

Contract Number: BC 14-004

D1. Fiscal Year.....: FY 2013-14

D2. Budget Unit Number (*plus -Ship/-Bill codes in paren's*) : 054

D3. Requisition Number

D4. Department Name.....: Public Works Department

D5. Contact Person.....: Joyce Hufschmid

D6. Phone

K1. Contract Type (*check one*): ☐ Personal Service ☐ Capital Project/Construction

K2. Brief Summary of Contract Description/Purpose: technical assistance for post construction stormwater management requirements

K3. Original Contract Amount: \$243,415 (plus contingency of \$24,341.50)

K4. Contract Begin Date.....: April 16, 2013

K5. Original Contract End Date.....: Dec. 31, 2015

K6. Amendment History (*leave blank if no prior amendments*):

<u>Seq#</u>	<u>EffectiveDate</u>	<u>ThisAmndt</u>	<u>AmtCum</u>	<u>AmndtTo</u>	<u>DateNew</u>	<u>TotalAmt</u>	<u>NewEndDate</u>	<u>Purpose (2-4 words)</u>
	\$	\$	\$					
K7. Department Project Number.....:								

B1. Is this a Board Contract? (*Yes/No*): yes

B2. Number of Workers Displaced (*if any*).....: N/A

B3. Number of Competitive Bids (*if any*).....: N/A

B4. Lowest Bid Amount (*if bid*): \$

B5. If Board waived bids, show Agenda Date.....:

B6. ... and Agenda Item Number.....: #

B7. Boilerplate Contract Text Unaffected? (*Yes / or cite ¶¶*) :

F1. Encumbrance Transaction Code: 1701

F2. Current Year Encumbrance Amount.....: \$

F3. Fund Number.....: 3060

F4. Department Number: 054

F5. Division Number (*if applicable*): 04-08

F6. Account Number.....: 7460

F7. Cost Center number (*if applicable*).....:

F8. Payment Terms: Net 30

V1. Vendor Numbers (*A=uditor; P=urchasing*).....: A- 042404

V2. Payee/Contractor Name.....: Dan Cloak Environmental Consulting

V3. Mailing Address.....: P.O. Box 2415

V4. City State (*two-letter*) Zip (*include +4 if known*) : El Cerrito, CA 94530-5415

V5. Telephone Number: (510) 559-9238

V6. Contractor's Federal Tax ID Number (*EIN or SSN*) :

V7. Contact Person: Dan Cloak

V8. Workers Comp Insurance Expiration Date

V9. Liability Insurance Expiration Date[s] (*G=enl; P=rofl*) :

V10. Professional License Number.....: #

V11. Verified by (*name of County staff*).....:

V12. Company Type (*Check one*): ☐ Individual ☐ Sole Proprietorship ☐ Partnership ☐ Corporation

I certify: information complete and accurate; designated funds available; required concurrences evidenced on signature page.

Date : Authorized Signature  3-26-13

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara Public Works Department, a political subdivision of the State of California (hereafter COUNTY) and Dan Cloak Environmental Consulting having its principal place of business at 317 Coronado Street El Cerrito, CA 94530 (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **DESIGNATED REPRESENTATIVE.** Joy Hufschmid at phone number (805) 568-3373 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Dan Cloak at phone number (510) 559-9238 is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advance written notice to the other party.

2. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as follows:

To COUNTY: Thomas D. Fayram, County of Santa Barbara Public Works Department,
130 E. Victoria Street, Suite 200, Santa Barbara, CA 93101

To CONTRACTOR: Dan Cloak Environmental Consulting, P.O. Box 2415, El Cerrito, CA 94530-5415

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. **SCOPE OF SERVICES.** CONTRACTOR agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. **TERM.** CONTRACTOR shall commence performance on April 16, 2013 and end performance upon completion, but no later than December 31, 2015 unless otherwise directed by COUNTY or unless earlier terminated.

5. **COMPENSATION OF CONTRACTOR.** CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 **NOTICES.** above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

6. **INDEPENDENT CONTRACTOR.** CONTRACTOR shall perform all of its services under this Agreement as an independent contractor and not as an employee of COUNTY. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure.

7. **STANDARD OF PERFORMANCE.** CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards

observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

8. **TAXES.** COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

9. **CONFLICT OF INTEREST.** CONTRACTOR covenants that CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR.

10. **RESPONSIBILITIES OF COUNTY.** COUNTY shall provide all information reasonably necessary by CONTRACTOR in performing the services provided herein.

11. **OWNERSHIP OF DOCUMENTS.** COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any materials under this section except after prior written approval of COUNTY.

No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of COUNTY. COUNTY shall have the unrestricted authority to publish, disclose, distribute, and other use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

12. **RECORDS, AUDIT, AND REVIEW.** CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice.

13. **INDEMNIFICATION AND INSURANCE.** CONTRACTOR shall agree to defend, indemnify and save harmless the COUNTY and to procure and maintain insurance in accordance with the provisions of EXHIBIT C attached hereto and incorporated herein by reference.

14. **NONDISCRIMINATION.** COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

15. **NONEXCLUSIVE AGREEMENT.** CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with

others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires.

16. **ASSIGNMENT.** CONTRACTOR shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

17. **TERMINATION.**

A. **By COUNTY.** COUNTY may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience or because of the failure of CONTRACTOR to fulfill the obligations herein. Upon receipt of notice, CONTRACTOR shall immediately discontinue all services effected (unless the notice directs otherwise), and deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process.

1. For Convenience. COUNTY may terminate this Agreement upon thirty (30) days written notice. Following notice of such termination, CONTRACTOR shall promptly cease work and notify COUNTY as to the status of its performance.

Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for service performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of COUNTY shall be final. The foregoing is cumulative and shall not effect any right or remedy which COUNTY may have in law or equity.

2. For Cause. Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate this Agreement by written notice, which shall be effective upon receipt by CONTRACTOR.

B. **By CONTRACTOR.** Should COUNTY fail to pay CONTRACTOR all or any part of the payment set forth in EXHIBIT B, CONTRACTOR may, at CONTRACTOR's option terminate this agreement if such failure is not remedied by COUNTY within thirty (30) days of written notice to COUNTY of such late payment.

18. **SECTION HEADINGS.** The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

19. **SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

20. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy,

to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

21. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement and each covenant and term is a condition herein.

22. **NO WAIVER OF DEFAULT.** No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

23. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

24. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

25. **COMPLIANCE WITH LAW.** CONTRACTOR shall, at his sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY be a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

26. **CALIFORNIA LAW.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

27. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

28. **AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

29. **PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

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Agreement for Services of Independent Contractor between the **County of Santa Barbara Public Works Department** and **Dan Cloak Environmental Consulting**.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

COUNTY OF SANTA BARBARA

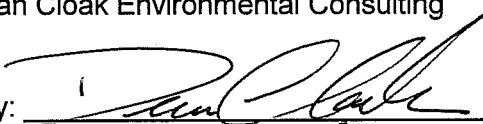
By: _____
Chair, Board of Directors

Date: _____

ATTEST:
CHANDRA L. WALLAR
CLERK OF THE BOARD

CONTRACTOR
Dan Cloak Environmental Consulting

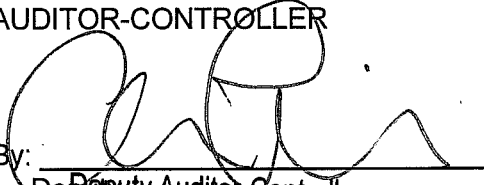
By: _____
Deputy

By: 
Title: Principal

APPROVED AS TO FORM:
DENNIS A. MARSHALL
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By: 
Deputy County Counsel

By: 
Deputy Auditor-Controller
Gregory Eric Levin
Advanced and Specialty Accounting

Dept: 054
Fund: 3060
Acct: 7460
Program: 3008

APPROVED AS TO FORM:
RAY AROMATORIO, ARM, AIC
RISK MANAGER

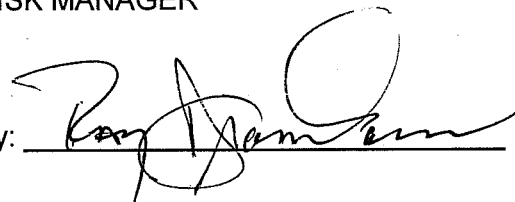
By: 

EXHIBIT A

STATEMENT OF WORK

SCOPE OF WORK

Technical Assistance for Implementation of the

Post Construction Stormwater Management Requirements for the Central Coast Region

Project Objective

The purpose of the project is successful implementation of the Post Construction Stormwater Management Requirements for the Central Coast Region (Order R3-2012-0025) by the Municipal Separate Storm Sewer System (MS4) Managers of Santa Barbara County. Project deliverables and invoices will conform with reporting requirements of the Proposition 84 contract between the County of Santa Barbara and the State of California.

Project Tasks

Task 1: Regulatory Liaison. The Consultant will assist County staff in discussions with Central Coast Water Board staff regarding the interpretation and applicability of the Post Construction Stormwater Management Requirements (PCRs) in the Central Coast Region (Order R3-2012-0025). Issues to be discussed with Water Board staff may include, as examples:

- Methods and procedures for determining whether a proposed development project is within a Watershed Management Zone or Designated Groundwater Basin
- Definitions and applicability of terms used in PCRs, such as impervious area, Effective Impervious Surface Area, Urban Sustainability Area, thresholds for proposed development projects, etc.
- Methods for determination of Special Circumstances, including characteristics of downstream channels not subject to hydromodification impacts
- Methods and criteria for determining technical infeasibility of LID implementation
- Technical methods, assumptions, and criteria for estimating infiltration and evapotranspiration by Low Impact Development (LID) facilities

As directed by County staff, venues for discussion with Water Board staff may include letters, email, conference calls, in-person meetings, and participation in group discussions (possibly including the Joint Effort Review Team).

As directed by County staff, interim products for this task may include letters, email messages, and brief technical memoranda. A memorandum including a summary of key outcomes from this task will be produced.

Task 2: Integration with Development Review Process. The Consultant, in collaboration with the project manager, will confer with Planning staff, with Public Works staff, and with other parties or entities involved in review of applications for development approvals. In email messages, meeting summaries, or brief technical memoranda, the Consultant will document issues related to the successful integration of stormwater compliance review with other aspects of land development review, including landscaping, transportation, fire, flood control requirements and CEQA review. Issues may include the content and timing of required submittals, staff roles in the development review process, required technical knowledge and

expertise of reviewers, presentation of LID concepts, features, and requirements to parties involved in the review of site and landscape designs, and incorporation of LID features and facilities into subdivisions. Additional issues may be raised by other County permittees, unique to their development review processes.

A memorandum including a summary of key outcomes from this task will be produced for use by the County of Santa Barbara and other County permittees.

Task 3: Policy and Ordinance Review. In consultation with County staff, the Consultant will provide policy review—and technical support for legal review—of existing ordinances and policies related to land development approvals. The Consultant will make specific recommendations, and will provide draft documents or language, for ordinances and policies that fully support implementation of Low Impact Development and the Post Construction Stormwater Management Requirements for the Central Coast Region, including requirements for ensuring operation and maintenance of LID facilities.

Deliverables will include a technical memorandum assessing existing policies and a partial or complete draft ordinance or policy.

Task 4: Direction, Review, and Oversight for Focused Technical Studies. The Consultant will provide scoping, technical review, and oversight for the Consultant's subcontractors or for technical contractors retained directly by the County. Focused technical study content may include continuous-simulation modeling of bioretention facilities using available local rainfall data to determine design criteria for treatment, retention, and peak flow control; analysis of rainfall, stream-flow or other hydrologic data to determine storm depths; development of calculators or calculation tools for sizing LID facilities, or related studies; engineering and geotechnical peer review of Technical Guide by local firm(s) to provide feedback based on local experiences. As requested by County staff, deliverables will include email messages and brief technical memoranda summarizing the objectives, scope, progress, and results of focused technical studies.

Task 5: Focused Technical Studies. The consultant will provide the services of subcontractors as may be required for focused technical studies.

Task 6: Alternative Compliance Approaches. In consultation with County staff, the Consultant will analyze policies and resources that would be required for the County to support some or all of the alternative compliance options envisioned in the Post Construction Stormwater Management Requirements for the Central Coast Region. Potential policies include a Watershed or Regional Plan and the concomitant commitments to facilitating off-site mitigation projects. The Consultant will prepare a technical memorandum summarizing the results of the analysis.

Task 7: Field Verification and Operation and Maintenance Programs. The Consultant will assist County staff and other permittees to develop a program, or refine an existing program, to meet the field verification and operation and maintenance requirements of the Post Construction Stormwater Management Requirements for the Central Coast Region. Issues to be addressed include level of effort, staffing, training, documentation, and cost recovery. Deliverables will include a summary of program requirements and status, and example forms to be used for conducting inspections and recording inspection results.

Task 8: LID Technical Guide. The Consultant will prepare a LID Technical Guide incorporating the policies, guidance, and results of technical studies from the previous tasks. The target audience will be land development professionals and County development review staff. The guiding objectives of the LID Technical Guide will be to ensure land development professionals can prepare a complete and acceptable submittal for a development project, and County development review staff can readily determine whether the submittal can be approved for compliance with the Post Construction Stormwater Management Requirements for the Central Coast Region. The Technical Guide will include step-by-step instructions for LID design, and will incorporate and adapt information, as appropriate, from LID manuals in use elsewhere in California. Example project submittals and model projects will be included. The Consultant will prepare a draft manual for review by County staff, and will organize a review process to obtain comments on this draft from representative user groups and the County's own local engineering/geotechnical contractor(s). In consultation with County staff, the Consultant will revise the draft in response to comments and prepare a final Technical Guide.

Task 9: Training. As needed and within the budget for this task, the Consultant will provide in-person training in use of the LID Technical Guide for County staff, staff from other Santa Barbara County permittees, and local land development professionals. Three public training workshops will be provided. Deliverables will include a complete package of presentation materials for future training, agendas, handouts, participant survey forms, and the results of participant surveys. The Consultant will also provide, to the extent allowed by the project budget and schedule, on-call services to troubleshoot implementation on specific projects, and will disseminate key lessons learned via email or web.

Task 10: Outreach. At the direction of County staff, and within the budget for this task, the Consultant will prepare and provide presentations regarding the background, development, and status of the County's implementation of the Post Construction Stormwater Management Requirements for the Central Coast Region, participate in question-and-answer sessions and discussions, receive, document, and coordinate input, and prepare responses. Outreach may be to public agency staff, elected and appointed officials, civic organizations, advocacy groups, the Joint Effort Review Team, and the public.

County Obligations

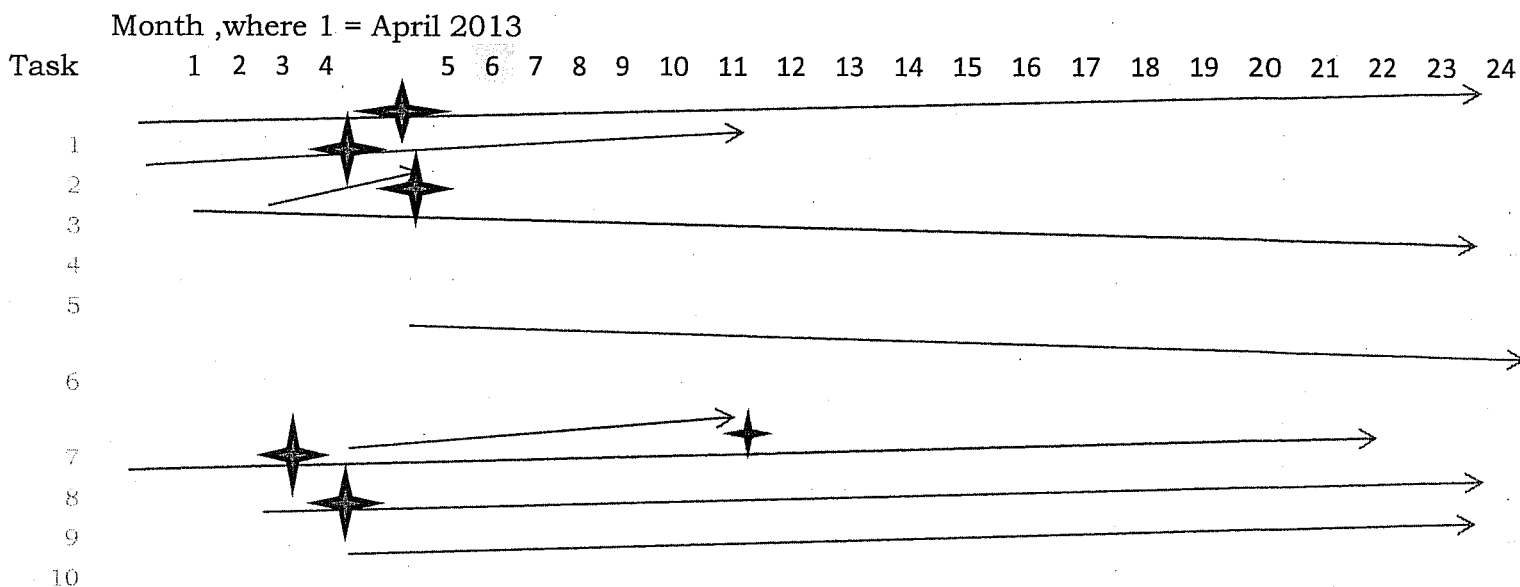
In order to effectively implement this scope, the County agrees to provide the following:

1. GIS data and mapping services
2. Contracting for technical studies and local engineering peer review of technical reports and LID Technical Guide
3. Clarification of state grant contract requirements that place conditions on contractors, such as eligible reimbursements, content of project reports (Quarterly Progress Reports and Final Project Report), etc.
4. Advertising, webinar broadcast, and recording of training workshops
5. Lead communications with Joint Effort Review Team and SBCAMM

Budget

Project Budget						
		Dan Cloak Environmental Consulting			Sub Contractors	Total
	Task	Hours	Labor	Expenses		
1	Regulatory Liaison	150	\$ 21,750			
2	Development Review Process	90	\$ 13,050			
3	Policy and Ordinance Review	32	\$ 4,640			
4	Oversight of Focused Technical Studies	140	\$ 20,300			
5	Focused Technical Studies (Subcontractors)				\$ 50,000	
6	Alternative Compliance Approaches	80	\$ 11,600			
7	Field Verification/Operation and Maintenance	65	\$ 9,425			
8	Guidance Manual	310	\$ 44,950			
9	Training	160	\$ 23,200			
10	Outreach	100	\$ 14,500			
			\$ 163,415	\$ 30,000	\$ 50,000	\$243,415

Project Timeline



Milestones:

- 1 **Regulatory Liaison:** Sept 2013, agreement with Water Board staff on definitions and applicability
- 2 **Development Review Process:** Aug 2013 Memo of key outcomes
- 3 **Policy and Ordinance Review:** Sept 2013 technical memo
- 4 **Oversight of Focused Technical Studies**
- 5 **Focused Technical Studies (Subcontractors)**
- 6 **Alternative Compliance Approaches**
- 7 **Field Verification/Operation and Maintenance**
- 8 **Guidance Manual:** Jul 2013 Final Public Draft
- 9 **Training:** August 2013 Public workshops (3)
- 10 **Outreach**

EXHIBIT B

PAYMENT ARRANGEMENTS Periodic Compensation

- A. For CONTRACTOR services to be rendered under this contract, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, not to exceed **\$ 243,415**.
- B. Extra Work required to complete the project may be authorized only if CONTRACTOR receives written approval by the COUNTY's designated representative as identified in Paragraph 1 of the Agreement based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY. The total amount of this contingency fund is 10% of the agreement amount or **\$24,341.50**.
- C. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY.
- D. **Monthly**, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned Board Contract Number. COUNTY REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of presentation.
- E. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.

EXHIBIT C

for contracts REQUIRING professional liability insurance

INDEMNIFICATION

Indemnification pertaining to other than Design Professional Services:

CONTRACTOR shall defend, indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the CONTRACTOR or his agents or employees or other independent contractors directly responsible to him; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the COUNTY.

CONTRACTOR shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

Indemnification pertaining to Design Professional Services:

CONTRACTOR shall defend, indemnify, and hold COUNTY, its officers, employees, and agents harmless from and against any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct on the part of the CONTRACTOR or his agents or employees or other independent contractors directly responsible to him to the fullest extent allowable by law.

CONTRACTOR shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

Without limiting the CONTRACTOR's indemnification of the COUNTY, CONTRACTOR shall procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CONTRACTOR in default. Upon request by the COUNTY, CONTRACTOR shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event CONTRACTOR is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONTRACTOR has no employees as

defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONTRACTOR submits a written statement to the COUNTY stating that fact.

2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of CONTRACTOR and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the CONTRACTOR in the indemnity and hold harmless provisions [above] of the Indemnification Section of this Agreement between COUNTY and CONTRACTOR. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder. CONTRACTORS shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

"Such insurance as is afforded by this policy shall be primary and if the COUNTY has other valid and collectible insurance, that other insurance shall be excess and non-contributory."

If the policy providing liability coverage is on a 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

3. Professional Liability Insurance. Professional liability insurance shall include coverage for the activities of CONTRACTOR's professional staff with a combined single limit of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Said policy or policies shall provide that COUNTY shall be given thirty (30) days written notice prior to cancellation, expiration of the policy, or reduction in coverage. If the policy providing professional liability coverage is a on 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three (3) years (ten years [10] for Construction Defect Claims) following completion of the performance or attempted performance of the provisions of this agreement.

CONTRACTOR shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated County representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the CONTRACTOR may be held responsible for payment of

damages resulting from CONTRACTOR'S services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder.

In the event the CONTRACTOR is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the CONTRACTOR'S expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Program Administrator is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY's risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.