

TERMS OF BAY FOUNDATION  
CENTRAL COAST AMBIENT MONITORING PROGRAM PROJECT AGREEMENT

1. **Project:** This agreement establishes a Central Coast Ambient Monitoring Program Endowment Fund (hereinafter CCAMP Fund), to provide monitoring staff and support for the Central Coast Ambient Monitoring Program, a water quality monitoring program originating with the Central Coast Regional Water Quality Control Board ("Water Board"). Funds are to be used to defray costs associated with monitoring and assessing water quality, including but not limited to administrative costs, sampling staff costs, data collection and analysis costs, laboratory costs, and equipment and supply purchases. Activities will include rotational watershed monitoring throughout the Central Coast Region, coastal confluences monitoring at major creek mouths from Gazos Creek (San Mateo Co.) to Rincon Creek (Santa Barbara Co.), water quality assessment work and any special projects to be undertaken from time to time
2. **Executive Officer and Assistant Executive Officer:** The Executive Officer is the chief executive of the Water Board and is appointed pursuant to California Water Code section 13220. The Executive Officer has been delegated and may exercise all the powers of the Water Board except for those enumerated in California Water Code section 13223. The Assistant Executive Officer is an employee of the Water Board and is second ranking manager at the Water Board and may act on behalf of the Executive Officer with respect to duties and responsibilities set forth in this Agreement.
3. **CCAMP Program Director:** The Central Coast Ambient Monitoring Program (CCAMP) Director will be responsible for day-to-day operations and development of annual work plans and budgets for all program activities regardless of funding source. The work plans will describe CCAMP monitoring activities and recommended disbursements from the funds described in this Agreement ("Annual Work Plan"). The CCAMP Program Director shall provide a periodic evaluation of services supplied to CCAMP by the Bay Foundation. Karen Worcester currently serves as the CCAMP Director.
4. **Project Manager:** The Project Manager represents the Bay Foundation and is responsible for coordinating the Bay Foundation's role. The Project Manager for this Project will be the President of the Bay Foundation of Morro Bay, 601 Embarcadero, Suite 11, Morro Bay, California, 93442. Joel Neel currently serves as President of the Foundation.
5. **Scope of Work:** The Bay Foundation agrees to provide all labor, material and equipment necessary to carry out work described in each Annual Work Plan to be funded with CCAMP funds, provided the Endowment Account or the Operational Reserve Account have sufficient available funds in accordance with the terms of this agreement. The Annual Work Plan receives external scientific peer review. It identifies monitoring activities to be conducted using multiple specified funding sources. The

Bay Foundation shall review the Annual Work Plan and budget for the purposes of determining consistency with the terms of this Agreement.

6. **Term of Agreement:** The term of this Agreement shall commence on May 1, 2007 and shall continue until January 1, 2017. The term of this Agreement may be extended by mutual agreement of the parties.
7. **Deliverables:** The Bay Foundation shall provide a quarterly accounting of fund income and expenditures. The Bay Foundation shall provide such goods and services as may be needed for performance under the terms of this Agreement.
8. **Fund Accounts:** The total amount of the CCAMP Fund shall be \$2,200,000. Of this amount, the Bay Foundation shall manage \$2,000,000 strictly in an Endowment Account, with only interest earnings available for expenditures. The Bay Foundation shall use \$200,000 to establish an Operational Reserve Account. The Bay Foundation shall use this account during the first year of operation for CCAMP expenses, to ensure that the \$2,000,000 Endowment Account is maintained in full. In subsequent years the Bay Foundation shall use the Operational Reserve Account to meet unforeseen budgetary demands by the CCAMP program or to pay CCAMP expenses in excess of available Endowment funds. The Bay Foundation shall disburse funds from the Operational Reserve Account upon request by the CCAMP Program Director, provided that such request is consistent with the purposes of the Endowment as set forth in this Agreement. The Bay Foundation shall seek to reimburse the Operational Reserve Account for any such disbursements within a reasonable time so as to maintain the Operational Reserve Account at a minimum of \$50,000, provided such reimbursement funding is available from Endowment Fund earnings or other sources of funding. With the written approval of the Water Board Executive Officer, the Bay Foundation's Board of Directors may increase the amount to be held in the Operational Reserve Account using Endowment Fund earnings. Prior to authorizing disbursements from the Operational Reserve Account, the Bay Foundation's Project Manager will provide a written finding that such request is consistent with the purposes of the Endowment as set forth in this Agreement. The funds in the Operational Reserve Account and the Endowment Account are collectively referred to as the "CCAMP funds."
9. **Accounting and Fiduciary Duties:** The Bay Foundation shall hold CCAMP funds in accounts dedicated exclusively to the purposes of the Agreement. The Bay Foundation shall disburse CCAMP funds under the terms and conditions set forth in this Agreement. The Bay Foundation shall manage the Endowment Account to preserve the original principal amount of \$2,000,000 and with an investment strategy designed to increase the principal balance over time through prudent investments. No portion of the Endowment Account principal may be used for payment of work plan activities or other direct or indirect costs. Unexpended Endowment Account income shall be added to principal and treated as principal for purposes of this limitation. Investment strategies employed by the Bay Foundation may include US treasury bills, bonds, notes, and other investment vehicles guaranteed by the full faith and credit of

government and these investments shall be considered prudent for the purposes of this Agreement.

10. **Budget:** The annual Budget for this Agreement shall be included as part of the Annual Work Plan. Adjustments to Budget line items greater than 10% shall be approved by the Bay Foundation's Project Director and the CCAMP Program Director.

11. **Invoice and Payment Procedure:** In the event of disbursements requested by the CCAMP Program Director and approved by the Bay Foundation from the Operational Reserve Fund, the CCAMP Program Director shall submit invoices to the Bay Foundation. Payment will be made by the Bay Foundation within 30 working days of receipt by the Bay Foundation of the original signed invoice.

12. **Additional Requirements:**

a. The Bay Foundation may provide services of its employees or contractors for the purposes set forth in this Agreement. The Bay Foundation shall be solely responsible for hiring and terminating employees and contractors that will provide services to CCAMP under the terms of this Agreement. The Bay Foundation's employees and contractors that provide services under the terms of this Agreement shall be subject to policies set forth in the Bay Foundation's Personnel Handbook and such other policies of the Bay Foundation as may be pertinent.

b. The Bay Foundation may provide sub-contracted services and other goods and services pursuant to the purposes of the Agreement subject to policies set forth in the Bay Foundation's CCAMP Endowment Procurement Policy.

c. Endowment funds are to be used for the purposes set forth in this Agreement and for costs incurred by Bay Foundation related to administration of the funds and an administrative fee. Direct costs include, but are not limited to, disbursements made by the Bay Foundation associated with monitoring and assessment activities, including worker's compensation insurance, bookkeeping, accounting, auditing, other insurances, benefits, investment advisory services, and other costs which the Bay Foundation may incur in connection with fulfilling the purpose of the Endowment and its related special funds.

d. In consideration for the obligations incurred by the Bay Foundation in entering into this Agreement, the Bay Foundation may collect an administrative fee, in the amount of 7% of CCAMP funds disbursements, or \$10,000 (whichever is greater) payable on October 1<sup>st</sup> of each year for the period of the prior year October 1 - September 30.

e. Paragraph 12.c and 12.d notwithstanding, total administrative fees shall not exceed 1% of the principal balance of the CCAMP funds.

For purposes of this limitation, 'administrative fees' are defined as funds to be disbursed to Bay Foundation not identified in the Annual CCAMP Budget.

13. **Commencement of Work and Delays Beyond Control of Bay Foundation:**

- a. Upon receipt of an executed copy of this Agreement and the Annual Work Plan and Budget, The Bay Foundation shall commence activities under this Agreement as specified.
- b. Delay in completion of work or services or submission of deliverables by Bay Foundation within the time or times specified in the Annual Work Plan which arise from causes beyond the control of the Bay Foundation and without fault or negligence on the part of the Bay Foundation shall entitle the Bay Foundation to a reasonable extension of time for performance. Causes beyond the control of the Bay Foundation shall be deemed to include but are not limited to, unusually severe weather, acts of God, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and delays of suppliers or subcontractors arising from causes beyond the control and without fault or negligence of both the Bay Foundation and such suppliers or subcontractors. The Bay Foundation shall not be held liable for circumstances which limit its performance under this Agreement which are beyond its control.

14. **Amendments:** This Agreement may be amended only by written agreement between the Bay Foundation of Morro Bay, the Executive Officer of the Central Coast Waterboard, and \_\_\_\_\_.

15. **Dispute Resolution:** If a dispute arises between The Bay Foundation and the Water Board CCAMP Program Director, the Bay Foundation Project Manager and Water Board CCAMP Program Director shall attempt to resolve it informally. If the dispute is not resolved informally within 30 days, the Bay Foundation, Water Board CCAMP Program Director or \_\_\_\_\_ may elevate the dispute to the Water Board Executive Officer by submitting a written memorandum to him/her describing the dispute. The Executive Officer will consult with the CCAMP Program Director and any representative selected by Bay Foundation and \_\_\_\_\_ as well as other appropriate parties and attempt to resolve the dispute. The Executive Officer shall make a decision within 15 days of receiving the memorandum describing the dispute. If the Bay Foundation or \_\_\_\_\_ is dissatisfied with the decision of the Executive Officer, The Bay Foundation or \_\_\_\_\_ may elevate the dispute to the members of the Water Board which will consider the dispute at a regularly scheduled public meeting. If the dispute is not resolved at that point, then it may be resolved by arbitration.

16. **Termination:**

- a. If for any reason the Bay Foundation is no longer willing or able to carry out the terms and conditions of this Agreement, the Bay

Foundation shall so notify the Water Board in writing. Within thirty days after providing the notice, the Bay Foundation transfer all remaining CCAMP funds to NFWF or any successor trustee specified by the Water Board. Bay Foundation may withhold its administrative expenses allowed by Paragraph 12.d and accrued to the date of termination, but shall not treat the transfer of remaining CCAMP funds as a disbursement for purposes of calculating administrative costs.

- b. The Water Board Executive Officer may terminate the Agreement at any time for any reason by giving thirty (30) days written notice to Bay Foundation and \_\_\_\_\_. Within thirty (30) days of receiving such notice, the Bay Foundation shall transfer all remaining CCAMP funds to NFWF or any successor trustee specified by the Water Board in the notice of termination. The Bay Foundation may withhold its administrative expenses allowed by Paragraph 12.d and accrued to the date of termination, but shall not treat the transfer of remaining CCAMP funds as a disbursement for purposes of calculating administrative costs. The Bay Foundation shall be entitled to an administrative fee of \$5,000 for executing the transfer and providing a final accounting of CCAMP funds.
  - c. In the event of the dissolution of Water Board, the term "Water Board" shall refer to the unit of California state government that assumes the functions of the Water Board. In the event of the dissolution of the Water Board without a transfer of functions to another unit of California state government, or in the event the Water Board shall no longer be a unit of California state government or an organization described in section 170(c) of the Internal Revenue Code of 1954, as amended, the Bay Foundation shall thereafter continue to hold the fund and shall distribute the income there from to such organizations as in the opinion of the Board of Directors of the Bay Foundation most nearly serve the purposes and objectives of the Agreement.
17. **Arbitration:** All claims, disputes, and other matters in question arising out of, or relating to this Agreement, its interpretation or breach shall be made in writing and shall be decided through arbitration by a person or persons mutually acceptable to Water Board, the Bay Foundation and \_\_\_\_\_. Notice of the demand for arbitration shall be made within a reasonable time after completion of the dispute resolution process specified in this Agreement. The award rendered by the arbitrator or arbitrators shall be final.
18. **Indemnity and Liability:**
- a. In making the Agreement and monitoring performance under this Agreement, Water Board assumes no liability for injuries or loss to persons or property resulting from Bay Foundation's activities.
  - b. In accepting the CCAMP funds and performing under the terms of this Agreement, the Bay Foundation assumes no liability for

injuries or loss to persons or property resulting from Water Board activities.

- c. In conducting its activities relating to the Project, the Bay Foundation agrees to conduct all such activities in compliance with all applicable federal, state, and local laws, regulations and ordinances; to secure all appropriate necessary public or private permits and consents; and to obtain and maintain all appropriate insurance against liability for injury to persons or property arising from its activities relating to the Project.
  - d. The Bay Foundation shall, indemnify and hold harmless \_\_\_\_\_ and Water Board, their members, officers, directors, agents, and employees in respect of any and all claims, injuries, losses, diminution in value, damages, liabilities, whether or not currently due, and reasonable expenses (including without limitation, settlement costs and any legal or other expenses for investigating or defending any actions or threatened actions arising from or in connection with the project funded under this Agreement, including but not limited to, environmental laws, regulations, orders and decrees of whatsoever character or nature and damage or injury to persons and property). This indemnification will survive termination of this Agreement.
  - e. The Bay Foundation expressly waives any and all rights to any type of express or implied indemnity or right of contribution from the State of California and the United States, their officers, agents or employees, for any liability resulting from or growing out of, or in any way connected with or incident to this Agreement.
19. **Third Parties:** Nothing in this Agreement is intended to create in the public, any member of the public or any public entity [other than the Water Board], rights as a third party beneficiary under this Agreement.
20. **Permits, Fees and Notices:** The Bay Foundation shall procure all permits and licenses necessary to accomplish work funded under this Agreement. The Bay Foundation shall pay all charges and fees with funds provided by this Agreement, and give all notices necessary and incident to the due and lawful prosecution of the work.
21. **Insurance and Bonds:**
- a. The Bay Foundation is solely responsible for maintaining insurance policies to cover insurance needs that may be required by law in the jurisdiction where the project funded under the terms of this Agreement is being implemented.
  - b. Upon request, the Bay Foundation shall furnish to Water Board copies of insurance certificates evidencing its present level of insurance coverage for: Worker's Compensation, Employer's Liability, Commercial Liability Insurance, (including Contractual Liability and Automobile Liability) and any other coverage the Bay Foundation has. The certificates shall specify the dates when

such insurance expires and shall provide further that Water Board shall be given not less than thirty (30) days notice before cancellation of or any material change in such insurance. The Bay Foundation shall maintain such insurance coverage throughout the term of this Agreement.

22. **The Bay Foundation Acting Independently:** The Bay Foundation, and the employees or agents of the Bay Foundation, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of Water Board, or the State of California. The Water Board shall not have the right to control or direct the mode or manner in which any employees, agents or contractors of the Bay Foundation perform their work.

23. **Audits and Access to Records:**

a. The Bay Foundation shall maintain standard financial accounts, documents and records relating to implementation of CCAMP activities funded under this Agreement. The Bay Foundation may use any accounting system which follows the guidelines of "Generally Accepted Accounting Practices" published by the American Institute of Certified Public Accountants.

b. Water Board, and federal and state government auditors or their duly authorized representatives, shall have access to any books, documents, papers, and records of the Bay Foundation which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcriptions.

c. The Bay Foundation shall include in each of its subcontracts involving an expenditure of funds under this Agreement in excess of twenty five thousand dollars (\$25,000) a provision which requires the subcontractor to make all records directly pertinent to the subcontract available for examination and audit under the same terms as specified in subparagraph a., of this paragraph. The subcontract shall also require subcontractor to maintain all required records for three (3) years after final payment under the subcontract and all pending matters are resolved.

24. **Rights to Data and other Information:** The Bay Foundation 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 Water Board as set forth in this section. Water Board 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 or patentable, The Bay Foundation may copyright or patent the same, except that, as to any work which is so protected by the Bay Foundation, Water Board reserves a royalty-free, nonexclusive, and irrevocable licenses to reproduce, publish, and use such work, or any part thereof.

25. **Agreement Not Assignable:** Without agreement of \_\_\_\_\_, Water Board, and the Bay Foundation this Agreement is not assignable in whole or in part.
26. **Review and Comments:** The Bay Foundation agrees \_\_\_\_\_ and Water Board have the right to review and comment on any and all activities undertaken by the Bay Foundation in connection with this Agreement. All services, materials and other consideration provided by the Bay Foundation shall be provided to the reasonable satisfaction of Water Board and \_\_\_\_\_; however, neither the Water Board nor \_\_\_\_\_ shall control or direct the mode or manner in which any employee, contractor or agent of the Bay Foundation performs his or her duties.
27. **Lobbying:** The Bay Foundation is prohibited from using funds from the Trust for lobbying the executive or legislative branches of the state or federal government.
28. **Applicable Law and Jurisdiction:** This Agreement has been executed and delivered in the State of California and shall be subject to and interpreted by the laws of the State of California, without regard to choice of law principles. By entering into this Agreement the parties hereto agree to submit to the jurisdiction of the courts of the State of California.
29. **Entire Agreement:** This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements and understandings, whether written or oral, between the parties.
30. **No Waiver of Enforcement:** The failure of \_\_\_\_\_, Water Board, or the Bay Foundation to enforce, or the delay by \_\_\_\_\_ or Water Board or the Bay Foundation in enforcing, any of the terms and conditions of this Agreement shall not be deemed a continuing waiver or a modification of this Agreement unless the waiver or modification is expressly written and signed by \_\_\_\_\_ and the Bay Foundation, [or when appropriate by \_\_\_\_\_, the Bay Foundation and Water Board].
31. **Nondiscrimination:** During the performance of this Agreement, the Bay Foundation and its 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, disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave and denial of pregnancy disability leave. The Bay Foundation and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (California Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder. (California Code of Regulations, Title 2, Section 7285.0 et seq.)
32. **Americans with Disabilities Act Compliance Statement:** By signing this Agreement, the Bay Foundation assures the State of California that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.



- 33. **Current State Employees:** No officer or employee of the State of California shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any California state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 34. **Former State Employees:** For the two-year period from the date he or she left state employment, no former California state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 35. **Certification of Signatories:** The people signing this Agreement certify that they are authorized by the entity they represent to sign this Agreement and to bind the entity they represent to the terms of this Agreement.

\_\_\_\_\_  
Bay Foundation of Morro Bay  
Joel Neel, President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Central Coast Water Board  
Roger W. Briggs, Executive Officer

\_\_\_\_\_  
Date