

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Director of Public Works/City Engineer via City Manager

DATE: Council Meeting of December 6, 2010

SUBJECT: Agreement for Bay Area-wide Trash Capture Demonstration Project Grant Funding

City Council Goals:

To provide for effective and efficient delivery of City Services (1)

To maintain and improve infrastructure (3)

Purpose:

To consider entering into an agreement with the Association of Bay Area Governments (ABAG) to participate in the Bay Area-wide Trash Capture Demonstration Project ("Project"), which will allow the City to receive grant funding to purchase and install trash capture devices in existing storm drain infrastructure to reduce the amount of trash discharged from our storm drains to the Lagoon and the Bay.

Recommendation:

1. Authorize the Public Works Director/City Engineer to sign an agreement with ABAG to allow Brisbane to participate in the Bay Area-wide Trash Capture Demonstration Project.

Background:

The Municipal Regional Stormwater Permit issued by the San Francisco Bay Regional Water Quality Control Board (Regional Board) in late 2009 mandates specific actions related to controlling trash, including a requirement for municipalities to reduce trash discharged from their storm drain systems by 40% by 2014, 70% by 2017, and 100% by 2022. ABAG, in conjunction with the San Francisco Estuary Partnership, received \$5 million in American Recovery and Reinvestment Act funding to implement the Project. Funds are allocated to every Bay Area municipality for purchase and installation of trash capture devices.

Installation of trash capture devices is an effective way to reduce trash and litter discharge from municipal storm drains. To quantify the benefit of trash capture devices, Bay Area municipal stormwater programs are developing trash "loading rates" for various land use types (i.e., how much trash reaches storm drains per unit area in different land uses). Since installation of trash capture

devices effectively eliminates storm drain trash loading within the drainage areas where they are located, the loading rates can then be used to calculate a percent reduction over a municipality's total jurisdiction. The Project funding will help Brisbane in meeting the mandated 40% reduction requirement.

Other trash management approaches Brisbane will need to consider in order to reach the Regional Board's reduction requirements include efforts such as plastic bag and Styrofoam food container bans, public outreach and education, on-land litter cleanup efforts, focused street sweeping, management of homeless and transient encampment litter, and effective residential and commercial trash and recyclable removal services. In addition, regional and statewide efforts focusing on "true" source control and extended producer responsibility are essential to sustainable trash management.

Discussion:

If Brisbane chooses to participate in the Project it is eligible for at least \$7,781 in grant funds. ABAG has requested that any jurisdiction choosing to participate in the project execute its contract by January 1. After that time, ABAG will reallocate funds from non-participating municipalities to those that choose to participate. Therefore, Brisbane may be eligible for more than its base allocation if other jurisdictions decide not to participate. Funds would be used to purchase and install devices within existing storm drain infrastructure to remove trash and debris prior to it being discharged into Brisbane Lagoon or the Bay. ABAG has already pre-qualified trash device vendors; Brisbane would simply choose which device(s) from the pre-approved list it wants installed, use ABAG's purchase order to contract with the appropriate vendor(s) for fabrication and installation, and notify ABAG upon successful installation of the devices. ABAG would then pay the vendor from Brisbane's pot of funding, and ownership and maintenance responsibilities for the devices would shift to the City.

Given the level of funding currently allocated to Brisbane, staff expects fewer than ten capture devices could be installed with the grant. The agreement requires maintenance of any purchased and installed trash devices for the useful life of the device, up to 25 years. City staff expects maintenance requirements for the trash capture devices to be minimally more than current annual storm drain maintenance activities. Typical maintenance involves removing catch basin grates and removing accumulated debris with a vacuum truck, which is already done on at least an annual basis for the majority of catch basins within the City. The few catch basins that would have trash devices installed may require more frequent cleaning. The devices, designed with screens to capture trash and debris down to five millimeters in diameter, also include overflow capabilities for larger storm events to minimize flooding potential if screens get clogged. The City would need to carefully choose appropriate catch basins in which to install devices, considering trash generation rates, leaf or pine needle drop, existing infrastructure limitations, maintenance access, and other relevant concerns.

The City attorney reviewed the required grant contract (Attachment A) and raised some concerns regarding the provisions, primarily related to ABAG's ability to not accept installed devices and thereby shift responsibility for vendor compensation to the City. Because the contract was developed to meet federal funding requirements and is a boilerplate applicable to all municipalities in the Bay area, Brisbane is unable to negotiate changes to the contract language with ABAG. Staff believes the risk associated with the contract language is minor in relation to the amount of funding Brisbane is eligible to receive, and recommends participating in the grant program.


Fiscal Impact:

If the City participates in the grant program it is eligible to receive at least \$7,781 to purchase and install trash capture devices. There are no matching fund requirements, only the commitment to ongoing operation and maintenance of the devices. Staff believes the required maintenance can be absorbed into existing storm drain maintenance activity performed by staff with minimal impact. Should maintenance requirements become more significant than anticipated, the City could utilize a portion of its share of vehicle license revenue recently approved under Measure M (\$75,000 annually) to fund additional maintenance activities.

If the City decides to not participate in the ABAG grant, it will need to consider funding installation of trash capture devices on its own, and/or expend additional resources on the other trash management approaches described in the "Background" section of this report.

Attachments:

- A. ABAG Agreement for Local Agency Participation in the Project
- B. Trash Capture Demonstration Project Frequently Asked Questions



Director of Public Works/City Engineer



City Manager

A copy of supporting materials provided to the City Manager and Council Persons in connection with this agenda item is available for public inspection and copying at 50 Park Place, City of Brisbane Department of Public Works, Brisbane, CA, 94005, Telephone: (415) 508-2130.

ASSOCIATION OF BAY AREA GOVERNMENTS

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

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

Recitals

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

ABAG and Brisbane mutually agree as follows:

1. Initial Allocation and Current Balances. Brisbane has access to \$7,781 (seven thousand, seven hundred and eighty-one dollars) in PFA Funds to acquire and install TCDs. PFA Funds may only be used to fund or defray the costs of acquiring and/or installing TCDs from the panel of vendors listed in Exhibit A-2 (see section 3). ABAG will calculate the amount of PFA Funds to which Brisbane has access on any given day by reducing the initial allocation by the amount encumbered by TCDs on order (see section 3) and amounts paid for accepted TCDs. This information will be posted at <http://www.bayareatrashtacker.org/content/contract-resources> and will be adjusted on an as-needed basis.
2. Reallocations.
 - (a) Brisbane acknowledges that the success of the Project depends on maximum use of the PFA Funds and that greater use may be achieved by reallocating access to PFA Funds among the Potential Participants that have executed an "Agreement for Local Agency Participation Grant Funded SF Bay Area Trash Capture Demonstration Project" by January 1, 2011 (Participating Entities). All reallocations will be reflected in the current balance (see section 1).
 - (b) All of the initial allocations for any Potential Participants that have not executed an "Agreement for Local Agency Participation Grant Funded SF Bay Area Trash Capture Demonstration Project" by January 1, 2011

will be reallocated among Participating Entities by ABAG at its sole discretion after soliciting input from the Project's Technical Advisory Group. Reallocations under this provision will be implemented by written notice from ABAG to each Participating Entity that is given access to the additional PFA Funds. Brisbane agrees that any written notice(s) it receives pursuant to this section will automatically amend the allocation in section 1 in accordance with its terms.

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

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

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

ABAG

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

City/County

City of Brisbane
50 Park Place
Brisbane, CA 94005
Attention: Matt Fabry
Phone: _____
Email: _____

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

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

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

Dated: _____

City/County:

By:

(Print name and title)

(Tax ID #)

Dated: _____

ASSOCIATION OF BAY AREA GOVERNMENTS:

Henry L. Gardner
Executive Director

Approved as to legal form and content:

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

Approved as to legal form and content:

Print Name & Title

City of Brisbane

EXHIBIT A
SCOPE OF WORK

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

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

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

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

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

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

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

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

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

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

EXHIBIT A-1

LIST OF POTENTIAL PARTICIPANTS

Alameda County

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

Contra Costa County

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

Marin County

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

Napa County

American Canyon
Calistoga
Napa
St Helena
Yountville
County of Napa

San Mateo County

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

Santa Clara County

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

Solano County

Benicia
Fairfield
Suisun City
Vallejo
County of Solano

Sonoma County

Petaluma
Sonoma
County of Sonoma

EXHIBIT A-2



**Bay Area-wide Trash Capture
Demonstration Project
Vendors and devices approved March 18, 2010**

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

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

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

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

High Flow Capacity Devices with Water Board certification

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

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

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

EXHIBIT A-3

SAMPLE PURCHASE ORDER FORM

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

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

THIS PURCHASE ORDER IS NOT FINAL UNTIL APPROVED BY ABAG

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

Date

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

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

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

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

Special Conditions:**

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

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

Name (print) _____ Phone _____

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

Name (print) _____ Phone _____

Approved by _____ Date: _____
 (ABAG)

OWP # 102147

EXHIBIT A-4

SAMPLE NOTICE OF ACCEPTANCE

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

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

Date: _____

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

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

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

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

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

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

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

Name (print) _____ Phone _____

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

Name (print) _____ Phone _____

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

Comments/Instructions:

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

OWP # 102147

EXHIBIT B
STANDARD CONTRACT PROVISIONS

1. Definitions:

“Contractor” as used in Exhibit B is Brisbane.

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

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

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

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

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

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

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

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

8. Insurance Requirements. Contractor shall procure and maintain for the duration of this Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees. Contractor may satisfy all of the requirements of this section by documentation of its membership in a California government agency self-insurance risk pool with coverage at least as broad as the Insurance Requirements set out in this Contract.

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

- 1) Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
- 2) Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).

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

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

ARTICLE I: DEFINITIONS

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

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

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

ARTICLE II: REPRESENTATIONS AND WARRANTIES

2.1 General Contractor Commitments.

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

2.2 Completion of Project.

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

2.3 Project Certification.

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

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

2.4 [not applicable]

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

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

(e) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Contractor agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the State Water Resources Control Board, Division of Financial Assistance (Division) has determined what actions should be taken to protect and preserve the resource. The Contractor agrees to implement appropriate actions as directed by the Division;

(f) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Contractor agrees to promptly notify the ABAG Contract Manager. This notification is in addition to the Contractor's obligations under the federal Endangered Species Act;

(g) Any monitoring, demonstration, or other implementation activities such that the State Water Resources Control Board (State Water Board) and/or Regional Water Quality Control Board (Regional Water Board) staff may observe and document such activities;

(h) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state and federal representatives with at least ten (10) working days notice; and,

(i) Completion of Construction of the Project, and actual Project Completion.

2.6 Project Access.

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

2.7 Project Completion; Initiation of Operations.

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

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

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

2.9 Reports.

(a) [not applicable]

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

2.10 [not applicable]

2.11 [not applicable]

2.12 [not applicable]

2.13 Signage.

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

ARTICLE III: [not applicable]

ARTICLE IV: MISCELLANEOUS PROVISIONS

4.1 Timeliness.

TIME IS OF THE ESSENCE IN THIS AGREEMENT

4.2 Amendment.

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

4.3 Assignability.

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

4.4 [not applicable]

4.5 Compliance with Law, Regulations, etc.

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

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

4.6 Conflict of Interest.

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

4.7 Damages for Breach Affecting ARRA Compliance.

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

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

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

4.8 Disputes.

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

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

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

4.9 Governing Law.

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

4.10 [not applicable]

4.11 Independent Actor.

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

4.12 Non-Discrimination Clause.

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

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

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

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

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

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

4.13 No Third Party Rights.

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

4.14 Operation and Maintenance; Insurance.

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

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

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

4.15 Permits, Subcontracting, Remedies and Debarment.

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

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

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

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

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

4.16 [not applicable]

4.17 Contractor's Responsibility for Work.

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

4.18 [not applicable]

4.19 Rights in Data.

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

4.20 State and ABAG Reviews and Indemnification.

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

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

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

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

4.22 Termination; Immediate Repayment; Interest.

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

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

4.23 Unenforceable Provision.

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

4.24 Useful Life of the Project.

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

4.25 Venue.

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

4.26 Waiver and Rights of the State Water Board.

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

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

EXHIBIT C-1

SPECIAL ENVIRONMENTAL, FINANCIAL AND OTHER PROGRAM CONDITIONS

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

EXHIBIT C-2
FEDERAL ARRA SPECIAL CONDITIONS

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

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

EXHIBIT C-3

ARRA SECTION 1511 CERTIFICATION

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

EXHIBIT C-4
DAVIS-BACON ACT COMPLIANCE

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

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

EXHIBIT D-1

OPERATION AND MAINTENANCE CERTIFICATION

The undersigned certifies by his or her signature the following:

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

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

or

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

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

Signature

Date

Print Name of Signer

Position/Title

EXHIBIT D-2

PROJECT SITE(S) ACCESS CERTIFICATION

The undersigned certifies by his or her signature the following:

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

Signature

Date

Print Name of Signer

Position/Title

EXHIBIT D-3

NO LITIGATION CERTIFICATION

The undersigned certifies by his or her signature the following:

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

Signature

Date

Print Name of Signer

Position/Title

EXHIBIT D-4

TITLE CERTIFICATION

The undersigned certifies by his or her signature the following:

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

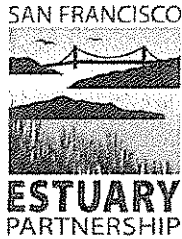
For any Project Site where the City of Brisbane has an easement, said easement is valid for the life of the Project (not to exceed 25 years).

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

City of Brisbane
Attorney or Legal Counsel

Date

Print Name of Signer



Bay Area-wide Trash Capture Demonstration Project

Information for Municipalities Frequently Asked Questions

Acronyms and abbreviations used in contract materials

ABAG	Association of Bay Area Governments
SFEP	San Francisco Estuary Partnership, a project of ABAG
State Water Board	State Water Resources Control Board, parent agency to the Division of Financial Assistance
Water Board	(or Regional Water Board) San Francisco Bay Regional Water Quality Control Board
DFA	The State Water Board's Division of Financial Assistance, which administers the CWSRF
CWSRF	Clean Water State Revolving Fund
PFA	Project Funding Agreement, i.e., the contract between the State Water Board and ABAG, which provides funding for the project
ARRA	American Recovery and Reinvestment Act of 2009 (stimulus funding legislation)
Potential Participants	All Bay Area counties, cities, and towns
Participating Entities	Municipalities that contract with ABAG to participate in the project
TCD	Trash Capture Device
TAG	The project's Technical Advisory Group, which includes city and countywide stormwater program representatives

Accessing Project materials

SFEP/ABAG, with assistance from the San Francisco Estuary Institute, is developing a website where municipalities can find and download project materials including contract support documents; device purchase orders and other forms; and both fact sheets and full vendor proposals for accepted devices. The site is password-protected; please do not share the url or password information with vendors or members of the public.

In the future municipal staff will enter monitoring/maintenance activities and results, and comments about specific devices and locations, on this site. Please go to <http://www.bayareatrashtacker.org>

Username: trash

Password: baytrashcapture

1515 Clay Street, Suite 1400 ♦ Oakland, CA 94612
510.622.2304
Fax: 510.622.5201
<http://sfestuary.org>

ATTACHMENT B

Bay Area-wide Trash Capture Demonstration Project – Frequently Asked Questions

On the site, under the “Contract Resources” tab:

- ABAG-State Water Board funding agreement (PFA)
- Template ABAG-municipalities contract
- Initial funding allocation spreadsheet
- Downloadable, fill-inable purchase order and notice of acceptance forms
- Project funding status spreadsheet (posted weekly after construction begins)

Under the “Trash Capture Devices” tab

- List of trash capture devices accepted in the project, by vendors who have contracted with ABAG
- Device fact sheets and vendor contact information
- Full proposals for each device

When complete, www.bayareatrashtracker.org will map-the locations where different types of devices are installed, and help us analyze how well they’re working and the level of effort required for maintenance for devices and location characteristics. During the project term SFEP/ABAG will use it to generate reports for our funding agency, the State Water Resources Control Board. At the end of this project the site will likely move under the control of local agencies for their own trash control evaluation and reporting purposes.

QUESTIONS AND ANSWERS

Allocating and reallocating project funds

- Q. What will happen to the allocations of cities or counties that do not participate in the project?
- A. Cities and counties have until January 1, 2011 to contract with ABAG to participate in the project. In January we will review the contracts and work with the project’s Technical Advisory Group (which includes representatives of the cities, countywide stormwater programs, Phase II counties, plus others who wish to join us) to develop a rationale for reallocating funds that will NOT be used by participating entities. We expect to reassign funds initially allocated to municipalities that have chosen not to contract with ABAG; and funds that participating municipalities do not intend to spend before the end of the project. We will keep everyone informed as we do this. Reallocation will require minor contract amendments.
- Q. Can cities combine their project funds in order to purchase a larger device, or capture trash from a larger catchment?
- A. Yes. We expect that some cities may aggregate their allocations to purchase high flow capacity devices and capture trash on a watershed basis. Countywide stormwater program co-permittees may also wish to reallocate funds within the program. Just let SFEP know what you’re planning.

Selecting, ordering, and accepting trash capture devices

- Q. Do cities and counties have to use the purchase order and Notice of Acceptance forms on the project website?

Bay Area-wide Trash Capture Demonstration Project – Frequently Asked Questions

- A. Yes. The P.O. posted on the website (<http://www.bayareatrashtacker.org/content/contract-resources>) should be downloaded and filled in electronically. The form records all of the information SFEP/ABAG needs for our record-keeping and reporting purposes.

Please use one form per vendor, and fill in all of the applicable blanks. You will need to enter each device and its location (lat/long or street address) on a separate line. Use the “special conditions” section for any arrangements you negotiate with the vendor.

The Notice of Acceptance form links to the P.O. by both P.O. number (city name plus number) and line number.

Email both forms, with any attachments, to

Jesse Mills, jemills@waterboards.ca.gov;

In addition, YOU MUST MAIL SIGNED HARD COPY FORMS to

Janet Cox, San Francisco Estuary Partnership
1515 Clay St. Suite 1400
Oakland CA 94612

SFEP/ABAG can only act on a signed, hardcopy P.O. or Notice of Acceptance.

Call Janet Cox (510 622 2334; jwcox@waterboards.ca.gov) or Jesse Mills (510 622 2465; jemills@waterboards.ca.gov) if you have questions about the purchase order or notice of acceptance form, or for more information about purchasing a high flow capacity device.

- Q. How does a municipality order a high flow capacity device? Does the same P.O. form work for both small devices (purchase and installation) and high flow devices (purchase only)?
- A. Yes, you should use the same P.O. form to order a large device, noting “non-install.” Use the special conditions section and attach all the additional contract terms between the municipality and vendor, including without limitation, delivery and storage of the large device, plans and specifications for modifying the large device for site conditions, coordination of installation effort, and protocols for testing and acceptance of the large device. Contact SFEP for more information before filling out the P.O.

If a municipality wishes to access funds in its allocation to install a large device, ABAG and the municipality will need to negotiate an amendment to the agreement between ABAG and the municipality. Please call SFEP for details.

- Q. What is SFEP/ABAG’s role in matching municipalities with vendors or devices?

- A. SFEP/ABAG issued two requests for proposals for trash capture devices, and worked with Water Board staff to develop a list of proposed trash capture devices that the Board can certify as “full trash capture” (or to be used in series with full trash capture devices). We have prepared fact sheets that reflect reference check information when available; and we are making those fact sheets and the full proposal packages for accepted devices available for cities to review, on the project website, <http://www.bayareatrashtacker.org/content/trash-capture-devices>. As approved vendors develop new products that the Water Board finds acceptable, we will update the list on the website and include fact sheets for additional devices.

It is up to each municipality to review the fact sheets and proposals, and contact the vendors’ representatives to discuss locations and needs.

Bay Area-wide Trash Capture Demonstration Project – Frequently Asked Questions

Vendors frequently ask SFEP staff for a list of participating municipality representatives. We do not comply with these requests, but tell the vendors that cities and counties have access to their proposals and price lists, and will call if interested.

- Q. What happens if SFEP/ABAG deletes a TCD from the list and a municipality has already ordered it?
- A. SFEP/ABAG is unlikely to delete a TCD from the list unless the manufacturer discontinues it. If this happens, we will work with the municipality and the vendor to make sure an acceptable substitute is available. When we revise the list of TCDs – which will most likely happen when a vendor adds a full-capture device to its product line, we will date the list on the website.
- Q. How can municipalities take advantage of the volume discounts offered by some vendors?
- A. A city or county that doesn't have enough installation locations to qualify for a vendor's price break can contact other cities to see if two or more municipalities can place orders (i.e., send signed purchase orders to SFEP) at the same time. Let SFEP know that you are doing this so that we'll be sure to group the orders.

Contracting with ABAG: Certifications (Exhibits D-1 through D-4)

- Q. Why are municipalities required to sign certificates (Exhibits D-1 through D-4) on matters already covered by the contract?
- A. Exhibits D-1 through D-4 are required by the Clean Water State Revolving Fund as a condition of SFEP/ABAG's funding agreement with the State Water Resources Control Board. ABAG has negotiated both signing requirements and the certificates' language with the funding agency.
- Q. When are the signed certifications due?
- A. They should be signed when the contract is signed, and returned at the same time as part of the contract.
- Q. How can a municipality comply with Exhibit D-1, the 'Operation and Maintenance Certification'?
- A. You may check the "general fund" box and simply estimate the percentage based on the cost of cleaning a catch basin some number of times per year. The percentage is likely to be very, very small. SFEP/ABAG and the State Water Board's grant administrators understand that a municipality's general fund is subject to annual appropriation.
- If the budget allows, a municipality could check the "other" box, and use its Public Works O&M budget, or a line item that includes storm drain system maintenance.
- Q. How can a municipality comply with Exhibits D-2 through D-4, which require it to make representations and promises about the property where a TCDS is installed (Project Sites), if it has not yet decided where to install all the TCDSs?

Bay Area-wide Trash Capture Demonstration Project – Frequently Asked Questions

- A. The required certifications in D-2 through D-4 serve to limit the locations where a municipality can install a TCD purchased through this project. All TCDs acquired through the project must be installed where the municipality owns the land or has an easement for access and maintenance; controls access; and is not subject to litigation.

Other Contracting Questions

- Q. Who is the "authorized representative" who will sign the purchase order and notice of acceptance (and is referenced in the contract Section 2)?

- A. The person who signs the P.O. and NOA should be the person managing the city's or county's participation in the project. This need not be the person who signs the contract with ABAG.

- Q. What is the meaning of "access to funds" (sections 1 and 2)? Will municipalities receive money from SFEP/ABAG?

- A. No money will change hands between SFEP/ABAG and municipalities. Cities and counties will have "access" to the amount of funds shown in the current allocation spreadsheet (posted on the project website at <http://www.bayareatrashtacker.org/content/contract-resources>) for purchase, by SFEP/ABAG, of trash capture devices.

- Q. Can Section 9 be clarified and limited by listing the grounds for SFEP/ABAG disapproving a Notice of Acceptance?

- A. While SFEP/ABAG does not anticipate disapproving any NOAs, we can't predict in advance all the circumstances under which this might be necessary. The municipality has significant protection against arbitrary action by ABAG. Under California law, the legal doctrine known as the 'covenant of good faith and fair dealing' requires that ABAG's disapproval of a Notice of Acceptance be reasonable in light of the contract as a whole.

- Q. Can the hold harmless, defense and indemnity provision in Section 12 be deleted or made mutual?

- A. As the funding agency, ABAG will not accept exposure to third party claims. The municipality's exposure is created by its decisions about acquiring, installing, and maintaining the TCDs.

Municipalities should use the "special conditions" section on the purchase order form to bind vendors to issues you may negotiate with them (other than price). You may want to ask your attorney to draft language that will hold the city or county harmless in case of claims or damages associated with a TCD.

- Q. What about the signage requirement in the contract (Exhibit C, Section 2.13)?

- A. SFEP will provide graphics for web posting, and signage for display in local offices, to all participating municipalities. The ARRA contract requires that all project participants display this signage until the end of the project.