Summary Title: Coastal Conservancy Grant To Control Spartina

Title: Adoption of a Resolution Authorizing the City Manager to Apply for a Grant and Execute an Agreement with the California State Coastal Conservancy for Funds to Control Non-Native Cordgrass (Spartina) in the City-Owned Baylands

From: City Manager

Lead Department: Community Services

Recommendation
Staff recommends that Council approve the attached resolution (Attachment A) to:

1. Authorize the submittal of a grant application to the California State Coastal Conservancy under its invasive Spartina treatment and eradication project, and approve the terms and conditions of the grant agreement.

2. Authorize the City Manager or his designee, as the person responsible for the administration of the grant on behalf of the City, including certifications and any amendments.

Executive Summary
The California State Coastal Conservancy initiated a regional grant funding program to pay for the costs of control and eradication of non-native Spartina throughout the nine-county Bay Area. The Invasive Spartina Project is a coordinated regional effort dedicated to preserving California's extraordinary coastal biological resources through the elimination of introduced species of cordgrass. The City of Palo Alto has received annual grant money from this program since 2003. The Coastal Conservancy proposes that the grant program
to the City of Palo Alto continue for an additional two years in the amount of $11,500.

**Background**

An aggressive species of non-native cordgrass (Spartina alterniflora) was introduced in the Alameda marina in 1975, and since that time has infected areas of marshland throughout the San Francisco Bay estuary. This non-native cordgrass is a threat to the Palo Alto marshes because it crowds out native cordgrass and saltgrass and displaces nesting habitat for the endangered California Clapper Rail by its tall, dense foliage. Cordgrass are highly aggressive invaders that significantly alter both the physical structure and biological composition of tidal marshes, mudflats and creeks.

In 1998, the California State Coastal Conservancy initiated a regional program to combat the spread of non-native Spartina throughout the nine-county Bay Area. The Invasive Spartina Project is a coordinated regional effort among local, state and federal organizations dedicated to preserving California's extraordinary coastal biological resources through the elimination of introduced species of cordgrass.

In order to enable local agencies to effectively control the spread of the non-native cordgrass, a grant funding program was established to pay for the costs of control and eradication. The City of Palo Alto has received grants from this program for the past eight years. The Coastal Conservancy proposes that the grant program to the City of Palo Alto continue for an additional two years in the amount of $11,500 (Grant Agreement – Attachment B).
The Palo Alto marshes, which comprise approximately 1,000 acres, have a relatively small area (.418 acres) of non-native cordgrass. The invasive species was identified in two areas of the Palo Alto marshes in 2001, and since that time the City has hired special skill contractors to systematically treat the non-native cordgrass during September of each year when birds are not nesting.

**Discussion**
The proposed grant from the State Coastal Conservancy would reimburse the City of Palo Alto for all costs incurred with the control of Spartina. The annual expense for contracted spraying is approximately $5,000. This grant would reimburse the City for its expenses.

**Resource Impact**
Work covered by the grant application is the on-going responsibility of the Community Services Department’s Open Space Division staff. Approval of the grant will not affect other scheduled park or community facility projects or their completion timelines.

The systematic containment of Spartina now, while its infestation in Palo Alto marshes is relatively minor, will reduce the amount of expenditures required in the future if the plant is not adequately controlled.

**Policy Implications**
These recommendations are consistent with existing City policies for the protection of natural resources and protection of wildlife species at the Baylands Nature Preserve.

**Environmental Review**
The application for a grant is not considered an action subject to the California Environmental Quality Act; therefore, no environmental assessment is needed at this time. Environmental review has been conducted by the Coastal Conservancy on approved methods of treatment.

Attachments:

- Attachment A- Spartina Grant Resolution (DOC)
- Attachment B- Spartina Grant Agreement Facesheet (PDF)
- Attachment B- Spartina Grant Agreement (PDF)

Prepared By: Daren Anderson,

Department Head: Greg Betts, Director, Community Services

City Manager Approval: James Keene, City Manager
Resolution No. _____

Resolution of the Council of the City of Palo Alto Authorizing the City Manager to Submit to the California State Coastal Conservancy a Grant Application for Funds which the City Intends to Expend on Spartina Treatment and Eradication In the Palo Alto Baylands

WHEREAS, the California State Coastal Conservancy (the “Conservancy”) provides grant funds for the treatment, monitoring and eradication of invasive, non-native cord grass (Spartina alterniflora) in the marshes of the San Francisco Bay Estuary; and

WHEREAS, the Conservancy accepts, annually, grant applications for projects that preserve and protect marsh habitat around the bay; and

WHEREAS, the City of Palo Alto wishes to accept a grant from the Conservancy that will result in the reimbursement to the City for funds ($11,500) that are expended in connection with the proposed control, monitoring and eradication of non-native cord grass (Spartina) in the Palo Alto Baylands.

NOW, THEREFORE, the Council of the City of Palo Alto does hereby RESOLVE as follows:

SECTION 1. The Council hereby authorizes the City Manager to submit a grant application to, and accept on behalf of the City of Palo Alto a grant of funds made by, the California State Coastal Conservancy in order that the City may be reimbursed for funds which the City intends to expend on proposed habitat restoration and conservation in the City-owner Baylands.

SECTION 2. The Council hereby certifies that the City’s staff has reviewed and understands the General Provisions contained in the Project Contract shown in the Procedural Guide.

SECTION 3. The Council hereby designates the City Manager or his designee as the person responsible for the administration of the grant application.

SECTION 4. The Council finds that the adoption of this resolution, which authorizes the submittal of a grant application, does not constitute a project under the California Environmental Quality Act.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:
*NOT YET APPROVED*

ATTEST:  
______________________________  ______________________________
City Clerk  

APPROVED AS TO FORM:  
______________________________
Sr. Asst. City Attorney  

APPROVED:  
______________________________
Mayor  

______________________________
City Manager  

______________________________
Director of Community Services  

______________________________
Director of Administrative Services
THIS AGREEMENT, made and entered into this _____ day of ____________, 2011,
in the State of California, by and between State of California, through its duly elected or appointed, qualified and acting
Executive Officer State Coastal Conservancy , hereafter called the Conservancy, and
City of Palo Alto , hereafter called the Grantee.

The Grantee, for and in consideration of the covenants, conditions, agreements, and stipulations of the Conservancy hereinafter expressed, does hereby agree as follows:

PRIOR GRANT AGREEMENT AND INCORPORATION OF CONTINUING OBLIGATIONS

The State Coastal Conservancy (“the Conservancy”) and the City of Palo Alto (“the grantee”) had previously entered into Grant Agreement No. 03-074 (which, including all amendments, is referred to as “the prior agreement”) by which the Conservancy provided to the grantee funds in the total amount of $27,574 for invasive Spartina treatment and eradication and associated activities under the Invasive Spartina Project (“ISP”) Control Program. The grant of funds under this agreement enables the grantee to continue with the same activities.

The Conservancy and the grantee have entered into a new agreement, rather than amending the prior grant agreement, in order to eliminate the administrative burden associated with utilizing an agreement with multiple amendments, to update and add agreement provisions and to streamline future augmentation of this agreement by amendment, as contemplated by the parties, if additional funding is available.

(Continued on following pages)
PRIOR GRANT AGREEMENT AND INCORPORATION OF CONTINUING OBLIGATIONS (Continued)

As of the effective date of this agreement, the prior agreement will be terminated and void and of no further effect. Notwithstanding the termination of the prior agreement, the following terms and provisions will survive the termination and will be incorporated into this agreement as continuing obligations of the grantee:

1. The grantee will continue to indemnify and hold harmless the State and Conservancy claims for injuries to persons or damage to property arising out of acts or omission of the grantee under the prior agreement, as specified in the “INDEMNIFICATION” section, below, and shall agree to diligently pursue insurance coverage under any insurance policies maintained by the grantee under the prior agreement for claims for injuries to persons or damage to property that arose from or in connection with any activities by the grantee undertaken pursuant to the prior agreement.

2. To the extent that the grantee undertook work under the prior agreement that was reimbursed by outside funds (which the prior agreement indicated), the grantee remains bound by all requirements of the outside funds.

3. To the extent and for as long as applicable, the grantee will continue to comply with all requirements for the work done by the grantee under the prior agreement including the requirements of: any permit or approval, including those identified in the site-specific Biological Opinion; all mitigation and monitoring measures for the work under the San Francisco Estuary Invasive Spartina Project Final Environmental Impact Statement/Environmental Impact Report: Spartina Control Program (FEIS/R); and any approved site-specific plan.

4. If any “non-expendable equipment” (see definition in “EQUIPMENT” section, below) was acquired by the grantee under the prior agreement, the grantee shall use, maintain, operate and dispose of that equipment subject to the requirements of the EQUIPMENT section, below.

The grantee shall continue to retain records and permit audit and examination of records as and to the extent required under the “AUDITS/ ACCOUNTING/ RECORDS” or similar section of the prior agreement or any other section of the prior agreement relating to the management and maintenance of records or requirement of audit or inspection of records.

SCOPE OF AGREEMENT

Pursuant to Chapter 4.5 of Division 21 of the Public Resources Code, Conservancy (“the Conservancy”) hereby grants to the grantee a sum not to exceed $11,500 (Eleven thousand five
SCOPE OF AGREEMENT (Continued)

hundred dollars), subject to the terms and conditions of this agreement. These funds shall be used by the grantee to undertake Spartina treatment and eradication and associated activities (the project) at the Palo Alto Baylands in the City of Palo Alto and County of Santa Clara, as detailed in Exhibit A, “2011-2015 ISP Site-Specific Invasive Spartina Treatment Sites”, which is incorporated by reference and attached.

All funds provided under this agreement, along with in-kind services as may be provided by the grantee, shall be used by the grantee to plan, prepare for, undertake and complete treatment activities for the eradication and control of invasive Spartina in the sites identified. The funds may also be used for activities required for such treatment work, including: (a) the purchase of herbicide, surfactant and other supplies reasonably needed to complete the treatment activities; (b) restoration work required as a mitigation measure; or (c) subsequent mapping and monitoring to determine the effectiveness of the treatment activities.

The grantee shall carry out the project in accordance with this agreement, a site-specific plan and a work program to be approved by the Executive Officer of the Conservancy (“the Executive Officer”) pursuant to this agreement. The grantee shall provide any funds beyond those granted under this agreement which are needed to complete the specific project work for which funding has been provided.

The specific work to be undertaken by the grantee with the initial funding under this agreement (“the Initial Project Work”) is specified below; in the event additional funding is available in the future and the parties agree to augment this agreement, the specific work to be undertaken by the grantee under the amendment (“the Amendment Project Work”) will be specified in the amendment.

Initial Project Work

The grantee will undertake treatment and eradication and associated activities, with initial funds in the amount of $11,500, for two treatment seasons from May 2011-December 2011 and from May 2012-December 2012, as follows:

1. Treatment and eradication of the invasive hybrid Spartina at the Palo Alto Baylands.
   a. Acreage: .418
   b. Methods of treatment: Herbicide application via backpack and truck.

All Initial Project Work, except for ongoing monitoring under the “OPERATION AND MAINTENANCE” section, below, shall be completed by December 31, 2012 (the “Initial completion date”).
CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT

The grantee shall not commence the Initial Project Work or any Amendment Project Work under this agreement and the Conservancy shall not be obligated to disburse any funds for such work unless and until the following conditions precedent have been met with respect to the Initial Project Work or to any Amendment Project Work:

1. The City Council of the City of Palo Alto has adopted a resolution authorizing the execution of this agreement or, as to any Amendment Project Work, authorizing an amendment to this agreement and approving its terms and conditions. The resolution may delegate to any officer or director of the grantee the authority to execute the agreement or amendment and to approve its terms and conditions.

2. The Executive Officer has approved in writing:
   a. The site-specific plan for each site at which treatment and eradication activities are proposed, including mitigation measures, and a work program for the specific project work under the initial funding or under any subsequent amendment.
   b. All contractors that the grantee intends to employ in connection with the project work.

3. The grantee has provided written evidence to the Conservancy that the grantee has provided for required insurance coverage, including additional insured endorsement, as described in the “INSURANCE” section, below.

4. All permits and approvals necessary to the commencement and completion of the project work under applicable local, state and federal laws and regulations have been obtained, including, without limitation, any required Biological Opinion for project work. The Conservancy’s ISP contractor will obtain all permits and approvals required under state and federal law; the grantee will obtain all local permits and approvals.

ADDITIONAL GRANT CONDITIONS

1. In carrying out the project, the grantee shall comply with all applicable mitigation and monitoring measures that are: identified in the San Francisco Estuary Invasive Spartina Project Final Environmental Impact Statement/Environmental Impact Report: Spartina Control Program (FEIS/R); set forth in the approved site-specific plan; or required by any permit or approval for the project including those identified in the site-specific Biological Opinion.
ADDITIONAL GRANT CONDITIONS (Continued)

2. For any project work that is on property that is not owned by the grantee, the grantee shall obtain either (a) written authorization from the owner of the property to undertake the treatment and eradication activities on that property or (b) written authorization of a state or local public entity to enter the property for or on behalf of that entity to undertake the activities and the state or local entity has legal authority to enter the property for the activities and has undertaken all procedures required to exercise that authority, or (c) the grantee has legal authority to enter the property for the activities and has undertaken all procedures required to exercise that authority. The grantee shall provide to the Conservancy documentation of such authorization prior to commencement of project work on the property.

3. The grantee shall use the herbicide(s) and the surfactant(s) which have been recommended in writing by the Conservancy as the most appropriate and effective for the site-specific treatment. If the use of an alternative herbicide or surfactant is proposed by the grantee, the grantee shall provide for review and written approval of the Executive Officer a request for use of an alternative and documentation establishing that the alternative is as (or more) effective and/or appropriate than the identified herbicide(s) or surfactant(s) in the context of the site-specific treatment.

TERM OF AGREEMENT

This agreement shall be deemed executed and effective when signed by both parties and received in the offices of the Conservancy together with the resolution described in the “CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT” section of this agreement. An authorized representative of the grantee shall sign the first page of the originals of this agreement in ink.

This agreement shall run from its effective date through May 31, 2016, (“the termination date”) unless otherwise terminated or amended as provided by the agreement. However, all work shall be completed by the completion date specified in the Scope of Agreement for that work. The grantee shall submit a final Request for Disbursement no later than 60 days after the completion date for the project work (“the final invoice date”).

The grantee, in reliance on the grant authorization, may have undertaken administrative activities for the project, such as preparation for contractor selection, prior to the effective date of this agreement, in order to meet the timelines for on-the-ground project work. These administrative activities were done at grantee’s risk and without the Conservancy’s obligation to compensate the grantee for such work. Notwithstanding the foregoing, however, the costs of such work may, in the sole discretion of the Executive Officer, be reimbursed, if determined to have been necessary to timely completion of the project and done in a manner consistent with the terms of this agreement.
AUTHORIZATION

The signature of the Executive Officer of the Conservancy on this agreement or on any subsequent amendment certifies that this agreement or amendment is executed pursuant to an authorization of the Conservancy by resolution included in a staff recommendation, attached and incorporated, adopted at a regular or special meeting, as follows:

Initial Project Work: Meeting of March 17, 2011. Staff recommendation attached to this agreement as Exhibit C.

Work under this agreement or under any subsequent amendment to this agreement is funded, in whole or in part, with outside grant funds, if specified in the “Scope of Agreement section, above. The Executive Officer's signature on the first page of this agreement or on any subsequent amendment certifies that the outside funds were awarded specifically for the work under this agreement or under the amendment.

WORK PROGRAM

Before starting the Initial Project Work or any subsequent Amendment Project Work, the grantee shall submit a detailed work program for that work to the Executive Officer for review and written approval of its consistency with this agreement. The work program shall include:

1. Site-specific plans, including mitigation and monitoring measures. The grantee shall prepare and review the plans on-site with the Conservancy’s Invasive Spartina Control Program Field Operations Manager.

2. A detailed work program, including a schedule of completion for treatment and eradication work at each site, a final project completion date, and a detailed project budget. The project budget shall describe all labor and materials costs to be incurred to complete each component of the project. For each project component, the project budget shall list all intended funding sources, including the Conservancy’s grant, the grantee’s contribution and all other sources of monies, materials, or labor.

The site-specific plans and work program shall have the same effect as if included in the text of this agreement. However, the site-specific plans and work program may be modified without amendment of this agreement upon the grantee’s submission of modified site-specific plans and work program and the Executive Officer’s written approval of it. If this agreement and the site-specific plans and work program are inconsistent, the agreement shall control.

If all or any part of the project to be funded under this agreement will be performed by third parties (“contractors”) under contract with the grantee, prior to initiating any request for contractor bids,
WORK PROGRAM (Continued)

the grantee shall submit the bid package to the Executive Officer for review and written approval as to consistency with the purposes of this grant agreement. Upon approval by the Executive Officer, the grantee shall proceed with the bidding process. Prior to final selection of a contractor, the grantee shall submit to the Executive Officer for written approval the names of all contractors that the grantee intends to hire. The grantee shall then comply with the above paragraph regarding submission and approval of a work program prior to implementation. If the grantee retains a public entity or a local Conservation Corps organization to do work under this agreement, the grantee need not solicit bids for the work. If the grantee has previously selected a contractor to conduct work under the prior grant agreement though a bid process, the grantee may continue to use the contractor under this agreement, without the need for additional bid process.

The grantee shall carry out the project in accordance with the approved work program.

COSTS AND DISBURSEMENTS

Upon determination by the Conservancy that all “CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT AND DISBURSEMENT” have been fully met, the Conservancy shall disburse to the grantee, in accordance with the approved project budget, a total amount not to exceed the amount of this grant, as follows:

Disbursements shall be made on the basis of costs incurred to date, less ten percent, upon satisfactory progress in accordance with the approved work program and upon the grantee’s submission of a “Request for Disbursement” form, which shall be submitted no more frequently than monthly but no less frequently than quarterly. Disbursement of the ten percent withheld shall be made as follows:

1. **Project Work Completion – Treatment Season.** The ten percent withheld with respect to any Initial Project Work or Amendment Project Work for any one treatment season shall be disbursed to the grantee upon the grantee’s satisfactory completion of the Initial Project Work or the Amendment Project Work for that treatment season and compliance with the applicable requirements of the “PROJECT OR TREATMENT SEASON COMPLETION” section of this agreement, and upon the Conservancy’s acceptance of the work.

2. **Project Completion.** Any remaining amount of the ten percent withheld shall be disbursed to the grantee upon the grantee’s satisfactory completion of the project and compliance with the applicable requirements of the “PROJECT OR TREATMENT SEASON COMPLETION” section of this agreement, and upon the Conservancy’s acceptance of the project.
COSTS AND DISBURSEMENTS (Continued)

The grantee shall request disbursements by filing with the Conservancy fully executed “Request for Disbursement” forms (available from the Conservancy). The grantee shall include in the forms its name and address, the number of this agreement, the date of the submission, the amount of the request for disbursement, the period during which the work was actually done, and an itemized description, including time, materials, and expenses incurred, of all work done for which disbursement is requested. The forms shall also indicate cumulative expenditures to date, expenditures during the reporting period, and the unexpended balance of funds under the grant agreement.

An authorized representative of the grantee shall sign the form. Each form shall be accompanied by:

1. All receipts and any other source documents for direct expenditures and costs that the grantee has incurred.

2. Invoices from contractors that the grantee engaged to complete any portion of the work funded under this agreement and receipts and any other source documents for costs incurred and expenditures by any such contractor, unless the Executive Officer makes a specific exemption in writing.

3. A supporting progress report summarizing the current status of the project and comparing it to the status required by the work program (budget, timeline, tasks, etc.) including written substantiation of completion of the portion of the project for which the grantee is requesting disbursement.

The Conservancy will reimburse the grantee for expenses necessary to the project when documented by appropriate receipts. The Conservancy will reimburse travel and related expenses at actual costs not to exceed the rates provided in Title 2, Division 1, Chapter 3, Subchapter 1, Article 2 of the California Code of Regulations (“CCR”), except that reimbursement may be in excess of these rates upon documentation that these rates are not reasonably available to the grantee. Reimbursement for the cost of operating a private vehicle shall not, under any circumstance, exceed the current rate specified by the State of California for unrepresented state employees as of the date the cost is incurred. The Conservancy will reimburse the grantee for other necessary expenses if those expenses are reasonable in nature and amount taking into account the nature of the project, its location, and other relevant factors.

The grantee’s failure to fully execute and submit a Request for Disbursement form, including attachment of supporting documents, will relieve the Conservancy of its obligation to disburse funds to the grantee unless and until the grantee corrects all deficiencies.
EQUIPMENT

If approved under a separate work program, the grantee may purchase equipment that is necessary to carry out the project.

Title will vest in the Conservancy to any equipment for which funds are disbursed to the grantee for purchase under this contract (“ISP equipment”).

Throughout the term of this agreement, the grantee shall maintain the equipment in good working condition and pay all costs of operation and maintenance. The grantee shall also comply with all requirements related to equipment purchased with any outside funding. The contractor shall promptly notify the Conservancy if any ISP equipment is damaged, lost, or stolen, and Conservancy may require the grantee to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the Conservancy with no expense to the Conservancy. In the event of theft of any non-expendable equipment, the grantee shall promptly cause a police report to be filed.

The grantee shall utilize equipment purchased under this agreement for the project. The Conservancy may, at its discretion and on written request of the grantee, provide prior written approval for the grantee to use non-expendable equipment for other public programs if such other use does not interfere with the work on the project and provided that the use is consistent with the requirements of the source of funding used for the original purchase of the equipment and compatible with Division 21 of the California Public Resources Code.

The contractor shall maintain an inventory record for each piece of non-expendable ISP equipment, including the date acquired, cost, serial number, model identification, and any other information or description necessary to identify said equipment. A copy of the inventory record must be submitted to the Conservancy on request.

On termination of the contract, the Contractor will provide an inventory of all non-expendable equipment, including information from which to reasonably determine whether the equipment has residual value or not and identifying the source of funding used to acquire the equipment. If the Conservancy determines that there is remaining residual value in the non-expendable equipment, the Conservancy may, at its option: (1) request that the equipment be returned to the Conservancy, with costs incurred by the grantee for such return being reimbursed by the Conservancy; (2) authorize the continued use of the equipment for work to be performed under a different agreement or contract; 3) authorize the continued use of the equipment for Spartina eradication and treatment work; 4) authorize the use or disposition of the equipment under an alternative proposal made by the grantee, provided that the alternative use or disposition is consistent with the requirements of the source of funding used for the original purchase of the equipment and compatible with Division 21 of the California Public Resources Code.
EQUIPMENT (Continued)

“Non-expendable” equipment, as used in this section, means equipment that has a normal life expectancy of one year or more and an approximate unit price of $250 or more or equipment that, although having a unit price of less than $250, is of significant value and is theft-sensitive.

EXPENDITURE OF FUNDS AND ALLOCATION OF FUNDING AMONG BUDGET ITEMS

The grantee shall expend funds in the manner described in the approved project budget for the Initial Project Work or, as applicable, in the approved budget for any Amendment Project Work. The allocation of the Conservancy’s total grant among items contained in the project budget may vary by as much as ten percent with the prior approval of the Executive Officer and upon provision of a revised work program budget to the Executive Officer with the proposed changes identified in the revised documentation. The Conservancy may withhold payment for changes in particular budget items which have not received the approval required above. The total amount of this grant may not be increased except by amendment to this agreement. Any increase in the funding for any particular budget item shall mean a decrease in the funding for one or more other budget items unless there is a written amendment to this agreement.

Any proposed change in the approved project budget must also comply with all requirements imposed by outside funding that will reimburse the grantee for work covered by that budget, which may include the prior approval of the outside funder.

PROJECT OR TREATMENT SEASON COMPLETION

Within sixty days of completion of the project or of all Initial Project Work or Amendment Project Work for any one treatment season, the grantee shall supply the Conservancy with evidence of completion by submitting a final report or a final treatment season report which includes:

1. A “Mitigation Checklist” for treatment work at all sites and subsites signed by the grantee and by a representative of the Conservancy’s ISP contractor, Olofson Environmental Inc., or one of its authorized subcontractors.

2. A final report, detailing the activities undertaken and documenting the completion of the project or the completion of all treatment activities for the treatment season under the site-specific plan(s) and work program, including acreages treated, maps showing the boundaries of areas treated, and photographs documenting the implementation of the required treatment.

3. In the case of a final report, a fully executed final “Request for Disbursement” form.
PROJECT OR TREATMENT SEASON COMPLETION (Continued)

Within thirty days of grantee’s compliance with this paragraph, the Conservancy shall determine whether the project or Initial Project Work or Amendment Project Work for the treatment season has been satisfactorily completed. If the Conservancy determines that the work has been satisfactorily completed, the Conservancy shall issue to the grantee a letter of acceptance of the project or of the Initial Project Work or Amendment Project Work for the treatment season, which shall be deemed complete as of the date of the letter of acceptance.

EARLY TERMINATION, SUSPENSION AND FAILURE TO PERFORM

Before the project is complete, either party may terminate this agreement for any reason by providing the other party with seven days notice in writing and the Conservancy may suspend the agreement upon written notice. In either case, the grantee shall immediately stop work under the agreement and take all reasonable measures to prevent further costs to the Conservancy. The Conservancy shall be responsible for any reasonable and non-cancelable obligations incurred by the grantee in the performance of this agreement prior to the date of the notice to terminate or suspend, but only up to the undisbursed balance of funding authorized in this agreement. Any notice suspending work under this agreement shall remain in effect until further written notice from the Conservancy authorizes work to resume.

If the grantee fails to complete the project as required, or fails to fulfill any other obligations of this agreement prior to the termination date, the grantee shall be liable for immediate repayment to the Conservancy of all amounts disbursed by the Conservancy under this agreement. The Conservancy may, at its sole discretion, consider extenuating circumstances and not require repayment for work partially completed. This paragraph shall not limit any other remedies the Conservancy may have for breach of this agreement.

The parties expressly agree to waive, release and relinquish the recovery of any consequential damages that may arise out of the termination or suspension of this agreement under this section.

The grantee shall include in any agreement with any contractor retained for work under this agreement a provision that entitles the grantee to suspend or terminate the agreement with the contractor for any reason on written notice and on the same terms and conditions specified in this section.

OPERATION AND MAINTENANCE

Upon completion of the project the grantee shall work with the Conservancy’s Invasive Spartina Project to continue control efforts on the project site(s) and shall continue to regularly monitor the
OPERATION AND MAINTENANCE (Continued)

site(s) for re-infestations of invasive Spartina for three years following the completion date for the work under this agreement and shall notify the Conservancy in the event of any re-infestation.

INSPECTION

Throughout the term of the agreement, Conservancy shall have the right to inspect the project area to ascertain compliance with this agreement.

INDEMNIFICATION

The grantee shall be responsible for, indemnify and save harmless the Conservancy, its officers, agents and employees from any and all liabilities, claims, demands, damages or costs resulting from, growing out of, or in any way connected with or incident to this agreement, except for active negligence of the Conservancy, its officers, agents or employees. The duty of the grantee to indemnify and save harmless includes the duty to defend as set forth in Civil Code Section 2778. This agreement supersedes the grantee’s right as a public entity to indemnity (see Gov. Code Section 895.2) and contribution (see Gov. Code Section 895.6) as set forth in Gov. Code Section 895.4.

Nothing in this agreement is intended to create in the public or in any member of it rights as a third party beneficiary under this agreement.

INSURANCE

Throughout the term of this agreement, the grantee shall procure and maintain insurance, as specified in this section, against claims for injuries to persons or damage to property that may arise from or in connection with any activities by the grantee or its agents, representatives, employees, volunteers, or contractors associated with the project undertaken pursuant to this agreement. As an alternative, with the written approval of the Executive Officer, the grantee may satisfy the coverage required by this section in whole or in part through: (a) its contractors’ procurement and maintenance of insurance for work under this agreement, if the coverage otherwise fully satisfies the requirements of this section; or (b) the grantee’s participation in a “risk management” plan, self insurance program or insurance pooling arrangement, or any combination of these, if consistent with the coverage required by this section. The grantee shall maintain property insurance, if required below, throughout the term of this agreement. Any required errors and omissions liability insurance shall be maintained from the effective date through two calendar years after the
completion date. The grantee shall maintain all other required insurance from the effective date through the completion date.

1. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:
   
   a. Insurance Services Office (“ISO”) Commercial General Liability coverage (occurrence Form CG 0001) or ISO Comprehensive General Liability form (1973) or comparable with Broad Form Comprehensive General Liability endorsement.
   
   b. Automobile Liability coverage: ISO Form Number CA 0001, Code 1 (any auto).
   
   c. Workers’ Compensation insurance as required by the Labor Code of the State of California.

2. **Minimum Limits of Insurance.** The grantee shall maintain coverage limits no less than:
   
   a. General Liability:
      
      \[
      \begin{align*}
      \text{($Including\ operations,\ products\ and\ completed\ operations,\ as\ applicable$)} & \quad \$1,000,000\ per\ occurrence\ for\ bodily\ injury, \\
      \text{personal\ injury\ and\ property\ damage.\ If} & \quad \text{If Commercial\ General\ Liability\ Insurance\ or\ other} \\
      \text{form\ with\ a\ general\ aggregate\ limit\ is\ used,\ either} & \quad \text{the\ general\ aggregate\ limit\ shall\ apply\ separately} \\
      \text{the\ general\ aggregate\ limit\ shall\ be\ twice\ the\ required} & \quad \text{to\ the\ activities\ under\ this\ agreement\ or\ the} \\
      \text{occurrence\ limit.} & \quad \text{general aggregate\ limit.} \\
      \end{align*}
      \]
   
   b. Automobile Liability: $1,000,000 per accident for bodily injury and property damage.

3. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the Executive Officer.

4. **Required Provisions.** Each insurance policy required by this section shall be endorsed to state that coverage shall not be canceled by either party, except after thirty days’ prior written notice by certified mail, return receipt requested, has been given to the Conservancy. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
   
   a. The State of California, its officers, agents and employees are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the grantee; and with respect to liability arising out of work or operations...
INSURANCE (Continued)

performed by or on behalf of the grantee including materials, parts or equipment furnished in connection with such work or operations.

b. For any claims related to this agreement, the grantee’s insurance coverage shall be primary insurance as respects the State of California, its officers, agents and employees.

5. Acceptability of Insurers. Insurance shall be placed with insurers admitted to transact business in the State of California and having a current Best’s rating of “B+:VII” or better or, in the alternative, acceptable to the Conservancy and approved in writing by the Executive Officer.

6. Watercraft. If the grantee is to engage in work involving the use of watercraft, the contractor or its subcontractor(s) shall provide and maintain insurance covering injury to person or property, which may include, as appropriate, an endorsement to a Commercial General Liability policy covering non-owned watercraft liability or Protection and Indemnity Insurance or Jones Act coverage. Coverage shall be in a reasonable amount in light of the nature of the activity and shall be verified by certificates of insurance and endorsements and approved by the Executive Officer.

7. Verification of Coverage. The grantee shall furnish the Conservancy with original certificates, in the form attached as Exhibit D to this agreement amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Executive Officer before work commences. The Conservancy may, at any time, require complete, certified copies of all required insurance policies, including endorsements affecting the coverage.

8. Contractors. The grantee shall include all contractors as insureds under its policies or shall require each contractor to provide and maintain coverage consistent with the requirements of this section.

9. Premiums and Assessments. The Conservancy is not responsible for premiums and assessments on any insurance policy.

AUDITS/ACCOUNTING/RECORDS

The grantee shall maintain financial accounts, documents, and records (collectively, “records”) relating to this agreement, in accordance with the guidelines of “Generally Accepted Accounting Principles” (“GAAP”) published by the American Institute of Certified Public Accountants. The records shall include, without limitation, evidence sufficient to reflect properly the amount, receipt, deposit, and disbursement of all funds related to implementation of the project. Time and effort
AUDITS/ACCOUNTING/RECORDS (Continued)

reports are also required. The grantee shall maintain adequate supporting records in a manner that permits tracing from the request for disbursement forms to the accounting records and to the supporting documentation.

Additionally, the Conservancy or its agents may review, obtain, and copy all records relating to performance of the agreement. The grantee shall provide the Conservancy or its agents with any relevant information requested and shall permit the Conservancy or its agents access to the grantee’s premises upon reasonable notice, during normal business hours, to interview employees and inspect and copy books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this agreement and any applicable laws and regulations.

The grantee shall retain the required records for a minimum of three years following the later of final disbursement by the Conservancy, and the final year to which the particular records pertain. The records shall be subject to examination and audit by the Conservancy and the Bureau of State Audits during the retention periods.

If the grantee retains any contractors to accomplish any of the work of this agreement, the grantee shall first enter into an agreement with each contractor requiring the contractor to meet the terms of this section and to make the terms applicable to all subcontractors.

The Conservancy may disallow all or part of the cost of any activity or action that it determines to be not in compliance with the requirements of this agreement.

NONDISCRIMINATION

During the performance of this agreement, the grantee and its contractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, ethnic group identification, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, age (over 40) or sexual orientation (Government Code section 12940). The grantee and its contractors also shall not unlawfully deny a request for or take unlawful action against any individual because of the exercise of rights related to family-care leave (Government Code sections 12945.1 and 12945.2). The grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination, harassment and unlawful acts.

Pursuant to Government Code section 12990, the grantee and its contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and
NONDISCRIMINATION (Continued)

the applicable regulations (California Code of Regulations Title 2, section 7285.0 et seq.). The regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated into this agreement by this reference.

The grantee and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. This nondiscrimination clause shall be included in all contracts and subcontracts entered into to perform work provided for under this agreement.

PREVAILING WAGE AND LABOR COMPLIANCE PROGRAM

Work done under this grant agreement may be subject to the prevailing wage and other provisions of the California Labor Code requirements (see Labor Code sections 1720 et seq.). The grantee shall pay prevailing wage to all persons employed in the performance of any part of the project and otherwise comply with all associated requirements and obligations, if required by law to do so.

This agreement is funded in whole or in part with funds from the “Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006” (“Proposition 84”). Section 75075 of the Public Resources Code imposes on a body awarding any contract for a public works project financed in any part with Proposition 84 funds responsibility for adoption and enforcement of a “labor compliance program” under Labor Code section 1771.5(b). The grantee shall review these statutory provisions and related provisions and regulations to determine its responsibilities.

INDEPENDENT CAPACITY

The grantee, and the agents and employees of grantee, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

ASSIGNMENT

Without the written consent of the Executive Officer, the grantee may not assign this agreement in whole or in part.
TIMELINESS

Time is of the essence in this agreement.

EXECUTIVE OFFICER’S DESIGNEE

The Executive Officer shall designate a Conservancy project manager who shall have authority to act on behalf of the Executive Officer with respect to this agreement. The Executive Officer shall notify the grantee of the designation in writing.

AMENDMENT

As expressly provided in this agreement, no change in this agreement shall be valid unless made in writing and signed by the parties to the agreement. No oral understanding or agreement not incorporated in this agreement shall be binding on any of the parties.

LOCUS

This agreement is deemed to be entered into in the County of Alameda.