

COOPERATIVE AGREEMENT
BETWEEN THE U.S. DEPARTMENT OF THE NAVY (DON) AND
STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD (SWRCB)
TO IMPLEMENT A PROGRAM FOR THE
REIMBURSEMENT OF COSTS
INCURRED IN SUPPORT OF THE
DON'S BASE REALIGNMENT AND CLOSURE (BRAC) PROGRAM,
DON'S INSTALLATION RESTORATION PROGRAM
AND MILITARY MUNITIONS RESPONSE PROGRAM (MMRP)

COOPERATIVE AGREEMENT NUMBER
N62473-11-2-2307

June 2011

Naval Facilities Engineering Command Southwest (NFECSW), San Diego, California

1. **Introduction:** This Cooperative Agreement (hereinafter referred to as the “Agreement” or “CA”), is made by and between the United States Department of the Navy, acting by and through the Naval Facilities Engineering Command, (hereinafter referred to as the “DON”) and the State of California, State Water Resources Control Board (hereinafter referred to as the “State Water Board”), (hereinafter referred to collectively as the “Parties”), who are legally empowered to enter into this Agreement. The State Water Board enters into this Agreement with the DON on behalf of the North Coast Water Board, San Francisco Bay Water Board, Los Angeles Water Board, Lahontan Water Board, Colorado River Basin Board, Santa Ana Water Board, and the San Diego Water Board (hereinafter referred to as “Regional Water Boards”). Attachment A lists Acronyms and Meanings utilized in this CA.
2. **Purpose:** The DON and State Water Board have agreed to enter this Agreement to implement a program, on a reimbursable basis, to carry out the environmental restoration responsibilities at the DON installations identified in Attachment B, pursuant to the respective authorities identified in Paragraph 3 below and in compliance with Enclosure (1) Terms and Conditions.
3. **Authorities:** The DON enters this Agreement pursuant to its authority under the Defense Environmental Restoration Program (“DERP”), 10 U.S.C. §2701, et seq. and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9601, et seq. The State Water Board enters this Agreement pursuant to California Water Code, Division 7, California Health & Safety Code, Div. 20, Chapters 6.5 and 6.8, and CERCLA.
4. **Scope of Program:** The program covers environmental restoration activities at the DON installations identified in Attachment B. The Agreement Period for Year 1 is 01 July 2011 to 30 June 2012 referred to as SFQ 1,2,3,4/FFQ 4,1,2,3 or Agreement Period. For purposes of this Agreement and to clarify the fiscal quarters for the Parties, the acronym SFQ will be

used for “State Fiscal Quarter” and the acronym FFQ will be used for “Federal Fiscal Quarter”. If the Parties agree to extend this Agreement, obligate additional funds, or de-obligate funds, the Agreement will be modified according to Paragraph 17. The following table shows the correlation of the fiscal quarters:

| Quarter | Duration |
|----------------|--------------------------------|
| SFQ1/FFQ4 | 01 July through 30 September |
| SFQ2/FFQ1 | 01 October through 31 December |
| SFQ3/FFQ2 | 01 January through 31 March |
| SFQ4/FFQ3 | 01 April through 30 June |

The Agreement Period for Year 2, 01 July 2012 through 30 June 2013 (SFQ 1,2,3,4/FFQ 4,1,2,3), may be incorporated in the Agreement by mutual agreement of the Parties and evidenced by written bilateral modification.

5. Anti-Deficiency Act: The DON's obligation to pay or reimburse any costs hereunder is subject to the availability of appropriated funds and limited by funds obligated and nothing in this Agreement will be interpreted to require obligations or payments by the Federal Government in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.
6. Accounting for Funds Expended: Pursuant to 32 C.F.R. § 33.20, the State Water Board must establish and maintain fiscal and administrative controls for expending and accounting for all funds provided under this Agreement. The DON has determined that the State Water Board's fiscal and administrative controls are consistent with 32 C.F.R. §22.415 and 33.20, as described in Paragraphs 7 through 10 below, to ensure that the funds are used in compliance with this Agreement and that the costs are reasonable and necessary costs of response consistent with the National Contingency Plan, 40 C.F.R. Part 300, under CERCLA.
7. Allowability of Costs: The State Water Board shall invoice the DON only for activities consistent with 10 U.S.C. § 2701(d) and California Water Code § 13304. The DON agrees to pay the State Water Board's allowable costs, both direct and indirect, incurred pursuant to this Agreement in general, as authorized by Federal and State requirements, including OMB Circular A-87. The State Water Board will submit invoices for “reasonable costs,” as used in Water Code § 13304. The term “reasonable costs” includes expenses incurred by the State Water Board in response to environmental restoration work performed or to be performed by the DON. The allowability of direct and indirect costs will be determined in accordance with OMB Circular A-87.
8. Audits and Recoupment: For the purposes of audits and recoupment, pursuant to 32 C.F.R. §§22.715, 22.825, 33.50, and 33.51 and the OMB Circulars A-87 and A-133, the DON has determined that the State Water Board's fiscal and administrative controls and reporting standards are consistent with the DON requirements.

The DON authorizes the State Water Board to pass through costs incurred by the California Department of Fish and Game (DFG) and the California Department of Public Health (CDPH) on DON installations pursuant to State Inter/Interagency Agreements (State Water

Board/DFG and State Water Board /CDPH). The State Water Board shall obtain and submit to DON supporting documentation, from DFG and CDPH as required to satisfy terms of this CA. The State Water Board is acting as a pass through to accommodate the DON and facilitate efficient invoicing of certain State agencies. The State Water Board is acting as a pass through only and payment of the State Water Board's own costs shall not be affected by this Paragraph.

9. Workload Expectations:

The State Water Board and the DON agree that the "One-Year Joint CA Execution Plans" (Execution Plans), which are comparable to the Appendix E of the DSMOA/Cooperative Agreement, will be based on the installations' current approved Site Management Plan (SMP), for installations having SMPs, to the maximum extent practicable. It is the intent of the Parties that all Execution Plans will have been completed and executed by March 1. The State Water Board shall provide a cost estimate for regulatory oversight based on these Execution Plans.

The Parties also agree that the Execution Plans will be used for identifying Milestones, Tasks, and State Services as applicable to each Party, and will facilitate the measurement of cleanup progress on the sites.

By April 15 the State Water Board shall provide DON a cost estimate for the coming FY in a draft Estimation Letter. The draft Estimation Letter will include the following, in accordance with California Water Section 13304 and 13365 and the State Water Board cost recovery procedures:

- i. A detailed estimate of the work to be performed or services to be provided by the Regional Water Board (available electronically on the EnviroStor website as the Execution Plan, electronic transmittal upon request).
- ii. An estimate of the number of hours and cost to be charged during the upcoming Agreement Period (SFQ 1,2,3,4/FFQ 4,1,2,3) to the installations - Table provided electronically by Regional Water Board Program Manager.
- iii. Billing rates for all individuals and classes of employees expected to engage in that work or service for estimation purposes, actual costs will be invoiced.

The Parties understand that schedules may change, as may the scope of a particular task, such that the agreement upon task and costs is solely for the purpose of assisting the Parties in better communicating, estimating, and defining costs. In addition, the terms of this Paragraph 9 shall not supersede any requirements covered in base specific Federal Facility Site Remediation Agreements or other related cleanup agreements with the State Water Board.

To further enhance communication, "Quarterly Cost Reimbursement Review Meetings" will be held. These meetings will occur after the invoices for each quarter are received and reviewed by DON Representatives. These quarterly meetings may be held in Sacramento, San Diego, or an agreed location within California or the Parties may agree to meet via

teleconference or VTC. The meetings will include review of the Execution Plan as appropriate, the invoice process, rate of disbursement of CA funds, other applicable issues, and progress toward meeting the mutual goal of evaluating the overall success of the cleanup program.

By letter dated April 15, 2011, the State Water Board provided the DON with a total annual cost estimate for FY11-12 based on Execution Plans completed by the DON and the Regional Water Boards in early 2011. The letter provided the estimated hours and costs associated with Water Board regulatory oversight of the Navy facilities in California for the next fiscal year. The hours are based on the estimated work contained in the FY11-12 Joint Execution Plans (JEPs) that were prepared and mutually agreed to by the Navy and Regional Water Board project managers.

The estimated total annual billing charges, as presented in the April 2011 letter, for project oversight, program management, contracts and travel during FY 2011-2012, is approximately \$4,063,785. This includes estimated charges of \$2,048,577 for BRAC, \$1,813,515 for DERA/ER,N and \$12,262 for MRP. The Parties acknowledge and agree these estimates create no obligation on the part of DoN or SWRCB.

10. Funding Estimates for ER,N, MMRP, and BRAC Accounts and Total Obligated On Award:

a. The Agreement Period for Year 1 is 01 July 2011 to 30 June 2012. (SFQ 1,2,3,4/FFQ 4,1,2,3.)

The DON's obligation to pay or reimburse any costs hereunder is subject to the availability of appropriated funds and limited by funds obligated and nothing in this Agreement will be interpreted to require obligations or payments by the Federal Government in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In addition, The State Water Board is not obligated to expend nor is the DON required to pay an amount in excess of the obligated funding for ER,N, MMRP and BRAC as identified in Paragraph 10(b) below unless changed by mutual agreement by bilateral modification.

The following are funding estimates for each funding account, ER,N, MMRP and BRAC, for Year 1, SFQ 1,2,3,4/FFQ 4,1,2,3. The total obligated amount for each funding account shall not be exceeded.

| Funding Account | Agreement Period | Funding Estimates | Total NTE Obligated Amount |
|------------------------|---|--------------------------|---|
| ER, N | SFQ 1/FFQ 4 - 01 July 2011 – 30 Sept 2011 | \$ 375,000.00 | \$ 375,000.00 |
| MMRP | SFQ 1/FFQ 4 - 01 July 2011 – 30 Sept 2011 | \$ 48,125.00 | \$ 48,125.00 |
| BRAC | SFQ 1,2,3,4/ FFQ 1,2,3 4 - 01 July 2011 – 30 June 2012 | \$1,203,420.00 | \$1,203,420.00 |
| Subtotal | | \$1,626,545.00 | \$1,626,545.00 |
| | | | |
| ER,N | SFQ 2,3,4/FFQ 1,2,3 - 1 October 2011 – 30 June 2012 | \$1,399,687.00 | Subject to Availability of Funds and incorporation by written mutual agreement by bilateral modification |
| MMRP | SFQ 2,3,4/FFQ 1,2,3 - 1 October 2011 – 30 June 2012 | \$ 90,691.00 | Subject to Availability of Funds and incorporation by written mutual agreement by bilateral modification |
| SubTotal | | \$1,490,378.00 | |
| Total | | \$3,116,923.00 | \$1,626,545.00 |

In Agreement Period SFQ 1/FFQ 4, the State Water Board shall provide an estimate to the DON no later than 15 September, of costs estimated to be incurred for the period 01 July to 30 September (SFQ 1/FFQ 4) of that Agreement Period, for the ER,N, MMRP, and BRAC accounts.

To ensure that the State Water Board funding estimate remains as accurate as possible with actual invoice amounts throughout the Agreement Period, the parties will closely track the rate of costs incurred and disbursement of each fund type against the obligated total for each Agreement Period and shall, by written mutual agreement by bilateral modification, make adjustments to the obligated total, as appropriate. These adjustments, as necessary, will be made during the July-September timeframe based on the rate of costs incurred for the previous 3 quarters. The Parties will negotiate any required adjustments to the funding accounts as appropriate. An additional review of expenditures will occur on or about September 15 so that a final adjustment can be made before September 30.

The State Water Board shall send actual bi-monthly invoices to the DON, no later than 60 days after the completion of each bi-monthly period.

b. Total Obligated on Award: The following funding is obligated and incorporated in this agreement:

For the period 01 July 2011 through 30 September 2011:

AA 1711111804 KU2E 0252 62470 R 068732 2D 000000 AA1122307ERN \$375,000.00 (ER,N)
AB 1711111804 KU2E 0252 62470 Z 068732 2D 000000 AB1122307ERN \$48,125.00 (MMRP)

For the period of 01 July 2011 through 30 June 2012:

AC 97XXXX0510 EHPR 0252 BRCIR V 068892 2D CV1252 BRCIR1V1198Q \$1,203,420.00
(BRAC)

The State Water Board shall notify the Cooperative Agreement Administrator Representative in writing whenever it has reason to believe the costs it expects to incur in any funding account under this Cooperative Agreement in the next 60 days, when added to all costs previously incurred in that funding account, will exceed 75 percent of the total amount so far obligated in the funding account by the Navy. The notice shall state the estimated amount of additional funds required for the funding account to continue performance for the period of performance specified.

The identified funding estimates for ER,N and MMRP funding accounts for period starting 01 October 2011 through 30 June 2012, (SFQ 2,3,4/FFQ 1,2,3) are subject to the availability of appropriated funds and will be incorporated in the Agreement by mutual agreement of the Parties and evidenced by written bilateral modification.

The State Water Board is not obligated to incur nor is the DON required to pay any amount in excess of the obligated amount for each funding period and each funding account.

11. **Invoice and Reporting:** The State Water Board will submit an accounting and invoices to the DON on a bi-monthly basis, no later than 60 days after the end of each two month period, in sufficient detail to allow the DON to relate the items to the benefits received. Additional details, including daily timesheet personnel data, shall be made readily available upon request. Invoices shall be supplemented with statements of any change in rates and a detailed justification for any such changes. Invoices shall be reviewed for accuracy and appropriateness by a member of the State or Regional Water Board staff who has direct knowledge of the response action. Invoices shall be reasonably consistent with expectations regarding costs, benefits, and outcomes, developed during the meet and confer process, except to the extent site conditions or other factors have changed since the last conference. In lieu of reports required by 32 C.F.R. §33.41, the DON will accept the State Water Board cost recovery documentation format. The DON reserves its right to request additional reports in accordance with 32 C.F.R. Part 33.

12. Payment by DON:

a. The DON agrees to make payment of allowable costs incurred pursuant to the terms of this Agreement in general and Paragraph 9 in particular, within seven (7) days of the date of receipt of a complete and acceptable invoice. If there is any undue delay between the date of receipt of a complete and acceptable invoice and payment DON shall notify the State Water Board within seven (7) days of receipt of the invoice so an accommodation can be made to adjust the payment due date. All payments made by the DON pursuant to this Agreement shall be made payable to the State Water Board and transmitted utilizing Electronic Funds Transfer, Cage Code 1PZ02.

b. In the event the DON contends that any of the costs set forth in the accounting provided pursuant to Paragraph 10 are not allowable or payable, the DON shall notify the appropriate Regional Water Board Program Manager and attempt to informally resolve the dispute with that Program Manager and the corresponding Regional Water Board Supervisor. If the invoice/payment issue pertains only to a portion of the costs included in the invoice, and the costs can be easily determined by DON, the DON shall immediately pay all costs that are undisputed, in accordance with Paragraph 12(a). The State Water Board reserves its right to seek interest on any unpaid costs. Both the DON and the State Water Board agree that the parties should seek resolution of disagreements concerning invoice issues or withheld payments at the lowest administrative level possible below the Regional Water Board Program Manager. However, if agreement on invoice/payment issues cannot be resolved at the initial working levels below the Regional Water Board Program Manager, both the DON and the State Water Board agree the issue will be raised to higher level managers, within each organization, having authority to discuss and resolve the issues before pursuing a formal Dispute, in accordance with Paragraph 13 of this Agreement. The State Water Board views the filing of a notice of dispute as not staying the accrual of interest on any unpaid costs pending resolution of the dispute. If a party to this Agreement desires to formally request dispute resolution with regard to the billing, the party shall file a request for dispute resolution in writing in accordance with Paragraph 13 of this Agreement. Either party may instead choose to terminate its participation pursuant to Paragraph 19.

13. Claims, Disputes, and Appeals

(a) Claims.

Per 32 CFR 22.815, any claims arising out of this agreement must be:

- (1) Submitted in writing to the Grants Officer;
- (2) Specify the nature and basis for the relief requested, and;
- (3) Include all data and relevant facts in support of the claim.

(b) DON Component Claims.

Claims by a DON Component shall be the subject of a written decision by the Grants Officer.

(c) Alternative Dispute Resolution (ADR).

The Parties shall use ADR to the maximum extent practicable, and comply with 32 CFR 22.815 ADR policies and procedures.

(d) Grants Officer Decisions.

(1) Within 60 calendar days after receipt of a written claim, the Grants Officer shall:

(a) Prepare a written decision, which shall include: the reasons for the decision; the relevant facts on which the decision is based; and the identity and mailing address of the cognizant Appeal Authority, and; shall be included in the award file, **or**

(b) Notify the Cooperator of a date when the written decision will be rendered. The notice shall address why additional time is needed.

(2) The Grants Officer's decision is final, unless appealed. In the event of an appeal, the Parties shall endeavor to use ADR procedures to the maximum extent practicable.

(e) Formal Administrative Appeals.

All formal administrative appeals shall comply with the applicable provisions of 32 CFR 22.815(e), Claims, disputes, and appeals.

(1) Appeal Authority. The Assistant Commander for Acquisition is the Appeal Authority to decide formal, administrative appeals under this Cooperative Agreement.

(f) Non-exclusivity of remedies. Nothing in this section is intended to limit the State Water Board's right to any remedy under Paragraph 20.

14. Continuing Obligations During Dispute Resolution: The existence of a dispute regarding cost reimbursement shall not excuse, stay, or suspend any other unrelated compliance obligation or deadline required pursuant to a Federal Facilities Site Remediation Agreement ("FFSRA") or other related cleanup agreement with the State Water Board.

15. Access to and Retention of Records: Pursuant to 32 C.F.R. §33.42, the State Water Board must provide access to records that relate to their performance under this Agreement. Accordingly, the State Water Board agrees to retain all such records for at least three (3) years following completion or termination of this Agreement.

16. The State Water Boards Contracts With Other Entities in Support of Cooperative Agreement Performance:

- a. The State Water Board will use its own procurement procedures, which reflect State and local laws and regulations. California's ongoing compliance with the Department of Defense-State Memorandum of Agreement (“DSMOA”), which was executed on May 31, 1990, is deemed by the DON to satisfy the requirements of 32 C.F.R. § 33.36(b) - (i). The State Water Board must not contract for work performed under this Agreement with any party which is debarred or suspended or is otherwise excluded from, or ineligible for, participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension” and 32 C.F.R. § 33.35 issued there under.
- b. The Parties' contractual obligations are their own exclusively and are not shared in or guaranteed in any manner by any other Party. No Party has an obligation hereunder to assume another Party's contractual obligations in the event that a Party fails or refuses to carry out those obligations.

17. Miscellaneous Terms & Conditions:

- a) Cooperative Agreements with the State Water Board are subject to the requirements of 32 C.F.R. §21.110(b)(2). California's ongoing compliance with the DSMOA is deemed by the DON to satisfy these requirements for purposes of this Agreement.
- b) Modification: This Agreement may be modified only by an instrument in writing signed by the Parties hereto. A sample modification format is provided in Attachment C.
- c) Entire Agreement: This Agreement constitutes the entire Agreement between the Parties. All prior discussions and understandings on this matter are superseded by this Agreement.
- d) Severability: If any provision of this Agreement is held invalid by a court or an administrative body of competent jurisdiction, the remainder of the Agreement will continue in force and effect to the extent it is not inconsistent with such holding. If a court or administrative body of competent jurisdiction renders the entire Agreement invalid, the Agreement will be considered null and void *ab initio*. Any State Water Board costs incurred during the term of this Agreement, not paid as of the date of the adverse ruling, will be pursued outside this Agreement.
- e) Waiver of Breach: If a party waives enforcement, or fails to act promptly to enforce any provisions of this Agreement, such waiver will not automatically extend to any continuation of the breach or to any other or future events of breach.
- f) Notices: Any notice, transmittal, approval, or other official communication made under this Agreement will be in writing and will be delivered by hand, facsimile transmission, electronic mail, or by first class mail to the Cooperative Agreement Administrator’s

Representative and Project Managers at the address or facsimile transmission telephone number set forth in Attachment D as appropriate.

- g) Points of Contact: The Navy's Grants Officer is the Assistant Commander for Acquisition and the Deputy Director for Acquisition, NAVFACENGCOM, and are the only authorized Government agents who can make changes and obligate or de-obligate funds under this Cooperative Agreement. The Grants Officer will delegate administrative responsibilities for this agreement to a Cooperative Agreements Administrator. The Cooperative Agreements Administrator will appoint a Cooperative Agreement Administrator Representative who will assist in managing the daily contractual activities necessary to accomplish the services specified in the Agreement. The Cooperative Agreements Administrator will appoint a Cooperative Agreement Technical Representative who will assist in managing the daily activities necessary to accomplish the services specified in the Agreement. However, the Grants Officer retains authority to (1) increase or decrease the funding estimates and obligated amounts of the Agreement, (2) extend the Agreement Period, (3) suspend or terminate the Agreement in whole or in part, and (4) respond to the grantee on any claim submitted under the Agreement. Copies of these appointment letters will be made available to both parties. The points of contact identified in Attachment D may be changed at any time upon written notification within thirty days of change.

18. Legal Authority: The Parties hereby represent and warrant that they are under no existing or reasonably foreseeable legal disabilities that would prevent or hinder them from fulfilling the terms and conditions of this Agreement. The Parties will promptly notify each other of any legal impediment that arises during the term of this Agreement that may prevent or hinder its fulfillment of its obligations under this Agreement.

19. Termination: Any Party to this Agreement may terminate its involvement in the Agreement with respect to any or all DON installations(s) as set out in Paragraph 4, by giving thirty (30) days notice to the other Parties. In the event this Agreement is terminated, the installations identified in Paragraph 4 may be added to Attachment A of the DSMOA, upon mutual agreement by the Parties.

20 Reservation of Rights: In the event of any of the following, the State Water Board reserves all its rights to take any action (including enforcement) it is entitled to take absent this Agreement, including but not limited to actions to recover past, present, and future costs incurred at the installations as set out in Paragraph 4, under CERCLA, Health & Safety Code §25187.2 and 25360.1, or any other applicable State or federal statute or common law:

- a) Upon written notice as provided in paragraph 13, failure, due to the lack of appropriated funds, of the DON to fulfill its obligations under this Agreement, a related FFSRA, or other related cleanup agreement with the State Water Board or Regional Water Board;

- b) The State Water Board 's determination that the DON has failed or refused to reimburse the State Water Board from appropriated federal funds, for costs incurred in connection with the subject matter of this Agreement; or
- c) The State Water Board 's determination that the DON has otherwise failed or refused to reimburse costs claimed by the State Water Board in the accounting pursuant to Paragraph 12.
- d) It is acknowledged and understood by the parties that the foregoing “Reservation of Rights” is a recitation of unilateral determinations of the State Water Board and have no obligatory or binding effect on the DoN concerning disputed costs.

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IN WITNESS WHEREOF, and intending to be legally bound hereby the parties to the Cooperative Agreement, by their authorized representatives, hereby cause this Agreement to be executed.



THOMAS HOWARD
Executive Director
State Water Resources Control Board
Sacramento, California

Date: 6/29/2011



ROBERT M. GRIFFIN, J.R.
Assistant Commander for Acquisition
Naval Facilities Engineering Command
Washington Navy Yard, D.C.

Date: 6/30/11

Enclosure (1)

**COOPERATIVE AGREEMENT TERMS AND CONDITIONS
(AUGUST 2007 Rev 5)**

DoDGARs Part 22:

<http://www.dtic.mil/whs/directives/corres/pdf/321006r22apap.pdf>

DoDGARs Part 33:

<http://www.dtic.mil/whs/directives/corres/pdf/321006r33p.pdf>

OMB Circulars:

<http://www.whitehouse.gov/omb/circulars/>

ARTICLES

1. **Order of Precedence**
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30. **Cost Share or Match ***
31. **Resource Conservation and Recovery Act**

* Refer to DoDGARS, Part 22, appendices A-C for applicable modifications and requirements.

1. Order of Precedence

This Cooperative Agreement is subject to the laws and regulations of the United States. Any inconsistency or conflict in the terms and conditions specified in this Cooperative Agreement shall be resolved according to the following order of precedence:

- (a) The Federal statute authorizing this award, or any other Federal statutes directly affecting performance of this Cooperative Agreement.
- (b) Department of Defense Grant and Assistance Regulations (DoDGARs) 32 CFR Part 33, Uniform Administrative Requirements for Grants and Agreements to State and Local Governments.
- (c) These General Terms and Conditions.
- (d) Other terms and conditions contained within this Cooperative Agreement and any attached schedules.

2. Statutes and Regulations

This Cooperative Agreement is subject to the laws and regulations of the United States that apply to assistance instruments including Chapter 63 of U.S. Code Title 31. DoDGARs Part 33 is hereby incorporated into this Cooperative Agreement by reference. The following OMB circulars, as appropriate, are also incorporated by reference into this Cooperative Agreement:

- (a) A-87, “Cost Principles for State, Local, and Indian Tribal Governments”
- (b) A-102, “Grants and Cooperative Agreements with State and Local Governments,”
- (c) A-133, “Audits of States, Local Governments, and Non-Profit Organizations”

3. Cost Principles and Audit

DoDGARs Part 33, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and the OMB Circulars below apply specifically to the Cooperator. The Cooperative Agreement shall be consistent with these authorities:

- (1) A-87, “Cost Principles for State, Local, and Indian Tribal Governments”
- (2) A-133 “Audits of States, Local Governments, and Non-Profit Organizations”

Cooperator shall submit a copy of OMB Circular A-133 audit reports to the agency Inspector General (IG) and to DoD (IG).

4. Record Retention and Access Requirements

All financial and programmatic records, supporting documents, statistical records, and other records of Cooperators or sub-Cooperators which are:

- (i) Required to be maintained by the terms of this part, program regulations or the Cooperative agreement, or
- (ii) Otherwise reasonably considered as pertinent to program regulations or the Cooperative agreement.

5. Modification of Cooperative Agreement

The only method by which this Cooperative Agreement can be modified is by a formal, written and signed modification. Administrative modification(s) to the Cooperative Agreement may be accomplished unilaterally by the signature of designated Cooperative Agreement Administrative Representative or Awarding Officer. Changes to the express clauses or terms of the Cooperative Agreement affecting price, quality, quantity or delivery of the Cooperator's duties shall be the subject of a bilaterally executed modification. No other communications, whether oral or in writing, shall modify this Cooperative Agreement.

6. Prior Approvals and Changes

Any program changes to the approved project must comply with 32 CFR 33.30.

7. Allowable Costs

Cooperative agreement funds may be applied only to those costs allowed under 32 CFR 33.22 and OMB Circular A-87.

8. Overpayment and Earned Interest

Overpayment. Within ninety (90) days after the end date of the Cooperative Agreement, any overpayment of funds shall be remitted to the Cooperative Agreement Administrator Representative at the Administrative Office on the Award/Modification document, by check made payable to the Treasury of the United States. An overpayment represents the difference between allowable actual expenditures and total disbursements received by the Cooperator.

9. Future Funding

The Government's legal funding obligation is limited to the amount shown as the "Total Obligated on Award," section of the Cooperative Agreement document.

10. Subagreements

Cooperator shall comply with 32 CFR 33.37 in awarding any subagreement.

11. Officials Not to Benefit

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Cooperative Agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.

12. Hatch Act

The Cooperator agrees to comply with the Hatch Act (5 U.S.C. 1501-1508 and 7324 - 7328), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

13. Lobbying

By signing and submitting this proposal, the Cooperator is providing the certification at Appendix A to 32 CFR Part 28 regarding lobbying.

14. Environmental Standards

By accepting funds under this Cooperative Agreement, the Cooperator assures that it will:

(a) Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 comp., p. 799] and Environmental Protection Agency (EPA) rules at Subpart J of 40 CFR Part 32.

(b) Identify to the Cooperator agency any impact that this agreement may have on:

(1) The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and to prepare Environmental Impact Statements or other required environmental documentation. In such cases, the Cooperator agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.

(2) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501, et seq.), concerning preservation of barrier resources.

(3) Any existing or proposed component of the National Wild and Scenic Rivers system, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).

15. Nondiscrimination

By accepting funds under this Cooperative Agreement, the Cooperator assures that it will comply with applicable provisions of the following national policies prohibiting discrimination:

(a) On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DoD regulations at 32 CFR Part 195

(b) On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964-1965 Comp., p.339], as implemented by Department of Labor regulations at 41 CFR part 60.

(c) On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.).

(d) On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) as implemented by Department of Health and Human Services regulations at 45 CFR Part 90.

(e) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR Part 41 and DoD regulations at 32 CFR Part 56.

16. Cargo Preference

The Cooperator agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulations at 46 CFR 381.7, which require that at least 50 percent of equipment, materials or commodities procured or otherwise obtained with U.S. Government funds under this Cooperative agreement, and which may be transported by ocean vessel, shall be transported on privately owned U.S.-flag commercial vessels, if available.

17. Preference for U. S. Flag Air Carriers

Travel supported by U.S. Government funds under this Cooperative agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

18. Profit or Fee

In accordance with 32 CFR 22.205(b), no fee or profit may be charged to this Cooperative agreement.

19. Claims, Disputes, and Appeals**(a) Claims.**

Per 32 CFR 22.815, any claims arising out of this agreement must be:

- (1) Submitted in writing to the Grants Officer;
- (2) Specify the nature and basis for the relief requested, and;
- (3) Include all data and relevant facts in support of the claim.

(b) DOD Component Claims.

Claims by a DOD Component shall be the subject of a written decision by the Grants Officer.

(c) Alternative Dispute Resolution (ADR).

The Parties shall use ADR to the maximum extent practicable, and comply with 32 CFR 22.815 ADR policies and procedures.

(d) Grants Officer Decisions.

(1) Within 60 calendar days after receipt of a written claim, the Grants Officer shall:

(a) Prepare a written decision, which shall include: the reasons for the decision; the relevant facts on which the decision is based; and the identity and mailing address of the cognizant Appeal Authority, and; shall be included in the award file, **or**

(b) Notify the Cooperator of a date when the written decision will be rendered. The notice shall address why additional time is needed.

(2) The Grants Officer's decision is final, unless appealed. In the event of an appeal, the Parties shall endeavor to use ADR procedures to the maximum extent practicable.

(e) Formal Administrative Appeals.

All formal administrative appeals shall comply with the applicable provisions of 32 CFR 22.815(e), Claims, disputes, and appeals.

(1) Appeal Authority. The Assistant Commander for Acquisition is the Appeal Authority to decide formal, administrative appeals under this Grant.

(f) Non-exclusivity of remedies.

Nothing in this section is intended to limit a Cooperator's right to any remedy under the law.

20. Controlled Unclassified Information

The parties understand that information and materials provided pursuant to or resulting from this Cooperative agreement may be export controlled, sensitive, for official use only, or otherwise protected by law, executive order or regulation. The Cooperator is responsible for compliance with all applicable laws and regulations. Nothing in this Cooperative agreement shall be construed to permit any disclosure in violation of those restrictions.

21. Debarment and Suspension

Cooperators shall comply with the requirements of DoDGARs Part 25, Subpart C, "Government-Wide Suspension and Debarment (Nonprocurement)", 32 CFR Part 25, Subpart C. The Cooperator shall also include a similar term or condition in any lower-tier covered transactions, as required by DoDGARs Part 25, Subpart B, 32 CFR Part 25 (2004).

22. Drug Free Workplace

By accepting funds under this Cooperative Agreement, the Cooperator agrees to comply with the "Government -Wide Drug-Free Workplace (Grants)" requirements specified by DoDGARS Part 26, Subpart B (or Subpart C, if the Cooperator is an individual) of 32 CFR Part 26 (2004), which implements Secs. 5151-5160 of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701, et. seq.).

23. Standards for Financial Management Systems

By accepting funds under this Cooperative agreement, the Cooperator agrees to maintain a financial management system that complies with 32 CFR 33.20.

24. Payment

Cooperator shall submit any request for payment in accordance with 32 CFR 33.21 and 33.41 Payment will be made in accordance with 32 CFR 33.21.

[NOTE: **For any advance payment** the Cooperator must maintain or demonstrate the willingness to maintain the conditions set forth at 33 CFR 33.21 (c). Include Cooperator is authorized to be paid in advance under the conditions set forth at 33 CFR 33.21 (c).

Reimbursement is the preferred method when the requirements in 32 CFR 33.21(d) cannot be met. Cooperator is authorized reimbursements under the conditions set forth at 32 CFR 33.21(d).

25. Procurement

Cooperator's system for acquiring goods and services under this Cooperative Agreement shall comply with 32 CFR 33.36, Procurement.

26. Property

Title shall vest in, and Cooperator shall manage, property under this Cooperative agreement in accordance with 32 CFR 33.31 through 33.34.

27. Reports

Cooperator shall maintain and submit reports in accordance with 32 CFR 33.40, Monitoring and Reporting Program Performance, and 32 CFR 33.41, Financial Reporting.

28. Termination and Enforcement

This award is subject to 32 CFR 33.43, Enforcement, and 33.44, Termination for Convenience.

29. After-Award Requirements

Closeouts, subsequent adjustments, continuing responsibilities, and collection of amounts due are subject to the requirements in 32 CFR 33.50 through 33.52.

30. Cost Share or Match

Any cost share or cost match agreements shall comply with 32 CFR 33.24.

31. Resource Conservation and Recovery Act

Cooperator shall comply with the requirements contained in 32 CFR 32.49.

[End of Items]

Attachment A

ACRONYMS AND MEANINGS

| Acronym | Meaning |
|----------------|---|
| ACRN | Accounting Classification Reference Number |
| Agreement | Cooperative Agreement |
| BRAC | Base Realignment and Closure |
| CA | Cooperative Agreement |
| CDPH | California Department of Public Health |
| CERCLA | Comprehensive Environmental Response, Compensation, and Liability Act |
| DERP | Defense Environmental Restoration Program |
| DFG | Department of Fish and Game |
| DON | Department of the Navy |
| DSMOA | Defense-State Memorandum of Agreement |
| ER,N | Environmental Restoration, Navy |
| FFQ | Federal Fiscal Quarter |
| FFY | Federal Fiscal Year |
| FY | Fiscal Year |
| JEP | Joint CA Execution Plans |
| MMRP | Military Munitions Response Program |
| NTE | Not to Exceed |
| Party/Parties | Department of the Navy and State Water Regional Control Board |
| SFQ | State Fiscal Quarter |
| SFY | State Fiscal Year |
| SWRCB | State Water Regional Control Board |

Attachment B

DON INSTALLATIONS

16521 Alameda Naval Air Station
 16513 Naval and Marine Corps Reserve Center, Alameda
 16529 Alameda Naval Supply Center (NSC) Annex
 16562 Barstow Marine Corps Logistics Base (MCLB)
 16563 Bridgeport Marine Corps Mountain Warfare Training Center (MCMTWTC)
 16592 Camp Pendleton Marine Corps Base (MCB)
 16561 China Lake Naval Weapons Center (NWC)
 16571 Chocolate Mountain Naval Weapons Range (NWS)
 16524 Concord Naval Weapons Station – Inland Area (NWS)
 16556 Concord Naval Weapons Station – Inland Area (NWS) (MMRP)
 16593 Coronado Naval Amphibious Base (NAVPHIBASE)
 16518 Corona Naval Weapons Station (NWS)
 16551 Crows Landing Naval Auxiliary Landing Field (NALF)
 16554 Dixon Naval Reserve Training Facility (NRTF)
 16572 El Centro Naval Air Facility (NAF)
 16559 El Centro Naval Air Facility (NAF) (MMRP)
 16582 El Toro Marine Corps Air Station (MCAS)
 16559 El Toro Marine Corps Air Station (MCAS) (MMRP)
 16532 Fallbrook Naval Weapons Station (NWS)
 16558 Fallbrook Naval Weapons Station (NWS) (MMRP)
 16525 Hunters Point Naval Shipyard (NSY)
 16533 Imperial Beach Naval Auxiliary Landing Field (NALF), San Diego Naval
 Auxiliary Landing Field – (NALF / AUXLNDFL)
 16552 Lemoore Naval Air Station (NAS)
 16541 Long Beach Naval Complex
 16523 Mare Island Naval Shipyard (NSY)
 16534 Marine Corps Air Station, Miramar (MCAS)
 16555 Marine Corps Air Station, Miramar (MCAS) (MMRP)
 16544 Marine Corps Recruit Training Center, Pico Rivera
 16527 Moffett Field Naval Air Station (NAS)
 16570 Morris Dam Naval Ocean Systems Center (NOSC)
 16599 Naval Base San Diego (NBSD)
 16590 Naval Base San Diego (NBSD) (MMRP)
 16548 Naval Facilities Engineering Services Center, Port Hueneme (NCEL)
 16515 Naval Facilities Engineering Services Center, Port Hueneme (NCEL) (MMRP)
 16543 Naval Marine Corps Reserve Center, Los Angeles
 16549 North Island Naval Air Station (NAS)
 16528 Novato DoD Housing
 16549 Pasadena Marine Corps Reserve Center (MCRC)
 16547 Point Mugu, Naval Air Weapons Station (NAWS)
 16542 Point Mugu, Naval Air Weapons Station (NAWS) (MMRP)
 16539 Point Loma Naval Complex (SPAWAR PLC)

16574 Salton Sea Naval Test Site
16545 San Clemente Island Naval Auxiliary Landing Field
16517 San Clemente Island Naval Auxiliary Landing Field (MMRP)
16589 San Diego Fleet and Industrial Supply Center (FISC/NSC)
16536 San Diego Fleet Combat Training Center, Pacific (FCTCPAC)
16595 San Diego Marine Corps Recruit Depot (MCRD)
16596 San Diego Naval Computer and Telecommunications Station (NCTS) (Silver Strand Training Complex)
16519 San Diego Naval Space Command
16531 San Diego Naval Training Center (NTC - DERP)
16591 San Diego Naval Training Center (NTC - BRAC 93)
16538 San Diego NAVSUBASE
16537 San Diego NISE-West
16546 San Pedro Defense Fuel Supply Point (DFSP)
16583 Seal Beach Naval Weapons Station (NWS)
16553 Stockton Naval Communications Station (NCS)
16522 Treasure Island Naval Station (NAVSTA)
16581 Tustin Marine Corps Air Station (MCAS)
16573 Twenty Nine Palms Marine Corps Air Ground Combat Center (MCAGCC)
16575 Twenty Nine Palms Marine Corps Air Ground Combat Center (MCAGCC) (MMRP)
16597 Warner Springs Survival Evasion Resistance and Escape Camp (SEREC)

Attachment C – Sample Modification
MODIFICATION

United States Navy
Naval Facilities Engineering Command, HQ
1322 Patterson Avenue, SE, Ste 1000
Washington Navy Yard, D.C. 20374

Cooperative Agreement No. XXXX
Effective Date: XXXXX
Modification No. XXXX

AWARDEE: STATE OF CALIFORNIA
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814-3805
CAGE Code: 1PZ02

AUTHORITY: 10 U.S.C. Section 2701 (d)

COOPERATIVE AGREEMENT MODIFICATION

Specific portions of the Agreement are hereby modified as follows, and all other portions remain in full force:

- 1. The purpose of this modification is to extend the Agreement Period
- 2. The funding estimates for (ER, N, MMRP, or BRAC) is (increased/decreased) by \$xxxxxx from \$xxxxxx to \$xxxxxx (unchanged).
- 2. The total obligated amounts for (ER, N, MMRP, or BRAC) is (increased/decreased) by \$xxxxxx from \$xxxxxx to \$xxxxxx (unchanged).
- 3. Accounting and Appropriation Data – For billing purposes refer to:

E,R, N - BC ##### \$xxxxx. Document Number
N#####.

IN WITNESS WHEREOF, and intending to be legally bound hereby the parties to the Cooperative Agreement, by their authorized representatives, hereby cause this Agreement to be executed.

THOMAS HOWARD
Executive Director
State Water Resources Control Board
Sacramento, California

Date: _____

ROBERT M. GRIFFIN, J.R. or (ROBERT SMITH)
Assistant (or Deputy Assistant) Commander for Acquisition
Naval Facilities Engineering Command
Washington Navy Yard, D.C.

Date: _____

Attachment D

POINTS OF CONTACT**Account & Project Managers:
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Remittance address:

State Water Resources Control Board
 Electronic Funds Transfer
 CAGE Code 1PZ02
 DUNS: 808321913

COOPERATIVE AGREEMENT
ADMINISTRATOR REPRESENTATIVE:

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Contracting Officer
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