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FOR STATE USE ONLY
DGS REGISTRATION NO. 31400707231520

# 30519

PROPOSITION 40 CLEAN BEACH GRANT PROGRAM  
GRANT AGREEMENT  
BETWEEN THE  
STATE WATER RESOURCES CONTROL BOARD  
AND

CITY OF LONG BEACH

COLORADO LAAGOON BEACHES

AGREEMENT NO. 06-266-550-0

This Grant Agreement is made between the State of California acting by and through the State Water Resources Control Board, hereafter referred to as the "SWRCB", and City of Long Beach, a city, hereafter referred to as the "Grantee".

**WHEREAS:**

1. The following provision(s) authorize the SWRCB to enter into this type of Grant Agreement: PRC §§ 5096.650, 30915 (Pr 40 Clean Beach);
2. The Grantee has applied for a grant and has been determined by the SWRCB to be eligible for a grant pursuant to applicable State laws and regulations; and
3. The SWRCB, pursuant to SWRCB Resolution No. 2006-0057, approved on September 6, 2006, has authorized grant funding for the Project hereafter described.

**NOW, THEREFORE, it is agreed as follows:**

1. The Project generally consists of design and construction of bioswales, storm drain diversions, and improved hydrology that will reduce or eliminate unhealthy bacterial concentrations in Colorado Lagoon, for the benefit of the Grantee.

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

State Water Resources Control Board	Grantee: City of Long Beach
Name: Jennifer Toney, Grant Manager	Name: Dennis Eschen, Project Director
Address: 1001 I Street, 16 <sup>th</sup> Floor Sacramento, CA 95814	Address: 2760 Studebaker Road Long Beach, CA 90815-1697
Phone: (916) 341-5646	Phone: (562) 570-3130
Fax: (916) 341-5707	Fax: (562) 570-3109
e-mail: jtoney@waterboards.ca.gov	e-mail: dennis_eschen@longbeach.gov

Direct all inquiries to:

State Water Resources Control Board	Grantee: City of Long Beach
Section/Unit: Division of Financial Assistance	Section/Unit: Parks, Recreation and Marine Department
Attention: Barbara Walton, Program Analyst	Attention: Dennis Eschen, Grant Contact
Address: 1001 I Street, 17 <sup>th</sup> Floor Sacramento, CA 95814	Address: 2760 Studebaker Road Long Beach, CA 90815-1697
Phone: (916) 341-5461	Phone: (562) 570-3130
Fax: (916) 341-5296	Fax: (562) 570-3109
e-mail: bwalton@waterboards.ca.gov	e-mail: dennis_eschen@longbeach.gov

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

2. Incorporation of Documents. This Agreement incorporates the following documents:

- 2.1 Exhibit A, Scope of Work;
- 2.2 Exhibit B, Invoicing, Budget Detail, and Reporting Provisions;
- 2.3 Exhibit C, SWRCB General Conditions; and
- 2.4 Exhibit D, Grant Program Terms and Conditions.

3. The Grantee accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by the Grantee in its application, accompanying documents, and communications filed in support of its request for grant funding. Grantee shall comply with and require its contractors and subcontractors to comply with all applicable laws, policies and regulations.

4. The term of the Agreement shall begin on April 21, 2005 and continue through Project completion plus twenty-three (23) years unless otherwise terminated or amended as provided in the Agreement. HOWEVER, ALL WORK SHALL BE COMPLETED BY SEPTEMBER 30, 2009.

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

By: Christine J. Shipley ASSISTANT  
Grantee Signature

By: [Signature]  
Barbara L. Evoy, Deputy Director  
Division of Financial Assistance  
State Water Resources Control Board

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

Gerald R. Miller  
Grantee Typed/Printed Name

6-29-07  
Date

City Manager 6/25/07  
Title and Date

Reviewed by AI  
Office of Chief Counsel  
Date: 6-19-07

APPROVED AS TO FORM  
June 20, 2007  
ROBERT E. SHANNON, City Attorney  
By: [Signature]  
DEPUTY CITY ATTORNEY

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EXHIBIT A – SCOPE OF WORK

1. Quality Assurance Project Plan and Monitoring Plan

- 1.1 Grantee shall prepare and maintain a Quality Assurance Project Plan (QAPP) in accordance with the SWRCB's QAPP for the Surface Water Ambient Monitoring Program (SWAMP). The QAPP must be approved by the SWRCB's Quality Assurance (QA) Officer prior to implementation of any sampling or monitoring activities. No monitoring may occur prior to QAPP approval. Any costs related to monitoring data collected prior to and not supported by the approved QAPP will not be reimbursed. Guidance for preparing the QAPP is available at <http://www.wateboards.ca.gov/swamp/docs/swamp/qapp.html>.
- 1.2 Grantee shall prepare and maintain a Monitoring Plan (MP) that describes the types of constituents to be monitored and the frequency/schedule for the monitoring activities. The MP shall be prepared in accordance with Exhibit D, Section 5, and be approved by the Grant Manager prior to implementation of any sampling or monitoring activities. No monitoring may occur prior to MP approval. The Grant Manager must approve any changes to the MP prior to implementation.
- 1.3 State Disclosure Requirements – Include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement.

"Funding for this Project has been provided in full or in part through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use." (Gov. Code 7550, 40 CFR 31.20)

Signage shall be posted in a prominent location at Project site (if applicable) and shall include the State Water Board logo (available from Program Analyst) and the following disclosure statement:

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

- 1.4 The Grantee shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this work item. (Gov. Code 7550)

2. Work To Be Performed by Grantee:

- 2.1 Award contract(s) to appropriate organization(s) to perform the work outlined in this Agreement. Document the steps taken in soliciting and awarding the contract, and submit them to the Grant Manager for review. Document all contractor activities in quarterly reports.
- 2.2 Design
  - 2.2.1 Thirty percent (30%) and seventy-five percent (75%) design meetings will be held between the City of Long Beach and its consultant, to discuss preliminary sketches and structural design of selected diversions, vegetated swales, culvert cleaning, and general plan layout.
  - 2.2.2 A one hundred percent (100%) design meeting will be held to discuss the grading plans and structural design. The final design plans and specifications shall include the construction cost estimate, and be submitted to the Grant Manager two weeks prior to the meeting.
  - 2.2.3 Final design will incorporate all comments on the plans and specifications. Submit a copy of the awarded construction contract to the Grant Manager.
- 2.3 Construction
  - 2.3.1 Provide a copy of the Notice to Proceed to Grant Manager.

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- 2.3.2 Construct the low flow diversion to the sanitary sewer, clean the culvert between the Lagoon and Marine Stadium, and install bioswales along the fence line between the golf course and lagoon (northern edge) and at drain outlets per the construction documents.
- 2.3.3 Conduct photo documentation of the construction work at all phases and submit to the Grant Manager.
- 2.3.4 Provide construction as-built plans to Grant Manager.
- 2.3.5 Conduct a minimum of one (1) year of post construction monitoring to evaluate Project effectiveness, in accordance with the approved monitoring and reporting plan. Monitoring results shall be included in the draft and final Project Reports.

### 3. Reporting

- 3.1 Prepare and provide an annual progress summary by September 30, 2007, and September 30, 2008. The summary must be no more than two (2) pages, and shall include pictures as appropriate. The summary shall include the following:
  - 3.1.1 A summary of the conditions the Project is meant to alleviate, the Project's objective, the scope of the Project, and a description of the approach used to achieve the Project's objective.
  - 3.1.2 A summary of the progress made to date, significant milestones achieved, and the current schedule of completing the Project.
  - 3.1.3 An evaluation of the effectiveness of the Project to date in preventing or reducing pollution and alleviating the Project's original conditions.
- 3.2 Prepare a draft final Project Report in accordance with Exhibit D, Section 6. In addition, include the following and submit to Grant Manager for review and comment.
  - 3.2.1 An introduction section including a summary of the Project's objective, the scope of the Project, and a brief description of the approach and techniques used during the Project.
  - 3.2.2 A list of submittals previously submitted as outlined in the Table of Items for Review.
  - 3.2.3 Any additional information that is deemed appropriate by the Grant Manager or Grantee.
- 3.3 Prepare and submit one (1) reproducible master, one (1) electronic copy and two (2) copies of the final Project Report that addresses comments from the Grant Manager.

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**TABLE OF ITEMS FOR REVIEW**  
 (Submittals to be delivered to Grant Manager to verify Project progress.)

Item	DESCRIPTION	DUE DATE
<b>EXHIBIT A – SCOPE OF WORK</b>		
1.0	QUALITY ASSURANCE PROJECT PLAN and MONITORING PLAN	--
1.1	Quality Assurance Project Plan	May 2008
1.2	Monitoring Plan	May 2008
2.0	WORK TO BE PERFORMED BY GRANTEE	--
2.1	Design Contract Award Documentation	October 2008
2.2.2	Final Design Plans and Specifications	September 2008
2.2.3	Construction Contract	November 2008
2.3.1	Notice to Proceed	December 2008
2.3.3	Photo Documentation of Construction Work At All Phases	December 2008 through September 2009
2.3.4	Construction As-Built Plans	September 2009
3.0	REPORTING	--
3.1	Annual Progress Summary	September 2007 September 2008
3.2	Draft Project Report	August 2009
3.3	Final Project Report	September 2009
<b>EXHIBIT B – INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS</b>		
5.0	REPORTS	
5.1	Progress Reports by the twentieth (20 <sup>th</sup> ) of the month following the end of the calendar quarter (March, June, September, and December)	Quarterly
5.2	Grant Summary Form	Day 90
5.3	Natural Resource Projects Inventory Project Survey Form	Before final invoice
<b>EXHIBIT C – SWRCB GENERAL CONDITIONS</b>		
6	Copy of Final CEQA/NEPA Documentation Any activity in the scope of work subject to CEQA cannot begin prior to receipt of environmental clearance from the SWRCB	November 2008
22	Signed Cover Sheets For All Permits	January 2009
<b>EXHIBIT D – GRANT PROGRAM TERMS &amp; CONDITIONS</b>		
5	Monitoring and Reporting Plan	May 2008

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EXHIBIT B  
INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS

1. Invoicing

- 1.1 Invoices shall be submitted in the format provided by the SWRCB. The original invoice shall be submitted to the Grant Manager on a quarterly basis consistent with the reporting schedule in Section 5.1 of this exhibit. The address for submittal is:

Jennifer Toney, Grant Manager  
Division of Financial Assistance  
State Water Resources Control Board  
1001 I Street, 16<sup>th</sup> Floor  
Sacramento, CA 95814

- 1.2 Payment of any invoice shall be made only after receipt of a complete, adequately supported, properly documented and accurately addressed invoice. Receipt of invoices in any other format than the one provided by the SWRCB will be cause for the invoice to be disputed. In the event of an invoice dispute, the Grant Manager will notify the Grantee by initiating an "Invoice Dispute Notification" form. Payment will not be made until the dispute is resolved and a corrected invoice submitted. Failure to use the address exactly as provided above may result in return of the invoice to the Grantee. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. All invoices must be approved by the Grant Manager.
- 1.3 Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, rules, or regulations, or which may require any rebates to the Federal Government, or any loss of tax-free status on state bonds, pursuant to any federal statute or regulation.
- 1.4 Notwithstanding any other provision of this Agreement, the Grantee agrees that the SWRCB may retain an amount equal to ten percent (10%) of the grant amount specified in this Agreement until completion of the Project to the reasonable satisfaction of the SWRCB. Any retained amounts due to the Grantee will be promptly disbursed to the Grantee, without interest, upon completion of the Project.
- 1.5 The invoice shall contain the following information:
- 1.5.1 The date of the invoice;
  - 1.5.2 The time period covered by the invoice, i.e., the term "from" and "to";
  - 1.5.3 The total amount due; and
  - 1.5.4 Original signature and date (in ink) of the Grantee or its authorized representative.
  - 1.5.5 Final invoice shall be clearly marked "FINAL INVOICE" and submitted NO LATER THAN OCTOBER 31, 2009.

2. Budget Contingency Clause

The maximum amount to be encumbered under this Agreement for the 2006-07 fiscal year ending June 30, 2007 shall not exceed THREE MILLION EIGHT HUNDRED TWENTY-THREE THOUSAND EIGHT HUNDRED SIXTY-EIGHT DOLLARS (\$3,823,868).

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

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

3. LINE ITEM BUDGET

	<u>PROP 40</u>
Professional and Consultant Services CEQA and Necessary Permit Requirements, Engineering Design Consultant	\$ 637,311
Construction (contracted services)	<u>\$3,186,557</u>
TOTAL	\$3,823,868

4. Budget Line Item Flexibility

4.1 Line Item Adjustment(s). Subject to the prior review and approval of the Grant Manager, adjustments between existing line item(s) may be used to defray allowable direct costs up to fifteen percent (15%) of the grant funds including any amendment(s) thereto. Line item adjustments in excess of fifteen percent (15%) shall require a formal Agreement amendment.

4.2 Procedure to Request an Adjustment. Grantee may submit a request for an adjustment in writing to the SWRCB. Such adjustment may not increase or decrease the total grant amount allocated per fiscal year. The Grantee shall submit a copy of the original Agreement Budget sheet reflecting the requested changes. Changes shall be noted by striking the original amount(s) followed with revised change(s) in bold and underlined. Budget adjustments deleting a budget line item or adding a new budget line item requires a formal amendment and are not permissible under this provision. The SWRCB may also propose adjustments to the budget.

5. Reports.

5.1 Grantee shall submit quarterly progress reports to the Grant Manager by the twentieth (20<sup>th</sup>) of the month following the end of the calendar quarter (March, June, September, and December). The progress reports shall provide a brief description of the work performed, accomplishments during the quarter, milestones achieved, and any problems encountered in the performance of the work under this Agreement. Grantee shall document all contractor activities and expenditures in progress reports.

5.1.1 The invoice accompanying the progress report must explain the method used to compute the amount due. Invoices must be itemized based on the categories specified in the Budget. The amount claimed for salaries/wages/consultant fees must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = the total amount claimed).

5.2 Grantee shall complete a one (1) page Grant Summary Form within three (3) months of the Agreement execution <http://www.waterboards.ca.gov/funding/docs/grantinfo/grantsum.doc>. A hard copy shall be submitted to the Grant Manager and an electronic copy for posting on the SWRCB website.

5.3 At the completion of this Project, the Grantee shall complete and submit electronically a Natural Resource Projects Inventory (NRPI) Project Survey Form <http://www.ice.ucdavis.edu/nrpi>. A hard copy shall be submitted to the Grant Manager prior to final payment.

5.4 The Grantee agrees to expeditiously provide, during work on the Project and throughout the term of this Agreement, such reports, data, information, and certifications, as may be reasonably required by the SWRCB.

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

7. Audit Disallowances. The Grantee agrees it shall return any audit disallowances to the SWRCB.

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EXHIBIT C  
SWRCB GENERAL CONDITIONS

1. **AMENDMENT:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
2. **APPROVAL:** The Grantee will not proceed with any work on the Project until authorized in writing by the SWRCB.
3. **ASSIGNMENT:** This grant is not assignable by the Grantee, either in whole or in part, without the consent of the SWRCB.
4. **AUDIT:** Grantee agrees that the awarding department, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Grantee agrees to maintain such records for a possible audit for a minimum of twenty-three (23) years after final payment, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Grantee agrees to include a similar right of the State to audit records and interview staff in any contract related to performance of the Agreement.
5. **BONDING:** Where contractors are used, Grantee shall not authorize construction to begin until each such contractor has furnished a performance bond in favor of the Grantee in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$20,000.00.
6. **CEQA/NEPA:** No work that is subject to the California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA) may proceed under this Agreement until documents that satisfy the CEQA/NEPA process are received by the Grant Manager and the SWRCB has given environmental clearance. No work that is subject to an Environmental Impact Report or a Mitigated Negative Declaration may proceed until and unless approved by the Deputy Director of the SWRCB's Division of Financial Assistance (Division). Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required.
7. **COMPLIANCE WITH LAW, REGULATIONS, ETC.:** The Grantee agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, the Grantee agrees that, to the extent applicable, the Grantee will comply with the provisions of the adopted environmental mitigation plan for the term of the Agreement.
8. **COMPUTER SOFTWARE:** The Grantee certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
9. **CONTINUOUS USE OF PROJECT; LEASE OR DISPOSAL OF PRODUCT:** The Grantee agrees that, except as provided in the Agreement, it will not abandon, substantially discontinue use of, lease, or dispose of the project or any significant part or portion thereof during the useful life of the project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the SWRCB, including a condition requiring repayment of all or any portion of all remaining grant Project funds covered by this Agreement together with accrued interest and any penalty assessments that may be due.
10. **DAMAGES FOR BREACH AFFECTING TAX EXEMPT STATUS:** In the event that any breach of any of the provisions of this Agreement by the Grantee shall result in the loss of tax exempt status for any state bonds, or if such breach shall result in an obligation on the part of the State to reimburse the federal government by reason of any arbitrage profits, the Grantee shall immediately reimburse the State in an amount equal to any damages paid by or loss incurred by the State due to such breach.



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11. **DISPUTES:** Grantee shall continue with the responsibilities under this Agreement during any dispute. Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Deputy Director of the Division, or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Grantee and to the SWRCB's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Grantee, the Grantee mails or otherwise furnishes a written appeal of the decision to the SWRCB's Executive Director. The decision of the SWRCB's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Grantee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Grantee shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement. This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the SWRCB, or any official or representative thereof, on any question of law.
12. **FISCAL MANAGEMENT SYSTEMS AND ACCOUNTING STANDARDS:** The Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of state law or this Agreement. The Grantee further agrees that it will maintain separate Project accounts in accordance with generally accepted accounting principles.
13. **GOVERNING LAW:** The grant is governed by and shall be interpreted in accordance with the laws of the State of California.
14. **GRANT MODIFICATIONS:** The SWRCB may, at any time, without notice to any sureties, by written order designated or indicated to be a "grant modification", make any change in Exhibit A, for the work to be performed under this Agreement so long as the modified work is within the general scope of work called for by this Agreement, including but not limited to changes in the specifications or in the method, manner, or time of performance of work. If the Grantee intends to dispute the change, the Grantee must, within ten (10) days after receipt of a written "grant modification", submit to the SWRCB a written statement setting forth the disagreement with the change.
15. **INCOME RESTRICTIONS:** The Grantee agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Grantee under this Agreement shall be paid by the Grantee to the State, to the extent that they are properly allocable to costs for which the Grantee has been reimbursed by the State under this Agreement.
16. **INDEPENDENT ACTOR:** The Grantee, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers of employees or agents of the SWRCB.
17. **INSPECTIONS:** Throughout the life of the Project, the SWRCB shall have the right to inspect the project area to ascertain compliance with this Agreement.
18. **INSURANCE:** Throughout the life of the Project, the Grantee shall provide and maintain insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Agreement, if any. This insurance shall be issued by a company or companies admitted to transact business in the State of California. The insurance policy shall contain an endorsement specifying that the policy will not be cancelled or reduced in coverage without thirty (30) days' written notice to the SWRCB. In the event of any damage to or destruction of the Project or any larger system of which it is a part, the net proceeds of insurance shall be applied to the reconstruction, repair or replacement of the damaged or destroyed parts of the Project or its larger system. The Grantee shall begin such reconstruction, repair, or replacement as expeditiously as possible and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the larger system shall be free of all claims and liens.
19. **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, religion, color, national origin, ancestry, disability, sexual orientation,

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medical condition, marital status, age (over 40) or denial of family-care leave, medical-care leave, or pregnancy-disability leave. The Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment.

20. **NOTICE:** The Grantee shall promptly notify the SWRCB of events or proposed changes that could affect the scope, budget, or work performed under this Agreement. The Grantee agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to the SWRCB, and the SWRCB has given written approval for such change. The Grantee shall notify the SWRCB at least ten (10) working days prior to any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by SWRCB's representatives. The Grantee shall promptly notify the SWRCB in writing of completion of work on the Project. The Grantee shall promptly notify the SWRCB in writing of any cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more and of any circumstance, combination of circumstances, or condition, which is expected to or does delay completion of construction for a period of ninety (90) days or more beyond the estimated date of completion of construction previously provided.
21. **OPERATIONS & MAINTENANCE:** The Grantee shall maintain and operate the facility and structures constructed or improved as part of the Project throughout the life of the Project, consistent with the purposes for which this Grant was made. The Grantee assumes all operations and maintenance costs of the facilities and structures; the SWRCB shall not be liable for any cost of such maintenance, management or operation. The Grantee may be excused from operations and maintenance only upon the written approval of the Grant Manager. For purposes of this Agreement, "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses. "Maintenance costs" include ordinary repairs and replacements of a recurring nature necessary to prolong the life of capital assets and basic structures, and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures.
22. **PERMITS, CONTRACTING, WAIVER, REMEDIES AND DEBARMENT:** The Grantee shall procure all permits and licenses necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Any contractors, outside associates, or consultants required by the Grantee in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified and agreed to during negotiations for this Agreement, or as are specifically authorized by the Grant Manager during the performance of this Agreement. Any substitutions in, or additions to, such contractors, associates, or consultants, shall be subject to the prior written approval of the Grant Manager. Any waiver of rights with respect to a default or other matter arising under the Agreement at any time by either party shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State provided for in this Agreement are in addition to any other rights and remedies provided by law. The Grantee shall not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension". The Grantee shall not contract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code 4477) [www.epis.gov](http://www.epis.gov). The Grantee certifies to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or Grantee;
  - b. Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

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- d. Have not within a three-year period preceding this application/proposal had one (1) or more public transactions (federal, state or local) terminated for cause or default.
23. **PREVAILING WAGES AND LABOR COMPLIANCE:** If applicable, the Grantee agrees to be bound by all the provisions of State Labor Code Section 1771 regarding prevailing wages. If applicable, the Grantee shall monitor all agreements subject to reimbursement from this agreement to assure that the prevailing wage provisions of State Labor Code Section 1771 are being met. The Grantee agrees to fulfill its responsibilities under Section 1771.8 of the Labor Code, where applicable.
24. **PROFESSIONALS:** The Grantee agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for.
25. **RECORDS:** Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles, the Grantee agrees to:
- a. Establish an official file for the Project which shall adequately document all significant actions relative to the Project;
  - b. Establish separate accounts which will adequately and accurately depict all amounts received and expended on this Project, including all grant funds received under this Agreement;
  - c. Establish separate accounts which will adequately depict all income received which is attributable to the Project, especially including any income attributable to grant funds disbursed under this Agreement;
  - d. Establish an accounting system which will adequately depict final total costs of the Project, including both direct and indirect costs;
  - e. Establish such accounts and maintain such records as may be necessary for the state to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
  - f. If Force Account is used by the Grantee for any phase of the Project, establish an account that documents all employee hours, and associated tasks charged to the Project per employee.
26. **RIGHTS IN DATA:** The Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement shall be in the public domain. The Grantee may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Agreement, subject to appropriate acknowledgement of credit to the SWRCB for financial support. The Grantee shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so.
27. **STATE REVIEWS AND INDEMNIFICATION:** The parties agree that review or approval of Project applications, documents, permits, plans and specifications or other Project information by the SWRCB is for administrative purposes only and does not relieve the Grantee of its responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out the Project. To the extent permitted by law, the Grantee agrees to indemnify, defend and hold harmless the SWRCB and the State against any loss or liability arising out of any claim or action brought against the SWRCB and/or the State from and against any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from, or in any way connected with (1) the Project or the conditions, occupancy, use, possession, conduct or management of, work done in or about, or the planning, design, acquisition, installation or construction, of the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the California Hazardous Waste Control Law and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances

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under which they were made, not misleading with respect to any information provided by the Grantee for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement. To the fullest extent permitted by law, the Grantee agrees to pay and discharge any judgment or award entered or made against the SWRCB and/or the State with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of the Agreement.

28. **SUPPLEMENTAL ENVIRONMENTAL PROJECTS:** Grant Funds shall not be used for supplemental environmental projects required by Regional Boards.
29. **SWRCB ACTION, COSTS, AND ATTORNEY FEES:** The Grantee agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the SWRCB as a result of breach of this Agreement by the Grantee, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by the SWRCB shall not preclude the SWRCB from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that the prevailing party shall be entitled to such reasonable costs and/or attorney fees as may be ordered by the court entertaining such litigation.
30. **TERMINATION, IMMEDIATE REPAYMENT, INTEREST:** The Grant Agreement may be terminated by written notice at any time prior to completion of the Project, at the option of the SWRCB, upon violation by the Grantee of any material provision after such violation has been called to the attention of the Grantee and after failure of the Grantee to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the SWRCB. In the event of such termination, the Grantee agrees, upon demand, to immediately repay to the SWRCB an amount equal to the amount of grant funds disbursed to the Grantee prior to such termination. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Grantee to the date of full repayment by the Grantee.
31. **TIMELINESS:** Time is of the essence in this Agreement. The Grantee shall proceed with and complete the Project in an expeditious manner.
32. **TRAVEL AND PER DIEM:** Any reimbursement for necessary travel and per diem shall be at rates not to exceed those amounts paid to the State's represented employees under collective bargaining Agreements currently in effect. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the SWRCB.
33. **UNENFORCEABLE PROVISION:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement shall continue to have full force and effect and shall not be affected thereby.
34. **USEFUL LIFE OF PROJECT:** For the purpose of this Agreement, the useful life of any constructed portions of this Project begins upon completion of construction and continues until fifty (50) years thereafter for pipelines and structures and twenty (20) years for all else.
35. **VENUE:** The SWRCB and the Grantee hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. The Grantee hereby waives any existing sovereign immunity for the purposes of this Agreement.
36. **WITHHOLDING OF GRANT DISBURSEMENTS:** The SWRCB may withhold all or any portion of the grant funds provided for by this Agreement in the event that the Grantee has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or the Grantee fails to maintain reasonable progress toward completion of the Project.

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EXHIBIT D  
Grant Program Terms & Conditions

1. The Grantee certifies that it is one of the following: a city, county, city and county, district, the state or any agency or department thereof, an applicant eligible for technical assistance under section 319 of the federal Clean Water Act (33 U.S.C. § 1329) or for grants under section 320 of the federal Clean Water Act (33 U.S.C. § 1330), or a 501(c)(3) nonprofit organization.
2. This Grantee hereby warrants and represents that this Project is capable of contributing to sustained, long-term water quality or environmental restoration or protection benefits for a period of twenty (20) years.
3. The Grantee certifies that this Project is intended to address the causes of degradation, rather than symptoms.
4. This Project is consistent with water quality and resource protection plans prepared, implemented, or adopted by the SWRCB, the applicable Regional Water Quality Control Board, and the State Coastal Conservancy.
5. Notwithstanding Exhibit A, the Grantee shall submit a monitoring and reporting plan that will do all of the following:
  - a. identifies the nonpoint source or sources of pollution to be prevented or reduced by Project
  - b. describes the baseline water quality or quality of the environment to be addressed
  - c. describes the manner that Project will prevent or reduce pollution and demonstrate desired environmental results
  - d. describes the monitoring program, including, but not limited to, the methodology, and the frequency and duration of monitoring.
6. Notwithstanding Exhibit A, upon completion of the Project, the Grantee shall submit a report to the SWRCB that summarizes the completed activities and indicates whether the purposes of the Project have been met. The report shall include information collected by the recipient in accordance with the Project monitoring and reporting plan, including a determination of the effectiveness of the Project in preventing or reducing pollution, and the results of the monitoring program.
7. The Grantee certifies that if a recovery plan for coho salmon, steelhead trout, or other threatened or endangered aquatic species exists, this Project is consistent with such a plan and, if feasible, implements actions in such a plan.