



## PACIFIC STATES MARINE FISHERIES COMMISSION

205 S.E. SPOKANE STREET, SUITE 100 • PORTLAND, OREGON 97202-6413

PHONE: (503) 595-3100 • FAX: (503) 595-3232

www.psmfc.org

### GRANTEE AGREEMENT NO. AWI-CCR-9 Revised FOR CALIFORNIA ADAPTIVE WATERSHED IMPROVEMENT Fish Passage Design and Engineering Workshops

This Agreement is made, effective as of July 1, 2006, by and between Pacific States Marine Fisheries Commission ("PSMFC") and FishNet 4C/Marin County. The PSMFC and the Grantee agree as follows:

#### SECTION 1 SERVICES

1.1 Services. The Grantee represents that it is in all ways qualified and duly licensed to practice its profession in the State of California. In performing Grantee services for PSMFC, the Grantee acts as an independent Grantee. Neither the Grantee nor any of its employees are or shall be deemed to be employees or agents of PSMFC. The Grantee shall perform its services for PSMFC in a good and competent manner and shall provide all services in full compliance with the terms and conditions of this agreement, exercising skill and care which is consistent with good quality practice. The Grantee shall be responsible to see that its Grantee services are performed in full compliance with all applicable federal, state, and local laws, regulations and codes in effect at the time of the rendering of Grantee services.

1.2 Scope of Services. The Grantee's services shall include:

See *Exhibit A* attached.

1.3 Time of Performance. The Grantee's Services shall commence on or about July 1, 2006, and unless earlier terminated in accordance with Section 3 below, shall conclude on or before December 31, 2007.

#### SECTION 2 COMPENSATION OF GRANTEE

2.1 Compensation.

2.1.1 Rates. PSMFC will pay to the Grantee, for services furnished in compliance with the terms of this Agreement, at the rates specified in the estimated budget (*Exhibit B*), which is attached to this Agreement and incorporated herein. **All invoices must be received by January 15, 2008.**

2.1.2 Reimbursable Expenses. PSMFC will reimburse substantiated, reasonable and necessary out-of-pocket expenses which are directly chargeable to the services described in Section 1 above, and which, but for those services, would not have been incurred. These expenditures include: transportation, communications, copying, postage, telephone and special materials and supplies required during the progress of the work. The Grantee shall include its actual costs for such out-of-pocket expenses in its billing(s) and provide PSMFC with

GRANTEE AGREEMENT NO. AWI-CCR-9

Page 1

sufficient documentation to substantiate each expense, if so requested.

2.1.3 Equipment. For the purposes of this agreement, "equipment" shall be defined as all moveable articles of nonexpendable personal property which have: 1) a normal useful life, including extended life due to repairs of four (4) years or more; 2) an identity which does not change with use, i.e., is not consumed by use or converted by fabrication into some other form of property; and 3) a unit cost of \$500.00 or more.

Any equipment and any nonexpendable materials, supplies, or property of any kind purchased with funds provided by CDFG under this grant, and not fully consumed in the performance of the Grant, shall become the property of CDFG or disposed of pursuant to instruction from CDFG at the termination of the Grant.

The Grantee shall keep adequate and appropriate records of all equipment purchased with Grant funds, including purchase price, description of the item, serial number, model number and location where equipment will be used during the term of this Grant.

## 2.2 Billing.

2.2.1 Services. For services and for reimbursables, the Grantee shall submit progress and final original billing invoices, as specified in *Exhibit C*, to the Department of Fish and Game (DFG) Project Manager (specified in *Exhibit A*.) An additional invoice copy shall be sent to PSMFC; Attention: Kristen Kanahele. These billing invoices shall contain sufficient detail and support documentation to enable PSMFC to determine the services which were rendered and the reimbursables for which the Grantee made payment preceding the billing invoice.

2.2.2 Payment. The Grantee shall submit to PSMFC for approval a statement itemizing all services and reimbursable expenses incurred. The Grantee shall mail all original billings to the DFG Project Manager listed in the Statement of Work. Grantee shall mail an additional invoice copy to PSMFC; Attention: Kristen Kanahele. The original invoice, once approved by the DFG Project Manager, will be forwarded to PSMFC. Payment of any invoice will be made only after receipt of a complete, and accurately addressed invoice. PSMFC reserves the right to withhold payment of any disputed amounts for which it has given the Grantee notice, after receipt of Grantee's billing, that the charges are in dispute.

2.3 Records. Upon PSMFC's request, the Grantee shall make available to PSMFC any time records, records of payment for any services, records of billings and payment of reimbursables and any other documents relating to charges, costs and expenses.

2.4 Not To Exceed Price. Payment for all services and reimbursables shall, under no circumstances, without the prior express written consent of PSMFC, exceed \$25,000.00 (See Exhibit B).

## SECTION 3 TERMINATION

3.1 Termination for Default. The failure of the Grantee or PSMFC to fully conform with all the terms and conditions of this Agreement shall constitute a default. If the Grantee or PSMFC has failed to cure this default within five (5) business days after receipt of a notice specifying the default, the Grantee or PSMFC, in addition to all other remedies available to it, may terminate this Agreement. In the event of termination for default of the Grantee, PSMFC may have the work taken over and completed by a Grantee of its own choosing. The

Grantee shall be responsible to PSMFC for any additional costs caused to PSMFC by reason of this completion by PSMFC. Upon termination or default by PSMFC, the Grantee may suspend performance of services under this Agreement. In the event of this suspension of services, the Grantee shall have no liability to PSMFC for delay or damage caused PSMFC because of such suspension of services and the Grantee shall be compensated for service properly performed prior to termination, together with reimbursable expenses incurred prior to termination.

3.2 Termination for Convenience. PSMFC may terminate this Agreement without cause upon twenty (20) days written notice. Upon receipt of notice of termination, the Grantee shall immediately cease performing services. In the event of termination of this Agreement in accordance with this paragraph, the Grantee's sole compensation shall be for services properly performed to the date of the receipt of notice of termination, including reimbursable expenses incurred prior to notice of termination.

#### **SECTION 4** **COMPLETION OF WORK**

4.1 Final Report. On or before the termination date of this agreement, it will be the responsibility of the Grantee to submit to the Project Manager for approval one (1) reproducible master and one (1) copy of the final report containing the results of the work performed. The copy may be either a hard copy or a *Microsoft Word* compatible document on 3.5 inch floppy disk(s) or CD. The report shall include, but not necessarily be limited to, information consisting of: (1) the grant agreement number P0510501, (2) location of work – show project location using U.S.G.S. 7.5 minute topographical map or appropriately scaled topographical map, (3) specific project access using public and private roads and trails, and landowner name and address should be included, (4) a description and analysis of the restoration and planning techniques used, (5) a detailed description of the results of the project, including specifics e.g. miles of stream habitat improved or opened to fish, cubic yards of sediment saved, linear feet of stream bank protected, etc., (6) dates of work and the number of person hours expended, (7) labeled before and after photographs of any restoration activities and techniques, and (8) total of each fund source expended to complete the project, breaking down Grant dollars and any other funding, whether in dollars or in-kind services.

4.2 All habitat improvements will be done in accordance with techniques described in the *California Salmonid Stream Habitat Restoration Manual* (Flosi, et al, 1998).

4.3 The Grantee will acknowledge the participation of the Department of Fish and Game, *Fishery Restoration Grant Program* on any signs, flyers, or other types of written communication or notice to advertise or explain projects included in the Adaptive Watershed Improvement Project(s) 2005.

#### **SECTION 5** **INDEMNITY**

5.1 To the full extent permitted by applicable law, the Grantee agrees to defend, indemnify and hold harmless PSMFC, its officers, and employees from any damage, liability or cost (including reasonable attorney fees incurred in establishing the right to indemnification, attorney fees and costs of defense) arising out of or due to:

5.1.1 Negligent acts, errors or omissions of the Grantee in performance

of services in connection with or incident to this Agreement;

5.1.2 Any failure of the Grantee to comply with current applicable laws, ordinances, rules, regulations, orders, licenses, permits or other requirements of any governmental authority with jurisdiction: and

5.1.3 Any failure of the Grantee to secure and maintain insurance as required by this Agreement.

## **SECTION 6**

### **INSURANCE**

6.1 Throughout the term of this Agreement, the Grantee shall maintain in effect:

6.1.1 Worker's Compensation Insurance as required by State law, including Employers' Liability Insurance for all employees of the Grantee with the below listed minimum limit per accident (Not required for sole proprietors). If there is an exposure for injury to the Grantee's employees under the United States Longshoremen and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, or any similar laws, regulations or statutes, coverage shall be included for such injuries or claims.

6.1.2 Commercial General Liability Insurance covering all operations by or on behalf of the Grantee, on an occurrence basis, against claims for personal injury (including bodily injury and death) and property damage (including loss of use) with the below listed minimum limit per occurrence for bodily injury, personal injury and property damage.

6.1.3 Automobile Liability Insurance against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, non-owned and hired vehicles with the below listed minimum limit per accident for bodily injury and property damage.

6.2 Before beginning work for PSMFC, the Grantee shall provide to PSMFC written proof of compliance with the requirements of this Section. Upon written request, the Grantee shall supply to PSMFC a copy of each insurance policy currently in effect, and shall obtain any insurance, additional to that specified above, which PSMFC may request. The cost of any insurance, additional to that specified above, which PSMFC requests, shall be reimbursed by PSMFC.

6.3 On the policies listed in Paragraphs 6.1.1, 6.1.2 and 6.1.3 above insurance shall be primary and not excess to or contributing with any insurance or self insurance maintained by PSMFC. The minimum limits mentioned in Sections 6.1.1, 6.1.2 and 6.1.3 above shall be One Million Dollars and No/100 (\$1,000,000.00) for any one person, One Million Dollars and No/100 (\$1,000,000.00) for bodily injury or death of any number of persons in any one occurrence, and One Million Dollars and No/100 (\$1,000,000.00) for property damage in any one occurrence.

## **SECTION 7**

### **TAXES**

The Grantee shall be exclusively liable for the payment to the appropriate governmental authority of all required contributions and taxes, including taxes imposed under the provisions of any unemployment insurance, Social Security or pension plan insofar as the taxes pertain to the work performed under this Agreement.

## **SECTION 8**

### **NOTICES**

Any notice provided for or concerning this Agreement shall be in writing. Notice shall be considered given either when delivered in person to the recipient or upon receipt by registered U.S. Mail or receipt of transmission by electronic facsimile machine to the following address:

#### **NOTICE TO PSMFC:**

Pacific States Marine Fisheries Commission  
205 SE Spokane Street Suite 100  
Portland, OR 97202-6413  
Attention: Kristen Kanahele  
(503) 595-3227 kristen\_kanahele@psmfc.org

#### **NOTICE TO GRANTEE:**

County of Marin  
3501 Civic Center Drive, Room 325  
San Rafael, CA 94903  
Attn: Lisa DeCarlo

## **SECTION 9**

### **COMPLIANCE WITH LAWS/ORDINANCES/REGULATIONS**

The Grantee shall in performance of its services, observe and comply with all laws, ordinances and regulations of all federal, state, local and city government that may in any manner affect the performance of this Agreement.

## **SECTION 10**

### **ASSIGNMENT OF RIGHTS**

The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

## **SECTION 11**

### **GOVERNING LAW**

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the state of California.

## **SECTION 12**

### **NO WAIVER**

The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms

and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

**SECTION 13**  
**ATTORNEY FEES**

In the event that litigation or other proceedings arise in relation to this Agreement, the substantially prevailing party shall be entitled to recover all costs of suit and collection, including but not limited to, reasonable attorney fees.

**SECTION 14**  
**EFFECT OF PARTIAL INVALIDITY**

The invalidity of any portion of this Agreement may not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the removal of the invalid provision.

**SECTION 15**  
**MODIFICATION OF AGREEMENT**


Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if placed in writing and signed by an authorized representative of each party.

**SECTION 16**  
**ENTIRE AGREEMENT**

This Agreement shall constitute the entire Agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement. The undersigned represent that they each are authorized to execute this Agreement respectively on behalf PSMFC and the Grantee.

DATED this 8<sup>th</sup> day of December, 2006

**PACIFIC STATES MARINE FISHERIES  
COMMISSION**

By 

Title Fiscal Manager

**GRANTEE**

By \_\_\_\_\_

Title \_\_\_\_\_

EXHIBIT A  
STATEMENT OF WORK  
Fish Passage Design & Engineering Workshops

Under the direction of the Grantor, and under the following conditions and terms, the Grantee will:

1. Project Location: Latitude/Longitude: N/A  
Township/Range/Section: N/A

2. STATEMENT OF WORK

This project would develop and implement two fish passage design and engineering workshops targeting county staff with the FishNet 4C counties of Monterey, Santa Cruz, San Mateo, Marin, Sonoma, and Mendocino. All of these counties are working to design and construct fish passage barrier modification or removal projects, and this type of training would be very beneficial to them in developing successful projects. Techniques for retrofitting existing structures are constantly evolving based on the lessons learned from previous projects. The team assembled for these workshops will have the skills and experience needed to help build county staff capacity to create innovative fish passage project designs.

These workshops will build on the success of the workshop presented by the Five Counties Salmonid Conservation Program (5C) in Ukiah in March 2006. There was a long waiting list of people who could not attend the 5C workshop because of space constraints, including many staff from the FishNet counties, as well as DFG and Caltrans staff. Inclusion of DFG staff in these workshops is vital as they are partners on many county projects, as both the funding source and as project managers, conducting monitoring throughout project construction. Caltrans staff are important partners as their structures are often the lower-most barrier on streams where the Counties are addressing fish passage barriers. There were approximately 25 additional individuals who did not attempt to register, so were not documented on the waiting list, as they had learned the workshop was already full from contacting instructors. As space allows, we would also like to extend invitations to Resource Conservation District and city staff, as they are often partners with the counties or work in the same watersheds where county projects are implemented. Other valuable participants would be staff from local watershed groups and non-profit organizations who are also involved in implementing fish passage design and implementation projects.

The timing of these workshops is critical because the FishNet Counties are poised to begin design on many fish passage projects funded by the DFG 2005-2006 Fisheries Restoration Program Grants and to follow-up on the interest generated by the 5C training. We are prepared to organize these workshops and implement them in fall 2006 or early spring 2007, depending on the preference of county staff. In order to implement the workshops on this ambitious schedule, the available time to procure funding is shorter than what could be achieved through the Fisheries Restoration Grant Program. We are also seeking

funding from the NOAA Restoration Center and will have in-kind support from the FishNet counties.

Fish passage improvement projects are often complicated by various site constraints and socioeconomic challenges, requiring creative approaches. Techniques for retrofitting existing structures are constantly evolving based on lessons learned from previous projects, such as the evolution of corner baffles. Innovative design methods, such as stream simulation and natural roughened channels, address the passage of both fish and other aquatic species. These techniques, however, require a more thorough understanding of stream morphology and sediment transport than the traditional stream crossing design. This workshop aims to provide an overall understanding of these constraints and the methodology to work toward successful restoration projects.

These hands-on workshops will assist engineers, but are also intended for hydrologists, biologists, and environmental planners, or any other staff who are involved in the design and implementation of fish passage projects. The workshop will cover the design and implementation process, including:

- Biological considerations
- Site surveys and geomorphic assessment
- State and federal fish passage design guidance
- Stream simulation design
- Grade control techniques
- Retrofitting existing crossings
- Contracting and implementation
- Monitoring and adaptation

The proposed team of instructors includes Mike Love, Ross Taylor, and Ken Kozmo Bates. In addition, we will have DFG staff (George Heise or Marcin Whitman) provide instruction on the DFG/NOAA design standards, and local county staff available to present case studies. The proposed format for the workshops includes two days in the classroom, comprised of presentations, group exercises and local case studies. The third day will feature field visits to local projects, and a specialized half-day workshop targeted specifically for engineers to explore in more detail the calculations used to develop successful designs. This format is based on feedback from participants in the 5C workshop, and suggestions from the instructor team.

3. The CDFG Project Manager for this agreement shall be: Derek Acomb, CDFG, P.O. Box 47, Yountville, CA 94599, (707) 744-8713, [dacomb@dfg.ca.gov](mailto:dacomb@dfg.ca.gov)
4. The Grantee's Project Manager for this agreement shall be: Darcy Aston, Program Director, FishNet 4C, c/o 515 G Street, Petaluma, CA 94952, 707-762-5162
5. Grantee will submit quarterly progress reports with invoices to the California Department of Fish and Game (CDFG) contract manager, Derek Acomb



6. Submit final report to the CDFG Contract Manager by December 31, 2007.
7. Contractor shall submit two (2) hard copies and one (1) electronic copy (Microsoft Word or PDF format on CD) of the final written report with the final invoice which contains: (1) the grant agreement number, (2) location of work – show project location(s) using U.S.G.S.. 7.5 minute topographical map or appropriately scaled topographical map, (3) specific project access using public and private roads and trails (4) a description and analysis of the restoration, planning or monitoring techniques used, (5) a description of the results of the project, (6) dates of work and the number of person hours expended, (7) labeled before and after photographs of any restoration and/or monitoring activities and techniques and/or photographs of current conditions and those taken during surveys and assessment activities (8) copies of newsletter(s), press releases, workshop/training materials, flyers, or any other notices pertaining to the project, (9) grant dollars spent and in-kind services and/or matching funds used to complete the project, and (10) include specific measurables for the project by responding to the restoration project reporting metrics listed below:

#### **Habitat Protection and Restoration Projects– Reporting Metrics**

#### **Public Outreach and Education Projects – Reporting Metrics (OR, PI, ED, TE)**

- Does the project focus on sustainability, restoration (where needed), and the maintenance of watershed and salmon population health? (Y/N)
  - # of workshops/training events held with the project
  - # of participants in workshops/training events within the project
  - # of publications completed and distributed within the project
  - #of schools or classrooms and other institutions reached within the project
  - Include a description of the results of student/teacher evaluations.
8. All invoices and final report must be sent to the CDFG Project Manager for approval prior to being paid by Pacific States Marine Fisheries Commission. Final invoice must be submitted to the contract manager by January 15, 2008.
  9. The Grantee will acknowledge the participation of the Department of Fish and Game, Salmon and Steelhead Trout Restoration Account funds on any signs, flyers, or other types of written communication or notice to advertise or explain the Fish Passage Design & Engineering Workshops.
  10. All habitat improvements and surveys will be done in accordance with techniques described in the latest edition of the *California Salmonid Stream Habitat Restoration Manual* (Flosi, et al., 1998) or approved by the DFG contract manager.
  11. Project Period: July 1, 2006 to December 31, 2007.

**GRANTEE AGREEMENT NO. AWI-CCR-9**

EXHIBIT B  
Estimated Budget  
Fish Passage Design & Engineering Workshops

	<u>Qty</u>	<u>Unit</u>	<u>Rate</u>	<u>Total</u>
<b><u>PERSONNEL SERVICES</u></b>				
FishNet 4C Program Director	60	hours	\$45.00/hr	\$2,700.00
County staff – workshop coordination	30	hours	\$45.00/hr	\$1,350.00
Personnel Service Costs Subtotal				\$4,050.00
Staff Benefits	30%			\$1,215.00
<b>SUBTOTAL Personnel Services</b>				<b>\$5,265.00</b>
<b><u>OPERATING EXPENSES</u></b>				
Instruction team	1	3-day workshop		\$12,000.00
Facility rental	2.5	Days	\$300/day	\$750.00
Workshop materials	180	Each	\$15.00	\$2,700.00
Printed materials			\$1,500.00	\$1,500.00
Transportation rental	5	vehicles	\$100/day	\$500.00
<b>SUBTOTAL Operating Expenses</b>				<b>\$17,450.00</b>
<b>BUDGET SUBTOTAL</b>				<b>\$22,715.00</b>
ADMINISTRATIVE OVERHEAD @ 10.059%				\$2285.00
<b><u>TOTAL ESTIMATED BUDGET</u></b>				<b><u>\$25,000.00</u></b>

Statement of Funding Sources and Cost Share

Source of Funds	Cash	In-Kind (If applicable)	Total
Fisheries Restoration Grant Program	\$25,000.00	\$	\$ 25,000.00
Other State Agency(ies)	\$	\$	\$
Federal	\$	\$	\$
Applicant	\$	\$5,265	\$ 5,265
Other(s) including partners (if applicable, state name)	\$	\$	\$
Total Project Cost	\$25,000.00	\$ 5,265	\$ 30,265.00

Note: Any changes or modifications to a fund source indicated above must be promptly reported to the Grantees project manager. Projects with undisclosed fund sources may be subject to an audit.

EXHIBIT D  
ESTIMATED BUDGET  
Fish Passage Design & Engineering Workshops

	<u>Qty</u>	<u>Unit</u>	<u>Rate</u>	<u>Total</u>
<b><u>PERSONNEL SERVICES</u></b>				
FishNet 4C Program Director	60	hours	\$45.00/hr	\$2,700.00
County staff – workshop coordination	30	hours	\$45.00/hr	\$1,350.00
Personnel Service Costs Subtotal				\$4,050.00
Staff Benefits	30%			\$1,215.00
<b>SUBTOTAL Personnel Services (In-kind)</b>				<b>\$5,265.00</b>
<b><u>OPERATING EXPENSES</u></b>				
Instruction team*	1	3-day workshop		\$17,215.00
Facility rental	2	days	\$400/day	\$800.00
Workshop meals	180	workshop	\$15.00/meal	\$2,700.00
Printed materials		binders	\$1,500	\$1,500.00
Transportation	5	1 day	\$100/day	\$500.00
<b>SUBTOTAL Operating Expenses</b>				<b>\$22,715.00</b>
<b>BUDGET SUBTOTAL</b>				<b>\$27,980.00</b>
<b>ADMINISTRATIVE OVERHEAD @ 8%</b>				<b>\$2,285.00</b>
<b><u>TOTAL ESTIMATED BUDGET</u></b>				<b>\$30,265.00</b>

EXHIBIT C

SAMPLE INVOICE FORMAT

1. LETTERHEAD
2. DATE
3. ORGANIZATION BEING BILLED
4. GRANTEE AGREEMENT NO.
5. BILLING PERIOD
6. SERVICES:

PERSONNEL COSTS	\$
OPERATING COSTS	\$
EQUIPMENT *	\$
SUBTOTAL	\$
8. ADMINISTRATIVE OVERHEAD AT \_\_\_\_\_%      \$
9. GROSS BILLING      \$
10. SIGNATURE
11. TITLE/PHONE NUMBER

\* WHEN SUBMITTING A FINAL INVOICE, GRANTEE MUST CERTIFY THAT EQUIPMENT HAS EITHER BEEN CONSUMED OR RETURNED TO CALIFORNIA DEPARTMENT OF FISH & GAME (PROVIDE NAME AND LOCATION).