm#ch1a5

If a (sub)contractor is placed on the CIWMB Unreliable List after award of this Grant, the Grantee may be required to terminate that contract.

To obtain the Reliable Contractor Declaration form (CIWMB 168) see <http://www.ciwmb.ca.gov/Grants/Forms/CIWMB168.doc>

- 2.02 Work Plan and Budget/Eligible Costs. Eligible costs include, but are not limited to:

- Waste removal and disposal;
- Security measures such as fences, barriers, and warning signs;
- Site grading and drainage controls to minimize erosion;
- Slope and foundation stabilization;
- Excavation, consolidation, and capping of waste areas;
- Installation of landfill gas and leachate control systems;

- Field and laboratory testing; and
- Health and safety measures required for eligible project work.

Note: It is the Grantee's responsibility to review all documents, letters, e-mails, and other information updates supplied by CIWMB.

2.03 Ineligible Costs. Ineligible costs include, but are not limited to:

- Expenses for services rendered or goods purchased prior to issuance of Notice to Proceed, or any expenses incurred after the end of the grant term;
- Overhead or indirect costs (unless pre-approved in writing by the Grant Manager, but in no event an amount in excess of 10% of the amount approved for reimbursement);
- Costs explicitly for the profit of the Grantee;
- Bonus payments for early completion of grant project or any phase of the grant project;
- Any portion of a program currently covered or incurred under any other CIWMB contract, loan or grant or grant cycle;
- Overtime costs (except for local government staffing during specially scheduled evening or weekend events that have been pre-approved in writing by the Grant Manager when law or labor contracts REQUIRE overtime compensation or when such staffing and/or costs are pre-approved in writing by the Grant Manager);
- Cellular phones, personal digital assistants, personal electronic devices, pagers, and similar electronic and telecommunications devices;
- Programs that are not cost effective, as determined by the Grant Manager;
- Travel and per diem expenses (unless pre-approved in writing by the Grant Manager)(See Terms and Conditions, attached as Exhibit A, subsection (e) under Payment);
- Any food or beverages (e.g. as part of meetings, workshops, training, events, etc.);
- Equipment or other materials that are not primarily used to implement the approved project;
- Staff training that is not directly related to the implementation of the approved project;
- Interest charges or other payments on bonds or indebtedness required to finance the project;
- Any personnel costs incurred as a result of time an employee assigned to the project funded by the grant does not actually work on the project (e.g. use of accrued vacation, sick leave, etc.);

- o Costs connected with contractor claims/liens against the Grantee;
 - o Fines or penalties due to violation of federal, state or local laws, ordinances, or regulations;
 - o Permit, inspection and use fees; and
 - o Any other costs not deemed reasonable or related to the purpose of the grant by the Grant Manager.
- 2.04 Overhead on Subcontracts. Overhead may only be paid on the first \$25,000 for each subcontract and is limited to a rate of 10% of the amount approved for reimbursement.
- 2.05 Payment Requests. Not more than once per month, the Grantee shall submit one (1) original and one (1) copy of its Payment Request to the Grant Manager at the following addresses:

Via standard mail:

California Integrated Waste Management Board
 Grant Manager
 Cleanup Branch
 Cleanup, Closure and Financial Assurance Division
 P.O. Box 4025
 Sacramento, CA 95812-4025

Via courier/personal delivery:

California Integrated Waste Management Board
 Grant Manager
 Cleanup Branch
 Cleanup, Closure and Financial Assurance Division
 1001 I Street
 Sacramento, CA 95814

The Payment Request shall be signed by the person authorized by Grantee's Resolution. Grantee must use CIWMB Payment Request form (CIWMB 87), available at <http://www.ciwmb.ca.gov/Grants/Forms/CIWMB087.doc> or from your Grant Manager. Faxed Payment Requests will not be accepted.

- 2.06 Property Purchased With Grant Funds. CIWMB will require that Grantees secure their obligations under the Grant Agreement by executing a security agreement that provides for CIWMB to receive a purchase money security interest in any equipment or fixtures acquired with grant funds. Grantees must execute all documents required to complete CIWMB's security interest prior to any payment of grant funds. (See "Real and Personal Property Acquired With Grant Funds" section in Exhibit A – Terms and Conditions for more information.)
- 2.07 Supporting Documentation. Payment Requests shall be accompanied by supporting documentation. Types of acceptable documentation include, but are not limited to:
- a. Invoices: should include the name of the vendor, vendor's telephone number and address, a description of goods or services purchased, amount due, and date.

- b. Receipts: should include the same information as invoices.
 - c. Purchase orders with proof of payment: should include the same information as invoices. Purchase orders must be accompanied by proof of payment (e.g., copies of cancelled checks).
 - d. Personnel Expenditure Summary Form: must document these costs based on actual time spent on grant related activities; form available at <http://www.ciwmb.ca.gov/Grants/Forms/CIWMB165.doc> (NOTE: These forms are not required if you have an alternate time reporting method pre-approved in writing by the Grant Manager).
- 2.08 **Payment Verification.** The Grant Manager will verify Payment Requests for completeness and accuracy, and adjust as necessary. Payments will be computed at 100 percent of the amount approved by CIWMB staff for payment, less 10 percent to be retained by the State until Grantee has satisfied all conditions stipulated in this Agreement. After CIWMB staff approval, Payment Requests will be forwarded to the State Controller's Office for issuance of payment warrants.
- 2.09 **Payment Processing.** The State will make payments to Grantee as promptly as fiscal procedures permit. Payment is typically made to Grantee approximately 45 calendar days from the date the completed Payment Request is approved by the Grant Manager. Payment shall be made only to the Grantee.

SECTION III

- 3.01 **Permit Checklist.** With each Grant Payment Request (CIWMB 87), the Grantee shall either submit to the Grant Manager a completed and signed General Checklist of Business Permits, Licenses and Filings Form (CIWMB 669), available at <http://www.ciwmb.ca.gov/Grants/Forms/CIWMB669.doc>. If the information on the previously submitted Checklist of Business Permits, Licenses and Filings requires updating OR indicate that the information on the previously submitted form is up to date (complete Step 8 on the Grant Payment Request Form).
- 3.02 **Progress Reports.** The Grant Manager may request a Progress Report at any time during the grant term.
- 3.03 **Final Report.** Upon completion of the project the Grantee shall complete and submit to the Grant Manager a Final Report that documents the cleanup activities performed under this grant. At a minimum, the Final Report shall contain the following:
- a. Introduction
 - 1. Disclaimer: "The statements and conclusions of this report are those of the Grantee and not necessarily those of the California Integrated Waste Management Board, its employees, or the State of California. The State makes no warranty, express or implied, and assumes no liability for the information contained in the succeeding text."
 - 2. Report Purpose
 - b. Project Information
 - 1. Site Location

2. Site Background
 3. Project Participants
- c. Construction/Cleanup Activities
1. Project Scope of Work
 2. Reference Documents (if applicable)
 3. Summary of Construction/Cleanup Activities
 4. Sampling and Analyses (if applicable)
 5. As-Built Plans and Specifications
- d. Summary of Expenditures
- e. Statement that all contractors and subcontractors have completed the Reliable Contractors Declaration (CIWMB 168) see www.ciwmb.ca.gov/Grants/Forms/CIWMB168.doc.
- 3.04. Self Assessment Checklist. The Grantee shall submit with its Final Report a completed and signed Self Assessment Checklist Form, which is designed to aid the Grantee and the CIWMB in measuring compliance with administrative requirements.
- 3.05 Untimely Final Report and Payment Request. Failure to submit the Final Payment Request and Final Report, with appropriate documentation, by July 1, 2011, may result in rejection of the Payment Request and/or forfeiture by the Grantee of claims for costs incurred that might otherwise have been eligible for grant funding.

EXHIBIT C
WORK STATEMENT/PLAN

EXHIBIT C
WORK STATEMENT/WORK PLAN

1. **Work Statement/Work Plan.** Grantee shall complete the remediation of the Vista Burn Dump Site as described in the Grant Application submitted on December 12, 2008, and approved by CIWMB in accordance with CIWMB Agenda Item 5 (Revised) and Resolution 2009-32 (Revised), February 24, 2009.
2. **Final Plans and Specifications.** Grantee shall submit prior to start of the project 1 copy of the project final plans and specifications, bid documents and executed contracts to the Grant Manager.
3. **Schedule.** Grantee shall submit a project schedule showing anticipated start and completion dates to the Grant Manager prior to start of the project.

EXHIBIT D
BUDGET/COST ESTIMATE

**EXHIBIT D
BUDGET/COST ESTIMATE**

1. **Budget/Cost Estimate.** Reimbursement to Grantee from CIWMB for eligible activities specified in the grant application and Exhibits A,B, and C shall not to exceed \$729,900.