



REPORT to the MAYOR and MEMBERS of the CITY COUNCIL
From the CITY MANAGER

DATE: July 22, 2014

SUBJECT: Resolution to Accept and Appropriate Proposition 84 Storm Water Grant Program Funds through the State Water Resources Control Board for the University Avenue Median Improvement Project, Provide Matching Funds, and Authorize the Mayor to Sign the Agreement

ISSUING DEPARTMENT: Public Works

SUMMARY:

Issue:

Should the City Council accept and appropriate 2.3 million dollars in Proposition 84 Storm Water Grant Program funds from the State Water Resources Control Board, provide \$575,000 in matching funds, and authorize the Mayor to sign the agreement for the University Avenue Median Improvement Project?

Recommendation:

Adopt the attached resolution to accept and appropriate Proposition 84 Storm Water Grant Program funds, provide matching funds, and authorize the Mayor to sign the agreement for the University Avenue Median Improvement Project.

Fiscal Impact:

The City's award of Proposition 84 Storm Water Grant Funds is \$2,300,000, which will be appropriated to CIP account 302150OT, University Avenue Median Water Quality Improvements. Matching funds equal to 20%, or \$575,000, of the total project amount are required. Approximately \$40,000 of this will be allocated from staff time, to be paid from Wastewater Salaries account 4141-6101. The remaining matching funds of \$535,000 are available in roadway drainage improvements account 304150TR. The actual match is subject to change, depending on the subsequent contract awards and actual staff time committed to the project.

Strategic Goals:

- Revitalize Neighborhoods and Corridors
- Continue to Improve High Quality Municipal Services

BACKGROUND:

The City of La Mesa is subject to water quality regulations set forth by the San Diego Regional Water Quality Control Board which mandate improvements in storm water runoff quality of streams and rivers. More specifically, these are called Total Maximum Daily Load (TMDL) requirements, the most significant of which was established in 2010 targeting bacteria.

In order to meet these water quality targets, the City must implement programs which control the source of the pollutants, as well as construct facilities which remove the pollutants from the storm water urban runoff. These programs are intended to be phased in over time in order to assist in meeting the long term water quality targets.

The Proposition 84 Storm Water Grant Program requires funds be used for the reduction and prevention of storm water contamination of rivers, lakes, and streams. The statewide total money available is 38 million dollars. This is the second round of Proposition 84 Storm Water funding, with the initial round having been in 2012. The City of La Mesa was awarded 2.3 million dollars from the State Water Resources Control Board following the application for funding authorized by the City Council on April 8, 2014.

DISCUSSION:

The scope of the proposed project consists of modifying roadway medians on University Avenue at feasible locations between La Mesa Boulevard and Harbinson Avenue. The modified roadway medians will be constructed to receive some storm water flows through a diversion from the curb inlets within the roadway gutter. The project is conceptual at this point; detailed engineering of the project was contingent upon the award of grant funding. The completion of all work for the project shall be March 31, 2017. No funding reimbursement can be requested from the State Water Resources Control Board after April 30, 2017.

Through the landscaping and aesthetic improvements, the scope of the project aligns with the University Avenue Revitalization Project. This strategy includes goals of improving aesthetics, maximizing walkability, and creating a unifying streetscape theme. This strategy was crafted and presented at community meetings in 2003, 2005, and 2006.

The grant funding will assist the City with meeting TMDL water quality regulations. This project represents the contribution from a large drainage basin, and would in turn positively affect the levels of pollution stemming from the surrounding roadways.

The Proposition 84 Storm Water Grant Program represents a significant amount of funding opportunity, compared to other environmental/storm water related grant programs, and is subject to a 20% required match of \$575,000. Project match will come from a combination of staff time, Transnet, and/or Gas Tax.

RECOMMENDATION:

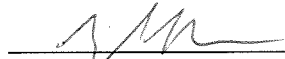
Staff recommends that the City Council adopt the attached resolution to accept and appropriate Proposition 84 Storm Water Grant Program funds, commit to provide the required project match, and authorize the Mayor to sign the agreement for the University Avenue Median Improvement Project.

Reviewed by:

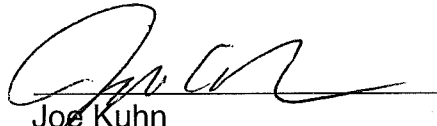


David E. Witt
City Manager

Respectfully submitted by:



Gregory P. Humora
Director of Public Works/City Engineer



Joe Kuhn
Storm Water Program Manager

Attachments: A. Resolution
B. Draft Agreement
C. Budget Summary

RESOLUTION NO. 2014-___

RESOLUTION TO ACCEPT AND APPROPRIATE PROPOSITION 84 STORM WATER GRANT PROGRAM FUNDS THROUGH THE STATE WATER RESOURCES CONTROL BOARD FOR THE UNIVERSITY AVENUE MEDIAN IMPROVEMENT PROJECT, PROVIDE MATCHING FUNDS AND AUTHORIZE THE MAYOR TO SIGN THE GRANT AGREEMENT

WHEREAS, the City strives to achieve strategic goals related to revitalization of neighborhoods and corridors, and to provide high quality community services;

WHEREAS, the City of La Mesa was selected by the State Water Resources Control Board to receive \$2.3 million in Storm Water Grant Program funds for the University Avenue Median Improvement Project;

WHEREAS, the grant award match amount for the University Avenue Median Improvement Project is 20% of the project total which is \$575,000;

WHEREAS, the City of La Mesa will provide matching funds with a combination of staff time, Transnet, and/or Gas Tax; and

WHEREAS, the City of La Mesa understands that the Proposition 84 Storm Water Grant Program funding is fixed at the programmed amount, and therefore project cost increases that exceed the grant awarded will be the sole responsibility of the grantee.

NOW THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the City Council of the City of La Mesa that the City is authorized to accept and appropriate said funds from the State Water Resources Control Board for Proposition 84 Storm Water Grant Program in the amount of \$2.3 million for the University Avenue Median Improvement Project to CIP account 302150OT, provide \$575,000 in matching funds, and that the Mayor is authorized to sign the grant agreement.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of La Mesa, California, held the 22nd day of July, 2014, by the following vote, to wit:

AYES:

NOES:

ABSENT:

CERTIFICATE OF CITY CLERK

I, MARY J. KENNEDY, City Clerk of the City of La Mesa, California, do hereby certify the foregoing to be a true and exact copy of Resolution No. 2014-___, duly passed and adopted by the City Council of said City on the date and by the vote therein recited.

MARY J. KENNEDY, CMC, City Clerk

(SEAL OF CITY)

PROPOSITION 84 STORMWATER GRANT PROGRAM
GRANT AGREEMENT
BETWEEN THE
STATE WATER RESOURCES CONTROL BOARD, hereinafter called "State" or "State Water Board"
AND

CITY OF LA MESA, hereinafter called "Grantee"

UNIVERSITY AVENUE MEDIAN WATER QUALITY IMPROVEMENTS, hereinafter called "Project"

AGREEMENT NO. 14-451-550

The State and Grantee hereby agree as follows:

PROVISION(S). The following provision(s) authorize the State Water Board to enter into this type of Grant Agreement:

Pub. Resources Code, § 75050(m) (Prop. 84 Stormwater Contamination Reduction and Prevention)

PURPOSE. The State shall provide a grant to and for the benefit of Grantee for the purpose of removing four thousand five hundred and forty linear feet (4,540 ln. ft.) of asphalt and concrete and installing four thousand five hundred and forty linear feet (4,540 ln. ft.) of bioretention areas covering approximately sixty thousand and one hundred and seventy five square feet (60,175 sq. ft.) of urban area along University Avenue.

GRANT AMOUNT. The maximum amount payable under this Agreement shall not exceed \$2,300,000.

TERM OF AGREEMENT. The term of the Agreement shall begin on SEPTEMBER 1, 2014 and continue through final payment plus thirty-five (35) years unless otherwise terminated or amended as provided in the Agreement. HOWEVER, ALL WORK SHALL BE COMPLETED BY MARCH 31, 2017. ABSOLUTELY NO FUNDS MAY BE REQUESTED AFTER APRIL 30, 2017.

PROJECT REPRESENTATIVES. The Project Representatives during the term of this Agreement will be:

State Water Board	Grantee: City of La Mesa
Name: Sarah Gatzke, Grant Manager	Name: Greg Humora, Project Director
Address: 1001 I Street, 16 th Floor	Address: 8130 Allison Avenue
City, Zip: Sacramento, CA 95814	City, Zip: La Mesa, CA 91942
Phone: (916) 341-5733	Phone: (619) 667-1146
Fax: (916) 341-5707	Fax: (619) 667-1380
e-mail: sgatzke@waterboards.ca.gov	e-mail: ghumora@ci.la-mesa.ca.us

Direct all inquiries to:

State Water Board	Grantee: City of La Mesa
Section: Division of Financial Assistance	Section:
Attention: Melissa Miller, Program Analyst	Name: Joe Kuhn, Grant Contact
Address: 1001 I Street, 17 th Floor	Address: 8130 Allison Avenue
City, Zip: Sacramento, CA 95814	City, Zip: La Mesa, CA 91942
Phone: (916) 993-3872	Phone: (619) 667-1340
Fax: (916) 341-5296	Fax: (619) 667-1380
e-mail: mamiller@waterboards.ca.gov	e-mail: jkuhn@ci.la-mesa.ca.us

Either party may change its Project Representative upon written notice to the other party.

STANDARD PROVISIONS. The following exhibits are attached and made a part of this Agreement by this reference:

- Exhibit A SCOPE OF WORK – WORK TO BE PERFORMED BY THE GRANTEE
- Exhibit B INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS
- Exhibit C GENERAL TERMS & CONDITIONS
- Exhibit D SPECIAL CONDITIONS

GRANTEE REPRESENTATIONS. The Grantee 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 Grantee in its application, accompanying documents, and communications filed in support of its request for grant funding. Grantee shall comply with and require its contractors and subcontractors to comply with all applicable laws, policies and regulations.

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

By: _____
Grantee Signature

By: _____
Darrin Polhemus, Deputy Director
State Water Resources Control Board,
Division of Financial Assistance

Grantee Typed/Printed Name

Date

Title

Reviewed by:
Office of Chief Counsel
Date:

Date

EXHIBIT A
SCOPE OF WORK – WORK TO BE PERFORMED BY THE GRANTEE

A. PLANS AND GENERAL COMPLIANCE REQUIREMENTS

1. In order for the State Water Board and Regional Water Quality Control Board (Regional Water Board) staff to verify work was adequately performed or conducted, Global Positioning System (GPS) information for project site and monitoring locations must be identified for this Project. Submittal requirements for GPS data are available at:
http://www.waterboards.ca.gov/water_issues/programs/grants_loans/grant_info/docs/gps.pdf.
2. The Grantee shall prepare and submit a Monitoring and Reporting Plan (MRP) that does all of the following: 1) identifies the nonpoint source(s) of pollution to be prevented or reduced by the Project; 2) describes the baseline water quality or quality of the environment to be addressed; 3) describes the manner in which the Project will be effective in preventing or reducing pollution and in demonstrating the desired environmental results; and 4) describes the monitoring program, including, but not limited to, the methodology, frequency, and duration of monitoring.

The MRP shall be organized as follows, and may be submitted as separate documents or in one report.

2.1 Project Assessment and Evaluation

Project Assessment and Evaluation Plan (PAEP) describes the manner in which the Project will be effective in preventing or reducing pollution and in demonstrating the desired environmental results. PAEP details the methods of measuring Project benefits and reporting them in accordance with a PAEP. Grantee shall not implement monitoring and performance assessment and/or evaluation actions prior to PAEP approval by the Grant Manager. Guidance for preparing the PAEP is available at http://www.waterboards.ca.gov/water_issues/programs/grants_loans/paep/index.shtml.

2.2 Monitoring Plan

All projects that include water quality or environmental monitoring must prepare a Monitoring Plan (MP). At a minimum, all MPs must: 1) describe the baseline water quality or quality of the environment to be addressed; 2) identify the non-point source(s) of pollution to be prevented or reduced by the Project; and 3) provide GPS information for all sampling locations.

The MP must include a description of the monitoring program and objectives, types of constituents to be monitored, methodology, the frequency and duration of monitoring, and the sampling location for the monitoring activities.

Any costs related to monitoring data collected prior to and not supported by the approved MP will not be reimbursed. Changes to the MP must be submitted to the Grant Manager for review and a decision regarding approval prior to implementation. Guidance for preparing an MP is available at: http://www.waterboards.ca.gov/water_issues/programs/grants_loans/grant_info/index.shtml#plans.

2.3 Quality Assurance and Project Plan

If water quality monitoring is undertaken, the Grantee shall also prepare, maintain, and implement a Quality Assurance Project Plan (QAPP) in accordance with the State Water Board's Surface Water Ambient Monitoring Program's (SWAMP) QAPP and data reporting requirements, and the USEPA QAPP, EPA AQ/R5, 3/01. Water quality monitoring data includes physical, chemical, and biological monitoring of any surface water. The QAPP shall be submitted to the State Water Board's Quality Assurance Officer for review and a decision regarding approval. Any costs related to monitoring data collected prior to and not supported by the approved QAPP will not be reimbursed. Guidance for preparing the QAPP is available at:
http://www.waterboards.ca.gov/water_issues/programs/grants_loans/grant_info/index.shtml.

The Grantee shall upload a pdf version of the final approved document(s) to the Financial Assistance Application Submittal Tool (FAAST) system.

2.4 Data Management

The Grantee shall upload all water quality data obtained through its implementation of the MP to the California Environmental Data Exchange Network (CEDEN). The Grantee shall also provide a receipt of successful data submission, which is generated by CEDEN, to the Grant Manager prior to submitting a final invoice. Guidance for submitting data, including required minimum data elements and data formats, is available at <http://www.ceden.org> or the Regional Data Centers (RDCs) (Moss Landing Marine Lab, San Francisco Estuary Institute, Southern California Coastal Water Research Project, or Central Valley RDC). Contact information for the RDCs is included in the CEDEN web link.

3. Activities supported by grant funds are projects under the California Environmental Quality Act (CEQA) and must comply with CEQA requirements. Work on the Project cannot begin until the State Water Board has reviewed the CEQA documentation submitted by the Grantee and given environmental clearance. If the work is conducted on federal land, the Grantee must also comply with the National Environmental Policy Act (NEPA). Proceeding with work subject to CEQA and/or NEPA without environmental clearance by the State Water Board shall constitute a breach of a material provision of this Agreement.
4. If public agency approvals, entitlements, or permits are required, such approvals, entitlements or permits must be obtained and signed copies submitted to the Grant Manager before work begins. If the Project is carried out on lands not owned by the Grantee, the Grantee must obtain adequate rights of way for the useful life of the Project.
5. State Disclosure Requirements – Include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

"Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

Signage shall be posted in a prominent location at Project site (if applicable) or at the Grantee's headquarters and shall include the State Water Board color logo (available from the Program Analyst):



and the following disclosure statement:

"Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board."

6. The Grantee shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this work item.

B. PROJECT-SPECIFIC REQUIREMENTS

1. Project Management

- 1.1 Provide all technical and administrative services as needed for Agreement completion; monitor, supervise, and review all work performed; and coordinate budgeting and scheduling to ensure the Agreement is completed within budget, on schedule, and in accordance with approved procedures, applicable laws, and regulations.
- 1.2 Notify the Grant Manager at least fifteen (15) working days in advance of upcoming meetings, workshops, and trainings.
- 1.3 Conduct pre-, during, and post-construction photo monitoring and submit to the Grant Manager.
- 1.4 Conduct periodic and final site visits with the Grant Manager.

2. Planning, Design, and Engineering

- 2.1 Prepare a site investigation and survey and submit the evaluations to the Grant Manager in an electronic format
- 2.2 Prepare and complete the hydrology study and geotechnical analysis. Submit to the Grant Manager in an electronic format for review and approval.
- 2.3 Complete the preliminary design for the installation of a minimum of four thousand, five hundred forty linear feet (4,540 ln. ft.) of bioretention areas covering approximately sixty thousand, one hundred seventy-five square feet (60,175 sq. ft.) of urban area along University Avenue. Submit the preliminary designs to the Grant Manager for review and approval.
- 2.4 Prepare and complete the one hundred percent (100%) engineering plans and specifications identifying changes from the preliminary design plans and specifications and submit to the Grant Manager for Review.
- 2.5 Complete the bid documents and advertise the Project for bid. Submit the awarded bid documents to the Grant Manager in an electronic format.

3. Construction and Implementation

- 3.1 Submit the construction Notice to Proceed to the Grant Manager in an electronic format.
- 3.2 Complete construction activities in accordance with approved plans and specifications.
- 3.3 Submit as-built drawings to the Grant Manager in an electronic format.
- 3.4 Prepare and submit an Operations and Maintenance Plan to the Grant Manager for review and approval.

4. Monitoring and Performance

- 4.1 Monitor in accordance with the approved MP.
- 4.2 Analyze monitoring results, document implementation of monitoring in accordance with MP, and include a summary report of the monitoring results in the associated Progress Report to the Grant Manager. A summary of all monitoring and data analysis shall be included in the Final Project Report.

5. Education and Outreach

- 5.1 Install a minimum of two (2) education signs and include photos of those signs in the associated quarterly Progress Report.
- 5.2 Conduct at least three (3) community volunteer outreach events, and submit meeting materials to Grant Manager.

TABLE OF ITEMS FOR REVIEW

ITEM	DESCRIPTION	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A – SCOPE OF WORK – WORK TO BE PERFORMED BY THE GRANTEE			
A.	PLANS AND GENERAL COMPLIANCE REQUIREMENTS		
1.	GPS information for Project site and monitoring locations	Day 90	
2.	Monitoring and Reporting Plan		
2.1	Project Assessment and Evaluation Plan (PAEP)	Day 90	
2.2	Monitoring Plan (MP)	Day 90	
2.3	Quality Assurance Project Plan (QAPP)	Day 90	
2.4	Proof of Water Quality Data Submission to CEDEN	Before Final Invoice	
3.	Copy of Final CEQA/NEPA Documentation	Day 30	
4.	Public Agency Approvals, Entitlements, or Permits		As Needed
B.	PROJECT-SPECIFIC REQUIREMENTS		
1.	Project Management		
1.2	Notification of Upcoming Meetings, Workshops, and Trainings		Ongoing
1.3	Pre-, During, and Post-Construction Photos		Ongoing
1.4	Periodic and Final Site Visits		Ongoing
2.	Planning, Design, and Engineering		
2.1	Site Investigation and Survey		December 2014
2.2	Hydrology Study and Geotechnical Analysis		December 2014
2.3	Preliminary Design Plans and Specification		January 2015
2.4	100% Engineered Design Plans and Specifications		June 2015
2.5	As Advertised Bid Documents		February 2015
3.	Construction and Implementation		
3.1	Notice to Proceed	September 15, 2015	
3.3	As-Built Drawings		October 2016
3.4	Operations and Maintenance Plan		November 2016
4.	Monitoring and Performance		
4.2	Summary Report of the Monitoring Results		Quarterly
5.	Education and Outreach		
5.1	Install Two (2) Educational Signs		January 2017
5.2	Meeting Materials From Three (3) Community Volunteer Outreach Events		January 2017
EXHIBIT B – INVOICING, BUDGET DETAIL, AND REPORTING PROVISIONS			

ITEM	DESCRIPTION	CRITICAL DUE DATE	ESTIMATED DUE DATE
A.	INVOICING		Quarterly
G.	REPORTS		
1.	Progress Reports within forty-five (45) days following the end of the calendar quarter (March, June, September, and December)		Quarterly
2.	Annual Progress Summaries		Annually by 9/30
3.	Natural Resource Projects Inventory (NRPI) Survey Form	Before Final Invoice	
4.	Draft Final Project Report	12/31/16	
5.	Final Project Report	1/31/17	
6.	Final Project Summary	Before Final Invoice	
7.	Final Project Inspection and Certification	Before Final Invoice	

EXHIBIT B
INVOICING, BUDGET DETAIL, AND REPORTING PROVISIONS

A. INVOICING

1. Invoices shall be submitted using the invoice template provided by the State Water Board. The invoice must be itemized based on the line items specified in the Budget. The original invoice shall be submitted to the State Water Board's Grant Manager on a quarterly basis consistent with the reporting schedule in Section G.1 of this exhibit. The address for submittal is:

Sarah Gatzke, Grant Manager
State Water Resources Control Board
1001 I Street, 16th Floor
Sacramento, CA 95814

2. Invoices submitted in any other format than the one provided by the State Water Board will cause an invoice to be disputed. In the event of an invoice dispute, the State Water Board's Grant Manager will notify the Grantee by initiating an "Invoice Dispute Notification" form. Payment will not be made until the dispute is resolved and a corrected invoice submitted. Failure to use the address exactly as provided above may result in return of the invoice to the Grantee. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. The State Water Board Grant Manager has the responsibility for approving invoices.
3. Supporting documentation (e.g., receipts) must be submitted with each invoice to request reimbursement for grant funds as well as to support Match Funds invoiced. The amount claimed for the Personnel Services line item and Professional and Consultant Services line item must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Invoice payment shall be made only after receipt of a complete, adequately supported, properly documented and accurately addressed invoice.
4. The Grantee shall not request disbursement for any cost until such cost has been incurred and has been paid by or is due and payable by the Grantee. Although it is agreed that actual payment of such cost by the Grantee is not required as a condition of the grant disbursement, all grant disbursements received by the Grantee shall be paid to contractors and vendors within thirty (30) days from receipt of the funds. In the event that the Grantee fails to disburse grant funds to contractors or vendors within thirty (30) days from receipt of the funds, the Grantee shall immediately return such funds to the State Water Board. Interest shall accrue on such funds from the date of disbursement through the date of mailing of funds to the State Water Board. If the Grantee held such funds in interest-bearing accounts, any interest earned on the funds shall also be due to the State Water Board.
5. Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the Federal Government, or any loss of tax-free status on state bonds, pursuant to any Federal statute or regulation.
6. Notwithstanding any other provision of this Agreement, the Grantee agrees that the State Water Board may retain an amount equal to ten percent (10%) of the grant amount specified in this Agreement until completion of the Project to the reasonable satisfaction of the State Water Board. Any retained amounts due to the Grantee will be promptly disbursed to the Grantee, without interest, upon completion of the Project.
7. The invoice shall contain the following information:
 - a. The date of the invoice;
 - b. The time period covered by the invoice, i.e., the term "from" and "to";
 - c. The total amount due; and

- d. Original signature and date (in ink) of Grantee or its authorized representative.
- e. Final invoice shall be clearly marked "FINAL INVOICE" and submitted NO LATER THAN APRIL 30, 2017.

B. PROHIBITION OF INDIRECT COSTS

The grant funds for this Agreement are the proceeds from the sale of general obligation bonds. As such, grant funds may not be used for any indirect costs. "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Grantee; non-project-specific accounting and personnel services performed within the Grantee organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; and, generic overhead or markup. Any invoice submitted including Indirect Costs will cause that invoice, in its entirety, to be disputed and will not be paid until the dispute is resolved. This prohibition applies to the Grantee and any subcontract or sub-agreement for work on the Project that will be reimbursed with grant funds pursuant to this Agreement. (Gov. Code, § 16727.)

C. BUDGET CONTINGENCY CLAUSE

The maximum amount to be encumbered under this Agreement for the 2014-15 fiscal year ending June 30, 2015 shall not exceed TWO MILLION, THREE HUNDRED THOUSAND DOLLARS (\$2,300,000).

If the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any payments under this Agreement. In this event, the State shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Agreement and Grantee shall not be obligated to perform any provisions of this Agreement. Nothing in this Agreement shall be construed to provide the Grantee with a right of priority for payment over any other Grantee.

If this Agreement's funding for any fiscal year is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to the Grantee to reflect the reduced amount.

D. LINE ITEM BUDGET

	PROP 84	MATCH	TOTAL
Direct Project Administration Costs	\$ 0	\$ 40,057	\$ 40,057
Planning/Design/Engineering/Environmental	\$ 283,500	\$ 70,500	\$ 354,000
Equipment (\$5,000 or more per item)	\$ 0	\$ 0	\$ 0
Construction/Implementation	\$ 2,006,500	\$ 429,220	\$ 2,435,720
Monitoring/Performance	\$ 0	\$ 32,753	\$ 32,753
Education/Outreach	\$ 10,000	\$ 2,471	\$ 12,470
TOTAL	\$ 2,300,000	\$ 575,001	\$ 2,875,001

E. BUDGET LINE ITEM FLEXIBILITY

1. Line Item Adjustment(s). Subject to the prior review and approval of the Grant Manager, adjustments between existing line item(s) may be used to defray allowable direct costs up to fifteen percent (15%) of the total grant amount (excluding Match Funds), including any amendment(s) thereto. Line item adjustments in excess of fifteen percent (15%) shall require a formal Agreement amendment. If the Line Item Budget includes an amount for Personnel Services, that amount is based on the hours, classifications, and rates submitted by the Grantee in its application. Any changes to the hours, classifications, and rates must be approved, in advance and in writing, by the Grant Manager.
2. Procedure to Request an Adjustment. Grantee may submit a request for an adjustment in writing to the State Water Board. Such adjustment may not increase or decrease the total grant amount allocated per fiscal year. The Grantee shall submit a copy of the original Agreement Budget sheet reflecting the requested changes. Changes shall be noted by striking the original amount(s) followed with revised change(s) in bold and underlined. Budget adjustments deleting a budget line item or adding a new budget line item requires a formal amendment and are not permissible under this provision. The State Water Board may also propose adjustments to the budget.
3. Remaining Balance. In the event the Grantee does not submit invoices requesting all of the funds encumbered under this Grant Agreement, any remaining funds revert to the State. The State Water Board will mail a Notice of Project Completion letter to the Grantee stating that the project file is closed, the final invoice is being processed for payment, and any remaining balance will be disencumbered and unavailable for further use under the Grant Agreement.

F. MATCH FUNDS

1. The Grantee agrees to provide match funds in the amount of FIVE HUNDRED SEVENTY-FIVE THOUSAND, ONE DOLLARS (\$575,001) (Match Funds) for this Project. This Match Funds amount is based on Line Item Budget categories, funding sources, and amounts submitted by the Grantee in its application and during the negotiation of this Agreement. Any Match Funds line item changes or adjustments in Match Funds classifications or sources requested by Grantee must be approved, in advance and in writing, by the Grant Manager.
2. If, upon completion of the Project, the Grantee has provided match funds in an amount that is less than the Match Funds amount set forth in paragraph F.1 above, then the State Water Board may proportionately reduce the grant amount and/or Grantee's Match Funds amount, provided the reduced amount(s) satisfy statutory requirements and State Water Board Guidelines.

G. REPORTS

1. PROGRESS REPORT. Grantee shall submit quarterly progress reports to the State Water Board's Grant Manager within forty-five (45) days following the end of the calendar quarter (March, June, September, and December).
 - a. The progress reports shall provide a brief description of the work performed, accomplishments during the quarter, milestones achieved, monitoring results (if applicable), and any problems encountered in the performance of the work under this Agreement. Grantee shall document all contractor activities and expenditures in progress reports.
 - b. The invoice should accompany the progress report. The invoice should reflect charges for the work completed during the reporting period covered by progress report. The invoice cannot be paid prior to submission of a progress report covering the invoice reporting period.
2. ANNUAL PROGRESS SUMMARIES. Prepare and provide an Annual Progress Summary annually by September 30. The summary must be no more than two (2) pages, and shall include pictures as appropriate. Upload an electronic copy of the Annual Progress Summary in pdf format to the FAAST system. The summary shall include the following:

- a. A summary of the conditions the Project is meant to alleviate, the Project's objective, the scope of the Project, and a description of the approach used to achieve the Project's objective.
 - b. A summary of the progress made to date, significant milestones achieved, and the current schedule of completing the Project.
 - c. An evaluation of the effectiveness of the Project to date in preventing or reducing pollution and alleviating the Project's original conditions.
3. NATURAL RESOURCE PROJECTS INVENTORY (NRPI) SURVEY FORM. At the completion of this Project, the Grantee shall complete and submit electronically a NRPI Project Survey Form found at <http://www.ice.ucdavis.edu/nrpi>.
 4. DRAFT FINAL PROJECT REPORT. Prepare and submit to the Grant Manager, for review and comment, a Draft Final Project Report in a format provided by the Grant Manager
 5. FINAL PROJECT REPORT. Prepare a Final Project Report that addresses, to the extent feasible, comments made by the Grant Manager on the Draft Final Project Report. Submit one (1) reproducible master and an electronic copy of the final. Upload an electronic copy of the final report in pdf format to the FAAST system.
 6. FINAL PROJECT SUMMARY. Prepare a brief summary of the information contained in the Final Project Report, including before and after pictures, as appropriate. Upload an electronic copy of the Final Project Summary in pdf format to the FAAST system.
 7. FINAL PROJECT INSPECTION AND CERTIFICATION. Upon completion of the Project, the Grantee shall provide for a final inspection and shall certify that the Project has been completed in accordance with this Agreement, any final plans and specifications submitted to the State Water Board, and any amendments or modifications thereto. If the Project involved the planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, or other professionals, the final inspection and certification shall be conducted by a California Registered Civil Engineer or other appropriate California registered professional. The results of the final inspection and certification shall be provided to the Grant Manager.
 8. The Grantee agrees to expeditiously provide, during work on the Project and throughout the term of this Agreement, such reports, data, information, and certifications that may be reasonably required by the State Water Board.

H. PAYMENT OF PROJECT COSTS

The Grantee agrees that it will provide for payment of its full share of Project costs and that all costs connected with the Project will be paid by the Grantee on a timely basis.

I. AUDIT DISALLOWANCES

The Grantee agrees it shall return any audit disallowances to the State Water Board.

J. FRAUD AND MISUSE OF PUBLIC FUNDS

All invoices submitted shall be accurate and signed under penalty of perjury. Any and all costs submitted pursuant to this Agreement shall only be for the tasks set forth herein. The Grantee shall not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any eligible costs for which the Grantee is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is illegal and constitutes fraud. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements of grant funds and/or termination of this Agreement requiring the repayment of all funds disbursed hereunder. Additionally, the Deputy Director of the Division of Financial Assistance may request an audit pursuant to

Exhibit C, paragraph 4 and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability.
(Civ. Code, §§ 1572-1573; Pen. Code, §§ 470, 489-490.)

EXHIBIT C
GENERAL TERMS & CONDITIONS

1. **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 the Agreement is binding on any of the parties.
2. **APPROVAL:** The Grantee will not proceed with any work on the Project until authorized in writing by the State Water Board.
3. **ASSIGNMENT:** This grant is not assignable by the Grantee, either in whole or in part, without the written consent of the State Water Board.
4. **AUDIT:** The Grantee agrees the State Water Board, the Bureau of State Audits, the Governor of the State, the Internal Revenue Service, or any authorized representative of the foregoing shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Division of Financial Assistance (Division), at its option, may call for an audit of financial information relative to the Project, where the Deputy Director of the Division determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of federal requirements. Where such an audit is called for, the audit shall be performed by a certified public accountant independent of the Grantee and at the cost of the Grantee. The audit shall be in the form required by the Division. The Grantee agrees to maintain such records for a possible audit for a minimum of thirty-five (35) years after final payment, unless a longer period of records retention is stipulated. The Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Grantee agrees to include a similar right of the State to audit records and interview staff in any contract related to performance of this Agreement. (Gov. Code, § 8546.7; Pub. Contract Code, § 10115 et seq.)
5. **BONDING:** Where contractors are used, the Grantee shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Grantee in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00. (Civ. Code, § 3247 et seq.; Pub. Contract Code, § 9550.)
6. **COMPLIANCE WITH LAW, REGULATIONS, ETC.:** The Grantee 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 Grantee agrees that, to the extent applicable, the Grantee will comply with the provisions of the adopted environmental mitigation plan for the term of this Agreement, or the useful life of the Project, whichever is longer.
7. **COMPUTER SOFTWARE:** The Grantee certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
8. **CONFLICT OF INTEREST:** The Grantee certifies that it is in compliance with applicable state and/or federal conflict of interest laws.
9. **CONTINUOUS USE OF PROJECT; LEASE OR DISPOSAL OF PROJECT:** The Grantee 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 Deputy Director of the Division. Such approval may be conditioned as determined to be appropriate by the Deputy Director of the Division, including a condition requiring repayment of all grant funds or any portion of all remaining grant funds covered by this Agreement together with accrued interest and any penalty assessments which may be due.
10. **DAMAGES FOR BREACH AFFECTING TAX EXEMPT STATUS:** In the event that any breach of any of the provisions of this Agreement by the Grantee 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 to reimburse the federal government by

reason of any arbitrage profits, the Grantee shall immediately reimburse the State in an amount equal to any damages paid by or loss incurred by the State due to such breach.

11. DATA MANAGEMENT: This Project includes appropriate data management activities so that Project data can be incorporated into appropriate statewide data systems.
12. DISPUTES: The Grantee shall continue with its responsibilities under this Agreement during any dispute. Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Deputy Director of the Division, or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Grantee 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 Grantee, the Grantee 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 Grantee 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 Grantee shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement. 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.
13. ENVIRONMENTAL CLEARANCE (CEQA/NEPA/STREAMBED ALTERATION):
 - a. No work that is subject to the California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA) may proceed under this Agreement until documents that satisfy the CEQA/NEPA process are received by the Grant Manager and the State Water Board has given environmental clearance. No work that is subject to an Environmental Impact Report or a Mitigated Negative Declaration may proceed until and unless approved by the Deputy Director of the Division. Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. Proceeding with work subject to CEQA and/or NEPA without environmental clearance by the State Water Board shall constitute a breach of a material provision of this Agreement.
 - b. If this Project includes modification of a river or stream channel, it must fully mitigate environmental impacts resulting from the modification. The Grantee must provide documentation that the environmental impacts resulting from such modification will be fully mitigated considering all of the impacts of the modification and any mitigation, environmental enhancement, and environmental benefit resulting from the Project, and whether, on balance, any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the Project.
14. FISCAL MANAGEMENT SYSTEMS AND ACCOUNTING STANDARDS: The Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of state law or this Agreement. The Grantee further agrees that it will maintain separate Project accounts in accordance with generally accepted accounting principles.
15. GOVERNING LAW: This grant is governed by and shall be interpreted in accordance with the laws of the State of California.
16. GRANTEE'S RESPONSIBILITY FOR WORK: The Grantee 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 Grantee shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to payment disputes with contractors and subcontractors. The State will not mediate disputes between the Grantee and any other entity concerning responsibility for performance of work.
17. INCOME RESTRICTIONS: The Grantee agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Grantee under this Agreement shall be paid by

the Grantee to the State, to the extent that they are properly allocable to costs for which the Grantee has been reimbursed by the State under this Agreement.

18. **INDEPENDENT ACTOR:** The Grantee, 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.
19. **INSPECTION:** The State Water Board, the Bureau of State Audits, or any authorized representative of the foregoing, shall have suitable access to the Project site at all reasonable times during Project implementation and thereafter for the useful life of the Project to ascertain compliance with this Agreement and its goals. The Grantee acknowledges that the Project records and location are public records.
20. **INSURANCE:** Throughout the useful life of the Project, the Grantee shall provide and maintain insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Agreement, if any. This insurance shall be issued by a company or companies admitted to transact business in the State of California. The insurance policy shall contain an endorsement specifying that the policy will not be cancelled or reduced in coverage without thirty (30) days prior written notice to the State Water Board. In the event of any damage to or destruction of the Project or any larger system of which it is a part, the net proceeds of insurance shall be applied to the reconstruction, repair or replacement of the damaged or destroyed parts of the Project or its larger system. The Grantee 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 larger system shall be free of all claims and liens.
21. **NONDISCRIMINATION:**
 - a. During the performance of this Agreement, the Grantee and its consultants and contractors 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 Grantee, its consultants, and contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
 - c. The Grantee, its consultants, and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990, 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 Grantee, its consultants, and contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement, if any.
 - e. The Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement. Failure by the Grantee to carry out these requirements and applicable requirements of 40 C.F.R. part 33 is a breach of a material provision of this Agreement which may result in its termination.
22. **NO THIRD PARTY RIGHTS:** The parties to this grant Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this grant Agreement, or of any duty, covenant, obligation or undertaking established herein.

23. NOTICE:

- a. The Grantee shall notify the State Water Board prior to conducting construction, monitoring, demonstration, or other implementation activities such that State Water Board and/or Regional Water Board staff may observe and document such activities.
- b. The Grantee shall promptly notify the State Water Board of events or proposed changes that could affect the scope, budget, or work performed under this Agreement. The Grantee 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 the State Water Board, and the State Water Board has given written approval for such change.
- c. Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during implementation of the Project, the Grantee 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 Deputy Director of the Division has determined what actions should be taken to protect and preserve the resource. The Grantee agrees to implement appropriate actions as directed by the Division.
- d. Discovery of any unexpected endangered or threatened species, as defined in the federal or California Endangered Species Acts. Should a federal or state protected species be unexpectedly encountered during implementation of the Project, the Grantee agrees to promptly notify the Deputy Director of the Division. This notification is in addition to the Grantee's obligations under the federal or state Endangered Species Acts.
- e. The Grantee shall notify the State Water Board at least ten (10) working days prior to any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by State Water Board's representatives.
- f. The Grantee shall promptly notify the State Water Board in writing of completion of work on the Project.
- g. The Grantee shall promptly notify the State Water Board in writing of any cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more and of any circumstance, combination of circumstances, or condition, which is expected to or does delay completion of construction for a period of ninety (90) days or more beyond the estimated date of completion of construction previously provided.

24. OPERATIONS & MAINTENANCE: The Grantee shall maintain and operate the facility and structures constructed or improved as part of the Project throughout the useful life of the Project, consistent with the purposes for which this Grant was made. The Grantee assumes all operations and maintenance costs of the facilities and structures; the State Water Board shall not be liable for any cost of such maintenance, management or operation. The Grantee may be excused from operations and maintenance only upon the written approval of the Deputy Director of the Division. For purposes of this Agreement, "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses. "Maintenance costs" include ordinary repairs and replacements of a recurring nature necessary to prolong the life of capital assets and basic structures, and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures.

25. PERMITS, CONTRACTING, AND DEBARMENT: The Grantee 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. Any contractors, outside associates, or consultants required by the Grantee 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, if any, or as are specifically authorized by the State Water Board's Grant Manager during the performance of this Agreement. Any substitutions in, or additions to, such contractors, associates, or consultants, shall be subject to the prior written approval of the State Water Board's Grant Manager. The Grantee shall not contract 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 Grantee shall not contract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35; Gov. Code, § 4477)www.echo.epa.gov. The Grantee 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 Grantee;
 - 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.
26. **PREVAILING WAGES AND LABOR COMPLIANCE:** If applicable, the Grantee agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. The Grantee certifies that it has a Labor Compliance Program (LCP) in place or has contracted with a third party that has been approved by the Director of the Department of Industrial Relations (DIR) to operate an LCP pursuant to: Public Resources Code, section 75075; Labor Code, sections 1771.3(c) and 1771.5; and, section 16423 of title 8 of the California Code of Regulations. Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.
27. **PROFESSIONALS:** The Grantee agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for. All technical reports required pursuant to this Agreement that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to Business and Professions Code, sections 6735, 7835, and 7835.1. To demonstrate compliance with California Code of Regulations, title 16, sections 415 and 3065, all technical reports must contain a statement of the qualifications of the responsible registered professional(s). As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.
28. **RECORDS:** Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles, the Grantee agrees to:
- a. Establish an official file for the Project which shall adequately document all significant actions relative to the Project;
 - b. Establish separate accounts which will adequately and accurately depict all amounts received and expended on this Project, including all grant funds received under this Agreement;
 - c. Establish separate accounts which will adequately depict all income received which is attributable to the Project, especially including any income attributable to grant funds disbursed under this Agreement;
 - d. Establish an accounting system which will adequately depict final total costs of the Project, including both direct and indirect costs;
 - e. Establish such accounts and maintain such records as may be necessary for the state to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and,

- f. If a Force Account is used by the Grantee for any phase of the Project, establish an account that documents all employee hours, and associated tasks charged to the Project per employee.
29. RELATED LITIGATION: Under no circumstances may a Grantee use funds from any disbursement under this Grant Agreement to pay costs associated with any litigation the Grantee pursues against the State Water Board or any Regional Water Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Grantee agrees to complete the Project funded by this Agreement or to repay all of the grant funds plus interest.
30. RIGHTS IN DATA: The Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, audio and video recordings, notes, and other written or graphic work produced in the performance of this Agreement shall be in the public domain. The Grantee may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Agreement, subject to appropriate acknowledgement of credit to the State Water Board for financial support. The Grantee shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so.
31. STATE REVIEWS AND INDEMNIFICATION: The parties agree that review or approval of Project applications, documents, permits, plans and specifications or other Project information by the State Water Board is for administrative purposes only and does not relieve the Grantee of its responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out the Project. To the extent permitted by law, the Grantee agrees to indemnify, defend and hold harmless the State Water Board and the State against any loss or liability arising out of any claim or action brought against the State Water Board and/or the State 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 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 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 Grantee 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 Grantee agrees to pay and discharge any judgment or award entered or made against the State Water Board and/or the State 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.
32. SUPPLEMENTAL ENVIRONMENTAL PROJECTS: Grant Funds shall not be used for supplemental environmental projects required by Regional Water Boards.
33. STATE WATER BOARD ACTION, COSTS, AND ATTORNEY FEES: The Grantee 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 the State Water Board as a result of breach of this Agreement by the Grantee, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by the State Water Board shall not preclude 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.
34. TERMINATION, IMMEDIATE REPAYMENT, INTEREST: This Grant Agreement may be terminated by written notice at any time prior to completion of the Project, at the option of the State Water Board, upon violation by the Grantee of any material provision after such violation has been called to the attention of the Grantee and after failure of the Grantee to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the State Water Board. In the event of termination, the Grantee agrees, upon demand, to immediately repay to the State Water Board an amount equal to the amount of grant

funds disbursed to the Grantee prior to such termination. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to/from the Grantee to the date of full repayment by the Grantee.

35. **TIMELINESS:** Time is of the essence in this Agreement. The Grantee shall proceed with and complete the Project in an expeditious manner.
36. **TRAVEL AND PER DIEM:** Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources. These rates may be found at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred by the Grantee. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the Grant Manager.
37. **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 shall continue to have full force and effect and shall not be affected thereby.
38. **URBAN WATER MANAGEMENT:** The Grantee certifies that this Project complies with the Urban Water Management Planning Act (Water Code, § 10610 et seq.). This shall constitute a condition precedent to this Agreement.
39. **USEFUL LIFE OF PROJECT:** For the purpose of this Agreement, the useful life of any constructed portions of this Project begins upon completion of construction and continues until fifty (50) years thereafter for pipelines and structures and twenty (20) years for all else.
40. **VENUE:** The State Water Board and the Grantee 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. The Grantee hereby waives any existing sovereign immunity for the purposes of this Agreement.
41. **WAIVER AND RIGHTS OF THE STATE WATER BOARD:** Any waiver of rights with respect to a default or other matter arising under the Agreement at any time by either party shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State provided for in this Agreement are in addition to any other rights and remedies provided by law.
42. **WATER CONSERVATION AND EFFICIENCY PROGRAMS:** The Grantee acknowledges that it has appropriate water conservation and efficiency programs in place, and that this provision constitutes a condition of the grant award. A web link with examples of water conservation and efficiency programs is available at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/conservation.shtml.
43. **WATER RIGHTS:** The Grantee acknowledges that its eligibility for this Grant award is conditioned on its compliance with Water Code section 5103(e), if applicable. The Grantee further certifies that it is not required to file a Statement of Diversion and Use pursuant to Water Code section 5101.
44. **WATERSHED MANAGEMENT PLAN CONSISTENCY:** The Grantee certifies that any watershed protection activity undertaken as part of this Project will be consistent with the applicable, adopted, local watershed management plans and the applicable Water Quality Control Plan (Basin Plan and/or Statewide) adopted by a Regional Water Board or the State Water Board, where such plans exist. Any such activity occurring in the San Gabriel and Los Angeles watersheds shall be consistent with the San Gabriel and Los Angeles River Watershed and Open Space Plan as adopted by the San Gabriel and Lower Los Angeles Rivers and Mountain Conservancy and the Santa Monica Mountains Conservancy.
45. **WITHHOLDING OF GRANT DISBURSEMENTS:** The State Water Board may withhold all or any portion of the grant funds provided for by this Agreement in the event that the Grantee has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or the Grantee fails to maintain reasonable progress toward completion of the Project.

EXHIBIT D
SPECIAL CONDITIONS

Proposition 84 Stormwater Grant Program

1. The Grantee certifies that it is a local public agency (i.e., one of the following: a city, county, city and county, district, or a joint powers authority comprised entirely of local public agencies).
2. The Grantee certifies that this Project is intended to achieve one of the purposes set forth in Public Resources Code section 75050.2(a).
3. The Grantee certifies that any real property or interests in real property acquired for this Project shall be acquired from a willing seller.
4. The Grantee certifies that it is providing a match in the amount of at least 20% of the total Project cost (see Round 2 Guidelines, page 3). Disadvantaged communities may request a reduced funding match as outlined in Round 2 Guidelines, Table 1, page 4.
5. The Grantee certifies that in no event will it complete this Project later than March 2017. It acknowledges that this condition is a material condition of this Agreement.

Prop 84 STORMWATER GRANT PROGRAM - BUDGET SUMMARY

Applicant: City of La Mesa

FAAST PIN: 26029

Project: University Ave. Median Water Quality Improvements

	Requested Grant	Local Match	Other Funding	Total	% Local Match
1. Direct Project Administration	\$0	\$40,057	\$0	\$40,057	100%
Storm Water Program Manager	\$0	\$18,955	\$0	\$18,955	
Engineering Project Manager	\$0	\$21,102		\$21,102	
				\$0	
				\$0	
				\$0	
2. Planning/Design/Engineering/ Environmental	\$283,500	\$70,500	\$0	\$354,000	20%
Site Investigation/Research	\$13,500	\$5,100		\$18,600	
Additional Survey	\$40,000	\$4,000		\$44,000	
Revisions to CEQA Document	\$10,000	\$3,000		\$13,000	
Hydrology Study and Geotechnical Analysis	\$20,000	\$5,000		\$25,000	
Landscape Architecture Plans	\$40,000	\$12,000		\$52,000	
75% Construction Documents- Civil and Arch	\$100,000	\$25,000		\$125,000	
Final Construction Documents	\$50,000	\$12,000		\$62,000	
Preparation of Bid Documents	\$10,000	\$4,400		\$14,400	
				\$0	
3. Construction/Implementation	\$2,006,500	\$429,220	\$0	\$2,435,720	18%
Existing Median Removal	\$125,000	\$33,900		\$158,900	
Mobilization	\$35,000	\$5,000		\$40,000	
Traffic Safety	\$17,700	\$3,500		\$21,200	
Trenching and Installation of Drainage	\$737,620	\$206,700		\$944,320	
Construction of Medians	\$963,680	\$148,620		\$1,112,300	
Landscaping and Irrigation	\$62,500	\$12,500		\$75,000	
Construction Management	\$65,000	\$19,000		\$84,000	
				\$0	
				\$0	
				\$0	
				\$0	
				\$0	
4. Equipment Purchases Over \$5,000*	\$0	\$0	\$0	\$0	0%
				\$0	
				\$0	
				\$0	
				\$0	
				\$0	
5. Monitoring/Performance	\$0	\$32,753	\$0	\$32,753	100%
Preparation of PAEP, Monitoring Plan, and QAPP	\$0	\$8,573		\$8,573	
Wet/Dry Season Monitoring	\$0	\$18,600		\$18,600	
Final Monitoring Report	\$0	\$5,580		\$5,580	
				\$0	
				\$0	
6. Education/Outreach	\$10,000	\$2,471	\$0	\$12,471	20%
Outreach Activities and Signage	\$10,000	\$2,471		\$12,471	
				\$0	
				\$0	
				\$0	
				\$0	
Grand Total:	\$2,300,000	\$575,001	\$0	\$2,875,001	20%

Other Funding Sources

Note: CHECK YOUR NUMBERS! Do NOT assume this Excel spreadsheet is correct. Please refer to the READ ME tab.

* Any equipment purchases over \$5,000 will require the grantee to submit a letter to the State Water Board, Division of Financial Assistance indicating how the equipment will be utilized after completion of the project.

Does the Budget Summary Total match the Budget Details Total?

YES

CERTIFICATE OF CITY/DIRECTOR OF FINANCE

Certification of Unappropriated Reserves

I HEREBY CERTIFY that the money required for the appropriation of funds for the purpose as docketed is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unappropriated.

Amount \$ _____ Fund _____

Purpose _____

Director of Finance
City of La Mesa

Date _____ By _____

Unappropriated Reserves Available Balance \$ _____

Certification of Unencumbered Balance

I HEREBY CERTIFY that the indebtedness and obligation as docketed can be incurred; that sufficient monies to meet the obligations are actually in the Treasury, or are anticipated to come into the Treasury to the credit of the appropriation from which the same are to be drawn; and that said monies now actually in the treasury, together with the monies anticipated to come into the Treasury, to the credit of said appropriation are otherwise unencumbered.

Amount Not to Exceed \$ 575,000.00



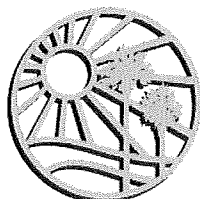
Director of Finance
City of La Mesa

Date: 07/22/14 By: Greg Humora

Fund: 207 & Dept./Activity: 4141-6101 & \$40,000.00 from account 4141-6101
304 304150TR-6830 (amount available \$556,550.00) and
\$535,000.00 from account 304150TR-
6830 (amount available \$600,000.00).

Purpose: Accept and appropriate Proposition Storm Water Grant Program Funds through the State Water Resources Control Board for the University Avenue Median Improvement Project, Provide matching funds, and authorize the Mayor to Sign the Agreement.

CERTIFICATE NO. 1421



**CITY OF
LA MESA**

JEWEL of the HILLS

STAFF REPORT

REPORT to the MAYOR and MEMBERS of the CITY COUNCIL
From the CITY MANAGER

DATE: July 22, 2014

SUBJECT: Resolution to Award RFP 14-12 for Janitorial and Custodial Services at City Facilities to Commercial Cleaning Systems

ISSUING DEPARTMENT: Finance

SUMMARY:

Issues:

Should the City Council adopt the resolution to award RFP 14-12 for janitorial and custodial services at City facilities to Commercial Cleaning Systems?

Recommendation:

That the City Council adopt the resolution to award RFP 14-12 for janitorial and custodial services at City facilities to Commercial Cleaning Systems.

Fiscal Impact:

The service will cost up to \$147,499.59 in Fiscal Year 2014/2015. An additional contingency amount of \$15,000 is included for possible contract services needed beyond the RFP cost schedule. Funds are budgeted in accounts 1402-6430 and 5105-6430 for this service.

BACKGROUND:

The City has eight locations, some with multiple buildings, which require part time or full time janitorial and custodial services. These facilities have a combined total interior space of approximately 146,000 square feet. Some facilities are serviced by City staff but most are through contract. Services also include set-up and tear-down of banquet type functions in some locations and also include occasional or temporary janitorial and custodial services for vacation coverage of City staff.

DISCUSSION:

RFP (Request For Proposal) 14-12 for janitorial and custodial services at City facilities was published on the City's online bid system and 1,295 firms were notified by automatic email. Forty-three prospective bidders accessed the RFP documents and eight submitted proposals. Staff from the public works, community services, police and fire departments evaluated the proposals as well as interviewed the top four firms and determined that Commercial Cleaning Systems had the best proposal, including qualifications and pricing, to meet the City's needs. References were also checked for each firm and Commercial Cleaning Systems currently has municipal contracts with other agencies such as the City of Murrieta. The initial award term will be from September 2014 thru June 2015 with four optional one-year extensions.

The first year of the contract is expected to cost \$147,499.59 for September through June. This represents a 34 percent decrease in costs for the same services under the prior contract due to expected efficiencies resulting in reduced time spent on these services. A contingency amount of \$15,000 is recommended as this is a new contract and may require some adjustments to ensure that all service expectations are met.

CONCLUSION:

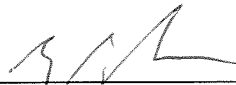
Staff recommends that the City Council adopt the resolution to award RFP 14-12 for janitorial and custodial services at City facilities to Commercial Cleaning Systems.

Reviewed by:

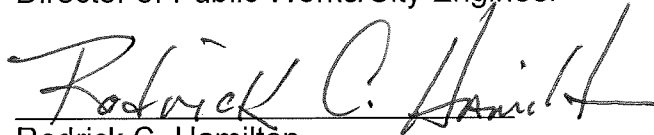


David E. Witt
City Manager

Respectfully submitted by:



Gregory P. Humora
Director of Public Works/City Engineer



Rodrick C. Hamilton
Superintendent of Public Works



Scott A. Munzenmaier
Purchasing Officer

Attachments: A. Resolution
B. Cost Schedule

RESOLUTION NO. 2014-

RESOLUTION TO AWARD RFP 14-12 FOR JANITORIAL AND CUSTODIAL SERVICES AT CITY FACILITIES TO COMMERCIAL CLEANING SYSTEMS

WHEREAS, the City has eight locations, some with multiple buildings, which require part time or full time janitorial and custodial services;

WHEREAS, RFP 14-12 for janitorial and custodial services at City facilities was published on the City's online bid system and 1,295 firms were notified by automatic email with 43 prospective bidders accessing the RFP documents and eight submitting proposals; and

WHEREAS, Staff from four departments evaluated the proposals as well as interviewed the top four firms and determined that Commercial Cleaning Systems had the best proposal, including qualifications and pricing, to meet the City's needs.

BE IT AND IT IS HEREBY RESOLVED by the City Council of the City of La Mesa, California, that the City Council intends to award RFP 14-12 for janitorial and custodial services at City facilities to Commercial Cleaning Systems in the amount of \$147,499.59 in Fiscal Year 2014/2015 with an additional contingency amount of \$15,000 included for possible contract services needed beyond the RFP cost schedule.

PASSED AND ADOPTED at a Regular meeting of the City Council of the City of La Mesa, California, held the 22nd day of July, 2014, by the following vote, to wit:

AYES:

NOES:

ABSENT:

CERTIFICATE OF CITY CLERK

I, MARY J. KENNEDY, City Clerk of the City of La Mesa, California, do hereby certify the foregoing to be a true and exact copy of Resolution No. 2014-, duly passed and adopted by the City Council of said City on the date and by the vote therein recited.

MARY J. KENNEDY, CMC, City Clerk

(SEAL OF CITY)

Commercial Cleaning Systems - Cost Schedule, RFP 14-12, Janitorial and Custodial Services at City Facilities

Bid item number	Location	Facility approx. sq. footage	Facility & Extra Tasks	Regular weekdays & start times	Estimated hours per 7 day week	Estimated number of needed staff	Lump sum cost	Per hour cost	Total hourly cost per 7 day week	Sub-total hourly cost per year	
1 a) & b)	4975 Memorial Dr.	15,100	Com., Rec. & Nan Courts Typ. Daily Tasks	M-F 6:30am & 7:30am	40	2		\$ 20.68	\$ 1,654.40	\$ 86,028.80	
			Windows 2x/year	Varies				\$ 1,140.00			
			Deep clean carpets 2x/year	Varies				\$ 371.98			
			Strip/buff/wax floors 2x/year	Varies				\$ 247.98			
1 c)	5540 Lake Prkwy.	4,500	Comm Ctr weekend tear-down/set-up	Weekend: Fri-Sun 11:00pm-9:00am			\$ 71.32				
			Rec Ctr weekend tear-down/set-up	Weekend: Fri-Sun 11:00pm-9:00am			\$ 59.43				
			Nan Courts weekend tear-down/set-up	Weekend: Fri-Sun 11:00pm-9:00am			\$ 35.66				
			Challenge Center Sunset Gym Typ. Daily Tasks	M-F after 6pm	10	1		\$ 16.81	\$ 168.10	\$ 8,741.20	
1 d)	8450 La Mesa Blvd.	7,500	Windows 2x/year	Varies			\$ 184.00				
			Deep clean carpets 2x/year	Varies			\$ 221.70				
			Strip/buff/wax floors 2x/year	Varies			\$ 147.80				
			Adult Enrichment Center & Porter Hall	Vacation coverage only, M-F 5:00am (two weeks est)	25	1		\$ 23.50	\$ 587.50	\$ 1,762.50	
2 a)	8085 University Ave.	83,606	Weekend tear-down/set-up	Weekend: Fri-Sun 11:00pm-9:00am			\$ 46.44				
			Police Dept. Entire Bldg. Typ. Daily Tasks	M-F 2:30pm	21.25	2		\$ 18.13	\$ 770.53	\$ 40,067.30	
			Windows 2x/year	Varies			\$ 1,522.60				
			Deep clean carpets 2x/year	Varies			\$ 570.62				
			Strip/buff/wax floors 2x/year	Varies			\$ 887.62				

Commercial Cleaning Systems - Cost Schedule, RFP 14-12, Janitorial and Custodial Services at City Facilities													
Bid item number	Location	Facility approx. sq. footage	Facility & Extra Tasks	Regular weekdays & start times	Vacation coverage only: M-F 1:30pm (two weeks est)	Estimated hours per 7 day week	Estimated number of needed staff	Lump sum cost	Per hour cost	Total hourly cost per 7 day week	Sub-total hourly cost per year		
												City Hall Bldg. & Annex I, II	PW Ops bldgs. #100,300,400,600 Typ. Daily Tasks
2 b)	8130 Allison Ave.	16,640	City Hall Bldg. & Annex I, II	M-F 1:30pm (two weeks est)	17.5	1		\$ 23.50	\$ 411.25	\$ 822.50			
2 c)	8152 Commercial St.	10,500	PW Ops bldgs. #100,300,400,600 Typ. Daily Tasks	M-F 2:30pm Alt. week M-Th 2:30pm	9	1		\$ 17.13	\$ 154.17	\$ 8,016.84			
			Windows 2x/year	Varies			\$ 262.20						
			Deep clean carpets 2x/year	Varies			\$ 517.32						
2 d)	8054 Allison Ave.	7,500	Strip/buff/wax floors 2x/year	Varies			\$ 344.88						
			Fire # 11 Admin. Typ. Daily Tasks	M, W, F 5:00pm	5.25	1		\$ 17.13	\$ 89.93	\$ 4,676.49			
			Windows 2x/year	Varies			\$ 777.40						
2 e)	8844 Dallas St.	1,000	Deep clean carpets 2x/year	Varies			\$ 369.52						
			Strip/buff/wax floors 2x/year	Varies			\$ 246.34						
			Fire # 12 Conf. & RR's Typ. Daily Tasks	Between 8pm & 8am	2.5	1		\$ 17.13	\$ 42.83	\$ 2,226.90			
ALL	Varies	Varies	Windows 2x/year	Varies			\$ 379.50						
			Deep clean carpets 2x/year	Varies			\$ 369.52						
			Strip/buff/wax floors 2x/year	Varies			\$ 246.34						
			On-call / As-needed Services	Varies	Varies	Varies		\$ 31.50					

CERTIFICATE OF CITY/DIRECTOR OF FINANCE

Certification of Unappropriated Reserves

I HEREBY CERTIFY that the money required for the appropriation of funds for the purpose as docketed is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unappropriated.

Amount \$ _____ Fund _____

Purpose _____

Director of Finance
City of La Mesa

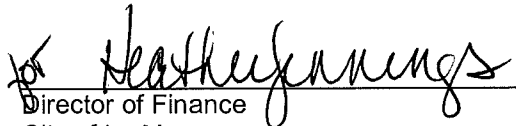
Date _____ By _____

Unappropriated Reserves Available Balance \$ _____

Certification of Unencumbered Balance

I HEREBY CERTIFY that the indebtedness and obligation as docketed can be incurred; that sufficient monies to meet the obligations are actually in the Treasury, or are anticipated to come into the Treasury to the credit of the appropriation from which the same are to be drawn; and that said monies now actually in the treasury, together with the monies anticipated to come into the Treasury, to the credit of said appropriation are otherwise unencumbered.

Amount Not to Exceed \$162,499.59



Director of Finance
City of La Mesa

Date: 07/22/14 By: Greg Humora

Fund: 101 Dept./Activity: 1402-6430 & 5105-6430 \$153,330.76 from account 1402-6430 (amount available \$320,955.76) and \$9,168.83 from account 5105-6430 (amount available \$191,160.00).

Purpose: Resolution to Award RFP 14-12 for Janitorial and Custodial Services at City facilities to Commercial Cleaning Systems.

CERTIFICATE NO. 1420



REPORT to the MAYOR and MEMBERS of the CITY COUNCIL
From the CITY MANAGER

DATE: July 22, 2014

SUBJECT: Consideration of the Introduction and First Reading of an Ordinance Amending Sections 7.27.020, 9.08.074 and 9.08.075 of the La Mesa Municipal Code to Prohibit the Use of Electronic Smoking Devices Wherever Tobacco Smoking is Prohibited

ISSUING DEPARTMENT: City Manager's Office

SUMMARY:

Issue:

Should the City Council adopt the Ordinance amending sections 7.27.020, 9.08.074 and 9.08.075 of the La Mesa Municipal Code to prohibit the use of electronic smoking devices wherever tobacco smoking is prohibited?

Recommendation:

Staff recommends that the City Council approve the introduction and first reading of the Ordinance amending sections 7.27.020, 9.08.074 and 9.08.075 of the La Mesa Municipal Code to prohibit the use of electronic smoking devices wherever tobacco smoking is prohibited.

Fiscal Impact:

None

City's Strategic Goals:

- Safe community
- Enhanced recreation and quality of life opportunities

BACKGROUND:

On March 25, 2014, the City Council considered a request to amend the City's existing smoking ordinance to similarly prohibit electronic cigarettes in specified locations. The Council directed staff to prepare a staff report regarding electronic cigarettes and current regulations of these devices in the region and at the state and federal level.

On July 8, 2014, the City Council discussed whether to regulate the use of electronic smoking devices in locations where smoking is prohibited. After consideration of the staff report and public testimony, staff was directed to prepare an ordinance to prohibit the use of electronic smoking devices wherever tobacco smoking is prohibited.

DISCUSSION:

This item is before the City Council to introduce an Ordinance to amend sections 7.27.020, 9.08.074 and 9.08.075 of the La Mesa Municipal Code to prohibit the use of electronic smoking devices wherever tobacco smoking is prohibited, as follows (underlining is added portion):

1. 7.27.020 "Smoke" or "smoking" as defined in this Chapter means and includes (1) the carrying of a lighted pipe, or lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind; or (2) the carrying or use of an activated or functioning electronic or battery-operated device, the use of which may resemble smoking (commonly known as "vaping"), which can be used to deliver an inhaled dose of nicotine or other substances. Electronic smoking device includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. Electronic smoking device does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.
2. 9.08.074 Smoking prohibited in parks. No person shall smoke a cigarette, cigar, ~~or~~ smoke or chew any other tobacco-related product, or use an electronic smoking device within the boundaries of any public park except for guests of private events in designated outdoor patios of the Community Center and Adult Enrichment Center complexes.
3. 9.08.075 Smoking prohibited near playgrounds. It shall be prohibited for any person to smoke a cigarette, cigar, or smoke or chew any other tobacco-related product, or use an electronic smoking device; or to dispose of cigarette butts, cigar butts, or chewing tobacco, or any other tobacco-related waste, or electronic smoking device waste (e.g. disposable electronic cigarettes, or batteries and cartridges within fifty feet of a playground. The distance shall be measured from the edge of any concrete, wood, plastic, or other fencing material border of the playground or, if no border exists, from the nearest piece of playground equipment or attraction.

"Public Place" means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, retail stores, retail service establishments, retail food production and marketing establishments, restaurants,

theaters, waiting rooms, reception areas, educational facilities, health facilities and public transportation facilities. A private residence is not a "public place."

Additionally, Councilmember Ewin requested that staff report to the Council on how the regulation would be enforced. Municipal code regulations are designed to affect the behavior of the general public. It is expected that most citizens will comply with the regulations and learn about them through community education and signage. Non-compliance is typically brought to the City's attention through the complaint process which then receives follow up by City staff. In addition, this regulation also provides property owners and business operators with a consistent set of regulations for both tobacco and electronic smoking device use. The infraction cost for use of an electronic device in locations where it is prohibited will be from \$10 to \$100, the same cost as tobacco smoking in prohibited locations.

CONCLUSION:

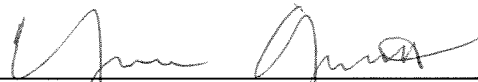
Prohibiting the use of electronic smoking devices wherever tobacco smoking is prohibited will promote a smoke-free environment and assist in the enforcement of the current smoking restrictions in La Mesa. Staff recommends that the City Council approve the introduction and first reading of the Ordinance amending sections 7.27.020, 9.08.074 and 9.08.075 of the La Mesa Municipal Code to prohibit the use of electronic smoking devices wherever tobacco smoking is prohibited.

Reviewed by:



David E. Witt
City Manager

Respectfully submitted by:



Yvonne Garrett
Assistant City Manager/Director of
Community Services

Attachment: Ordinance

ORDINANCE NO. 2014-

AN ORDINANCE AMENDING SECTIONS 7.27.020, 9.08.74, AND 9.08.075 OF THE LA MESA MUNICIPAL CODE TO PROHIBIT THE USE OF ELECTRONIC SMOKING DEVICES WHEREVER TOBACCO SMOKING IS PROHIBITED

WHEREAS, prohibiting the use of electronic smoking devices wherever tobacco smoking is prohibited will promote a smoke-free environment for youth in the City of La Mesa;

WHEREAS, prohibiting the use of electronic smoking devices wherever tobacco smoking is prohibited will assist in the enforcement of the current smoking restrictions in the City of La Mesa; and

WHEREAS, the La Mesa City Council directed staff to draft an ordinance prohibiting the use of electronic smoking devices wherever tobacco smoking is prohibited.

NOW, THEREFORE, THE CITY COUNCIL DOES ORDAIN AS FOLLOWS:

SECTION 1: Section 7.27.020 of the La Mesa Municipal Code is amended to read as follows:

“Definitions. ‘Smoke’ or ‘smoking’ as defined in this Chapter means and includes (1) the carrying of a lighted pipe, or lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind; or (2) the carrying or use of an activated or functioning electronic or battery-operated device, the use of which may resemble smoking (commonly known as “vaping”), which can be used to deliver an inhaled dose of nicotine or other substances. Electronic smoking device includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. Electronic smoking device does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.”

SECTION 2: Section 9.08.074 of the La Mesa Municipal Code is amended to read as follows:

“Smoking prohibited in parks. No person shall smoke a cigarette, cigar, or smoke or chew any other tobacco-related product, or use an electronic smoking device within the boundaries of any public park except for guests of private events in designated outdoor patios of the Community Center and Adult Enrichment Center complexes.”

SECTION 3: Section 9.08.075 of the La Mesa Municipal Code is amended to read as follows:

“Smoking prohibited near playgrounds. It shall be prohibited for any person to smoke a cigarette, cigar, or smoke or chew any other tobacco-related product, or use an electronic smoking device; or to dispose of cigarette butts, cigar butts, or chewing tobacco, or any other tobacco-related waste, or electronic smoking device waste (e.g. disposable electronic cigarettes, or batteries and cartridges within fifty feet of a playground. The distance shall be measured from the edge of any concrete, wood, plastic, or other fencing material border of the playground or, if no border exists, from the nearest piece of playground equipment or attraction.”

SECTION 4. This Ordinance shall be effective 30 days after its adoption and the City Clerk shall certify to the adoption of this Ordinance and cause the same to be published at least once in the *East County Californian/La Mesa Forum* within 15 days of its adoption.

INTRODUCED AND READ at a Regular meeting of the City Council of the City of La Mesa, California, held the 22nd day of July 2014, and thereafter PASSED AND ADOPTED at a Regular meeting of said City Council held the 9th day of September 2014, by the following vote, to wit:

AYES:

NOES:

ABSENT:

APPROVED:

ARTHUR E. MADRID, Mayor

ATTEST:

MARY J. KENNEDY, CMC, City Clerk

CERTIFICATE OF CITY CLERK

I, MARY J. KENNEDY, City Clerk of the City of La Mesa, California, do hereby certify the foregoing to be a true and correct copy of Ordinance No. 2014-, duly passed and adopted by the City Council of said City on the date and by the vote therein recited and that the same has been duly published according to law.

MARY J. KENNEDY, CMC, City Clerk

(SEAL OF CITY)



CITY OF
LAMESA
JEWEL of the HILLS

INTEROFFICE MEMO

TO: MAYOR AND CITY COUNCIL

FROM: CITY ATTORNEY 

RE: ORDINANCE REPEALING CHAPTER 10.23 OF THE LA MESA MUNICIPAL CODE
REGULATING SEX OFFENDER'S PROXIMITY TO CHILDREN'S FACILITIES

DATE: JULY 17, 2014

The City Council adopted Ordinance No. 2006-27 and Ordinance No. 2006-2768, codified in Chapter 10.23 of the La Mesa Municipal Code (Municipal Code), which established regulations in the City related to sex offenders' proximity to children's facilities. The California Penal Code contains a comprehensive statutory scheme regulating and restricting sex offenders.

Recently, the California Court of Appeal determined that a similar sex offender ordinance adopted by the City of Irvine was preempted by State law and, therefore, could not be enforced (People v. Nguyen (2014) 184 Cal App 4th 1096). Subsequently, the California Reform Sex Offender Laws group, a statewide non-profit which claims to be dedicated to protecting the U.S. Constitution by restoring the civil rights of sex offenders, has threatened litigation if the City does not repeal Chapter 10.23 of the Municipal Code.

Based upon the recent Nguyen decision, to avoid unnecessary litigation, we recommend that the Council repeal Chapter 10.23 of the Municipal Code. Attached is a draft ordinance that, if adopted, would do so.

Please contact me with any questions.

Thank you

ORDINANCE NO. 2014-

AN ORDINANCE REPEALING CHAPTER 10.23 OF THE LA MESA MUNICIPAL CODE REGULATING SEX OFFENDERS' PROXIMITY TO CHILDREN'S FACILITIES

Whereas, the City Council adopted Ordinance No. 2006-27 and Ordinance No. 2006-2768, codified in Chapter 10.23 of the La Mesa Municipal Code (Municipal Code), which established regulations in the City related to sex offenders' proximity to children's facilities;

Whereas, the California Court of Appeal determined that a similar sex offender ordinance adopted by the City of Irvine was preempted by State law and, therefore, could not be enforced (People v. Nguyen (2014) 184 Cal App 4th 1096);

Whereas, the California Reform Sex Offender Laws group, a statewide non-profit which claims to be dedicated to protecting the U.S. Constitution by restoring the civil rights of sex offenders, has threatened litigation if the City does not repeal Chapter 10.23 of the Municipal Code; and

Whereas, to avoid unnecessary litigation, the Council hereby desires to repeal Chapter 10.23 of the Municipal Code in its entirety.

THE CITY COUNCIL OF THE CITY OF LA MESA DOES ORDAIN AS FOLLOWS:

SECTION 1: Chapter 10.23 of the La Mesa Municipal Code, "Sex Offenders' Proximity to Children's Facilities" is hereby repealed in its entirety.

SECTION 2: This Ordinance shall be effective 30 days after its adoption and the City Clerk shall certify to the adoption of this Ordinance and cause the same to be published at least once in the *East County Californian/La Mesa Forum* within 15 days of its adoption.

INTRODUCED AND FIRST READ at a Regular meeting of the City Council of the City of La Mesa, California, held the 8th day of July 2014 and thereafter PASSED AND ADOPTED at a Regular meeting of said City Council held the 22nd day of July 2014, by the following vote, to wit:

AYES:

NOES:

ABSENT:

APPROVED:

ARTHUR E. MADRID, Mayor
ATTEST:

MARY J. KENNEDY, CMC, City Clerk

CERTIFICATE OF CITY CLERK

I, MARY J. KENNEDY, City Clerk of the City of La Mesa, California, do hereby certify the foregoing to be a true and correct copy of Ordinance No. 2014-_____, duly passed and adopted by the City Council of said City on the date and by the vote therein recited and that the same has been duly published according to law.

MARY J. KENNEDY, CMC, City Clerk

(SEAL OF CITY)



DATE: July 22, 2014

TO: Mayor and Members of the City Council

FROM: Vice Mayor Alessio and Councilmember Ewin

SUBJECT: Consideration of suspending enforcement of metered parking during streetscape improvements

Consideration that the Council direct the Parking Commission to assess the effects for suspending the enforcement of metered parking during the pendency of the Downtown Streetscape project. Specifically, at its next regularly scheduled meeting, the Parking Commission will be directed to analyze the effects of not enforcing metered parking from the following standpoints, including, but not limited to: revenue loss (cost), a parking management, local business perspective, block by block vs. entire area, street by street vs. entire area, etc. The Parking Commission shall then report back to the Council its finding within 30 days and the Council shall consider suspending the enforcement of metered parking during the Downtown Streetscape project.



DATE: July 22, 1014

TO: Mayor and Members of the City Council

FROM: Councilmember Ewin

SUBJECT: Discussion of the new agenda packet item on Council expenses

Following Council 5-0 action at the last council meeting, Councilman Ewin will discuss and display the public reporting format for future Council expenses. Sample included.

**CITY COUNCIL - FY 14-15
TRAVEL, CONFERENCES AND MEETINGS
EXAMPLE**

DATE	NAME	DESCRIPTION	PURPOSE	PAYMENT TO:	ALESSIO	DR. A	EWIN	MADRID	STERLING	TOTALS
<i>Event date</i>	<i>Member name</i>	<i>Explanation of the travel</i>	<i>Reason for attendance</i>	<i>Host of event</i>						
		BUDGETED AMOUNT								5,000.00
		TOTAL EXPENSES			0.00	0.00	0.00	0.00	0.00	0.00
		AVAILABLE BALANCE								5,000.00

PERSONAL EXPENSES

DATE	NAME	DESCRIPTION AND ATTENDEES	PURPOSE	PAYMENT TO:	ALESSIO	DR. A	EWIN	MADRID	STERLING	TOTALS
<i>Event date</i>	<i>Member name</i>	<i>Explanation of expense (lunch, parking, educational seminar, business expense), name of attendees</i>	<i>Reason for expenditure</i>	<i>Vendor name</i>						
		BUDGETED AMOUNT			1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	5,000.00
		TOTAL EXPENSES			0.00	0.00	0.00	0.00	0.00	0.00
		AVAILABLE BALANCE			1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	5,000.00

CITY COUNCIL MEMBERSHIPS

Arbor Day Foundation
 East County Economic Development Council
 League of CA Cities
 League of CA Cities-San Diego Division
 National League of Cities

COUNCIL REPRESENTATIVE FOR OUTSIDE ORGANIZATION

Harry Griffen Park JPA
 Heartland Communications Facility Authority
 Heartland Fire Training Facility Authority
 La Mesa-Spring Valley School District/City Joint Steering Committee
 Metro Wastewater JPA/Commission
 MTS
 Mission Trails Regional Park Task Force
 SANDAG

**CITY COUNCIL - FY 14-15
TRAVEL, CONFERENCES AND MEETINGS**

DATE	NAME	DESCRIPTION	PURPOSE	PAYMENT TO:	ALESSIO	DR. A	EWIN	MADRID	STERLING	TOTALS
7/10/14	Sterling	Univ Leadership Summit, Santa Clara.	Airfare for NLC Summit	Southwest Airlines					218.00	
7/11/14	Sterling	Univ Leadership Summit, Santa Clara, CA- Aug 13-16, Reg.	Explore the connection between leadership and	National League of Cities					849.00	
		BUDGETED AMOUNT								5,000.00
		TOTAL EXPENSES			0.00	0.00	0.00	0.00	1,067.00	1,067.00
		AVAILABLE BALANCE								3,933.00

PERSONAL EXPENSES

DATE	NAME	DESCRIPTION AND ATTENDEES	PURPOSE	PAYMENT TO:	ALESSIO	DR. A	EWIN	MADRID	STERLING	TOTALS
7/2/14	Madrid	Parking fee for Building for Mobility - Circulate SD 2014 Regional TOD Summit, San Diego, CA	TOD Workshop	Art Madrid				28.00		
		BUDGETED AMOUNT			1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	5,000.00
		TOTAL EXPENSES			0.00	0.00	0.00	28.00	0.00	28.00
		AVAILABLE BALANCE			1,000.00	1,000.00	1,000.00	972.00	1,000.00	4,972.00

CITY COUNCIL MEMBERSHIPS

Arbor Day Foundation
 East County Economic Development Council
 League of CA Cities
 League of CA Cities-San Diego Division
 National League of Cities

COUNCIL REPRESENTATIVE FOR OUTSIDE ORGANIZATION

Harry Griffen Park JPA
 Heartland Communications Facility Authority
 Heartland Fire Training Facility Authority
 La Mesa-Spring Valley School District/City Joint Steering Committee
 Metro Wastewater JPA/Commission
 MTS
 Mission Trails Regional Park Task Force
 SANDAG