

FOR STATE USE ONLY
DGS REGISTRATION NO.

34545

**PUBLIC BEACH SAFETY GRANT PROGRAM
GRANT AGREEMENT
BETWEEN THE
STATE WATER RESOURCES CONTROL BOARD, hereinafter called "State" or "State Water Board"
AND**

Grantee, hereinafter called "Grantee"

CITY OF LONG BEACH, hereinafter called "Project"

AGREEMENT NO. D1614103

The State and the Grantee hereby agree as follows:

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

Health & Safety Code, § 115881 – Public Beach Safety Program
Water Code, § 13260, subd. (d)(2) – Waste Discharge Permit Fund (WDPF) – Public Beach Safety Grant Program

PURPOSE. The State shall provide a grant to and for the benefit of Grantee for the purpose of beach water monitoring and public notification.

GRANT AMOUNT. The maximum amount payable under this Agreement shall not exceed \$100,000. Global Positioning System (GPS) locations for any monitoring must be identified prior to any disbursements.

TERM OF AGREEMENT. The term of the Agreement shall begin on JULY 1, 2016, and continue through final payment plus seven (7) years unless otherwise terminated or amended as provided in the Agreement. **HOWEVER, ALL WORK SHALL BE COMPLETED BY JUNE 30, 2017. ABSOLUTELY NO FUNDS MAY BE REQUESTED AFTER AUGUST 1, 2017.**

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

State Water Board, Division of Water Quality	Grantee: City of Long Beach
Name: Michael Gjerde, Grant Manager	Name: Nelson Kerr, Project Director
Address: 1001 I Street, 15th Floor	Address: 2525 Grand Avenue
City, Zip: Sacramento, CA 95814	City, Zip: Long Beach, CA 90815
Phone: (916) 341-5283	Phone: (562) 570-4170
Fax: (916) 341-5284	Fax: (562) 570-4038
e-mail: Michael.gjerde@waterboards.ca.gov	e-mail: Nelson.kerr@longbeach.gov

Direct all inquiries to:

State Water Board, Division of Financial Assistance	Grantee: City of Long Beach
Attention: Anna Perez, Program Analyst	Name: Nelson Kerr, Project Director
Address: 1001 I Street, 17th Floor	Address: 2525 Grand Avenue
City, Zip: Sacramento, CA 95814	City, Zip: Long Beach, CA 90815
Phone: (916) 341-	Phone: (562) 570-4170
Fax: (916) 341-5296	Fax: (562) 570-4038
e-mail: anna.perez@waterboards.ca.gov	e-mail: Nelson.kerr@longbeach.gov

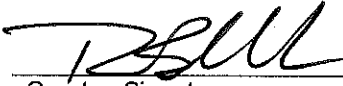
Either party may change its Project Representative upon written notice to the other party.

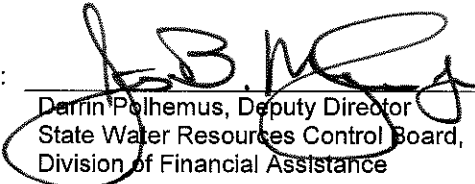
STANDARD PROVISIONS. The following exhibits are attached and made a part of this Agreement by this reference:

- Exhibit A SCOPE OF WORK
- Exhibit B INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS
- Exhibit C GENERAL TERMS & CONDITIONS

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

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

By: 
Grantee Signature
Assistant City Manager
EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.
Patrick H. West
Grantee Typed/Printed Name
City Manager
Title
2/2/17
Date

By: 
Darin Polhemus, Deputy Director
State Water Resources Control Board,
Division of Financial Assistance
2/17/17
Date

Reviewed by:
Office of Chief Counsel
Date:

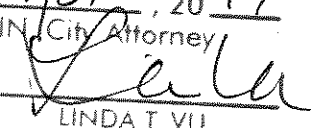
APPROVED AS TO FORM
1/31, 20 17
CHARLES PARKIN, City Attorney
By: 
LINDA T. VU
DEPUTY CITY ATTORNEY

EXHIBIT A
SCOPE OF WORK

A. PLANS AND GENERAL COMPLIANCE REQUIREMENTS

1. Quality Assurance. The Grantee shall prepare, maintain, and implement a Quality Management Plan (QMP) that contains the Standard Operating Procedures (SOP) for sampling and monitoring activities and Quality Assurance (QA) procedures for data quality and evaluation. Guidance for preparing these documents can be found in the State Water Board's Surface Water Ambient Monitoring Program (SWAMP) Quality Assurance Program Plan (QAPrP), the State Water Board QMP, and *Guidance for Quality Assurance Project Plans (QAPP) EPA QA/G-5*. Guidelines are available online at: http://www.waterboards.ca.gov/water_issues/programs/swamp/tools.shtml. The SWAMP QAPrP is currently undergoing revision, so guidance provided in the most current version should be used. Consult with the State Water Board QA Officer before preparing a QAPP. Documents should be submitted to the Grant Manager and approved by the State Water Board QA Officer.
2. If landowner agreements are required, signed copies must be submitted to the Grant Manager before works begins.
3. If permits are required, the permits must be obtained and signed copies submitted to the Grant Manager before work begins.
4. The Grantee shall include in any report, document, publication or other materials developed for public distribution supported by this Agreement the following statement: "This project has been funded wholly or in part by 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 the State Water Resources Control Board endorse trade names or recommend the use of commercial products mentioned in this document."
5. The Grantee shall also include in each of its contracts for work under this Agreement a provision that incorporates the State Disclosure Requirements stated within Item 4. (Gov. Code, § 7550)

B. WORK TO BE PERFORMED BY GRANTEE

1. Project Management and Administration. The Project Director shall promptly notify the Grant Manager of any event or proposed change that could affect the scope, budget, or schedule of work performed under this Agreement. Unless otherwise specified in the Agreement, all submittals shall be provided to both the Program Analyst and the Grant Manager.
 - a. Provide all technical and administrative services as necessary for Agreement completion, including: monitor, supervise, and review all work performed; and coordinate budgeting and scheduling to ensure that work is completed within budget, on schedule, and in accordance with approved procedures, applicable laws, and regulations.
 - b. Ensure that the Agreement requirements are met through completion of quarterly progress reports as specified in Exhibit B, Item F.1 of this Agreement. The Grantee is responsible for data being complete and accurate.
2. Testing and assessment
 - a. Test and assess the waters adjacent to all public beaches within the Grantee's jurisdiction at least weekly between April 1 to October 31 of each year in accordance with Health and Safety Code sections 115875 through 115915 and California Code of Regulations sections 7952 through 7962. Additional testing and assessment may be authorized upon written approval of the Grant Manager.
 - b. Beginning July 1, 2016, enter monitoring and notification data for all monitored sites to the State Water Board into the online Beach Watch Database at <http://beachwatch.waterboards.ca.gov/>. Update all program information including Water Body and Station GPS locations, sampling frequencies,

seasonal timing, AB411 beach status, zero-point station status (when available), and other information as appropriate.

- c. Sampling result data and advisory (posting or closing) information shall be entered as soon as practicable, but no later than five (5) business days following receipt of sampling data.
 - d. Grantee's monitoring program must include sampling at point zero (e.g., all public beaches visited by more than 50,000 people annually and adjacent to storm drains where the drain/creek/river water enters the ocean), unless such sampling locations create unsafe situations or are already currently being sampled under other permit requirements.
 - e. Submit a list to the Grant Manager of any "point zero" locations sampled by another entity under permit requirements or that are unsafe to sample.
3. If the testing and assessment performed in Item B.2 above results in a determination that any public health standard, as set forth in Health and Safety Code sections 115875 through 115915 and California Code of Regulations sections 7952 through 7962 (Public Health Standard), is being violated, the Grantee shall restrict the use of or close the public beach or a portion thereof in which the violation has occurred until the public health standard is attained.
 4. Investigate any complaint by a person of a violation of any Public Health Standard. If a violation of a Public Health Standard is found, the Grantee shall restrict the use of or close the public beach or a portion thereof until the Public Health Standard is attained.
 5. Report any violation of any Public Health Standard to the Grant Manager, the applicable Regional Water Quality Control Board (Regional Water Board) and any appropriate local government agency official having jurisdiction over the land adjacent to the public beach where the violation has occurred.
 6. Posting and closing beaches.
 - a. Whenever a public beach is posted, closed, or otherwise restricted in accordance with Items B.2 and/or B.3 above, the Grantee shall inform the public agency or entity responsible for the operation and maintenance of the public beach within twenty-four (24) hours of the posting, closure, or restriction.
 - b. Whenever a public beach is posted, closed, or otherwise restricted in accordance with Items B.2 and/or B.3 above, the Grantee shall at a minimum, post the beach with conspicuous warning signs to inform the public of the nature of the problem and the possible public health risk. A warning sign shall be visible from each primary beach access point as identified in the coastal access inventory prepared and updated pursuant to Public Resources Code section 30531, and any additional access points identified by the Grantee.
 7. Establish and/or maintain a telephone hotline and electronic forms of communication to inform the public of all public beaches currently closed, posted, or otherwise restricted within its jurisdiction. The Grantee shall update the telephone hotline and electronic forms of communication as needed to convey changes in public health risks.
 8. In the event of a release of untreated sewage, the Grantee shall immediately test and assess the waters adjacent to any affected public beach in accordance with Health and Safety Code sections 115875 through 115915 and California Code of Regulations sections 7952 through 7962.
 9. In the event of an untreated sewage release that is known to have reached recreational waters adjacent to a public beach, the Grantee shall immediately close those waters until it has been determined that the waters are in compliance with Public Health Standards.

TABLE OF ITEMS FOR REVIEW

Item	DESCRIPTION	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A – SCOPE OF WORK			
A.	PLANS AND COMPLIANCE REQUIREMENTS		
1.	QMP with SOP and QA Documents and Procedures	Day 90 after execution of agreement	
2.	Landowner Agreement(s) (If applicable)	Before work begins	
3.	Applicable Permits (If applicable)	Before work begins	
B.	WORK TO BE PERFORMED BY GRANTEE		
2.b.	Update all program information including Water Body and Station GPS locations, sampling frequencies, seasonal timing, AB411 beach status, zero-point station status (when available), and other information as appropriate into State Water Board Online Beach Watch Database	Day 90 after execution of agreement	
2.c.	Input of sample data and advisory information in Beach Watch Database .	Within 5 days of receipt of sampling results	
2.e.	List of any Point-Zero locations sampled by another entity under permit requirements or that are unsafe to sample	April 1, 2017	
5.	Notification of Violations of Public Health Standard	Per Occurrence	
EXHIBIT B – INVOICING, BUDGET DETAIL, AND REPORTING PROVISIONS			
A.	INVOICING		Quarterly
E.	REPORTS		
1.	Progress Reports by the thirtieth (30 th) of the month following the end of the calendar quarter (March, June, September, and December)		Quarterly
2.	Final Project Summary	Before Final Invoice	July 30, 2017

EXHIBIT B
INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS

A. INVOICING

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

Michael Gjerde, Grant Manager
State Water Resources Control Board
1001 I Street, 15th Floor
Sacramento, CA 95814

2. Invoices submitted in any other format than the one provided by the State Water Board will cause an invoice to be disputed. In the event of an invoice dispute, the State Water Board's Grant Manager will notify the Grantee by initiating an "Invoice Dispute Notification" form. Payment will not be made until the dispute is resolved and a corrected invoice submitted. Failure to use the address exactly as provided above may result in return of the invoice to the Grantee. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. The State Water Board Grant Manager has the responsibility for approving invoices.
3. Supporting documentation (e.g., receipts) must be submitted with each invoice to request reimbursement for grant funds invoiced. The amount claimed for the Personnel Services line item and Professional and Consultant Services line item must include a calculation formula (i.e. hours or days worked times the hourly or daily rate = total amount claimed). Invoice payment shall be made only after receipt of a complete, adequately supported, properly documented and accurately addressed invoice.
4. The Grantee shall not request disbursement for any cost until such cost has been incurred and has been paid by or is due and payable by the Grantee. Although it is agreed that actual payment of such cost by the Grantee is not required as a condition of the grant disbursement, all grant disbursements received by the Grantee shall be paid to contractors and vendors within thirty (30) days from receipt of the funds. In the event that the Grantee fails to disburse grant funds to contractors or vendors within thirty (30) days from receipt of the funds, the Grantee shall immediately return such funds to the State Water Board. Interest shall accrue on such funds from the date of disbursement through the date of mailing of funds to the State Water Board. If the Grantee held such funds in interest-bearing accounts, any interest earned on the funds shall also be due to the State Water Board.
5. Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or guidelines. In the event that any breach of any of the provisions of this Agreement by the Grantee shall result in the failure of Project funds to be used pursuant to the provisions of this Agreement, or if such breach shall result in an obligation on the part of the State or any subdivision of agency thereof to reimburse the federal government, the Grantee shall immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof to such breach.
6. Notwithstanding any other provision of this Agreement, the State Water Board may withhold all or any portion of the funds provided for by this Agreement in the event that:
 - a. The Grantee has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
 - b. The Grantee fails to maintain reasonable progress toward completion of the Project.
7. Notwithstanding any other provision of this Agreement, the Grantee agrees that the State Water Board may retain an amount equal to ten percent (10%) of the grant amount specified in this Agreement until

completion of the Project to the reasonable satisfaction of the State Water Board. Any retained amounts due to the Grantee will be promptly disbursed to the Grantee, without interest, upon completion of the Project.

8. The invoice shall contain the following information:
 - a. The date of the invoice;
 - b. The invoice number and State Water Board Agreement number;
 - c. The time period covered by the invoice, i.e., the term "from" and "to";
 - d. The total amount due; and
 - e. Original signature and date (in ink) of Grantee or its authorized representative.
 - f. Final invoice shall be clearly marked "FINAL INVOICE" and submitted NO LATER THAN AUGUST 1, 2017.

B. MANAGEMENT FEES AND INDIRECT COSTS

Management fees or similar charges in excess of the Direct Costs are prohibited. The term "management fees or similar charges" refers to expenses added to the Direct Costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under the Agreement.

"Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Grantee; accounting and personnel services performed within the Grantee organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining facilities; tuition and conference fees; and, generic overhead or markup.

C. BUDGET CONTINGENCY CLAUSE

The maximum amount to be encumbered under this Agreement for the 2016-17 fiscal year ending June 30, 2017 shall not exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000).

The State Water Board's obligation to disburse Project funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Grantee under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. If any disbursements due the Grantee under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding.

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. In this event, the State Water Board shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Agreement and Grantee shall not be obligated to perform any provisions of this Agreement. Nothing in this Agreement shall be construed to provide the Grantee with a right of priority for payment over any other Grantee.

If this Agreement's funding for any fiscal year is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State Water Board shall have the option to either cancel this

Agreement with no liability occurring to the State Water Board, or offer an amendment to the Recipient to reflect the reduced amount.

D. LINE ITEM BUDGET

	WDPF State Funds
Personnel Services	\$65,768
Actual Indirect Costs (Not to exceed 20%)	\$10,457
Operating Expenses (Prorated for Project) (Travel Expenses – Sample Collection Supplies)	\$699
Laboratory Costs	\$23,076
TOTAL	\$100,000

Note: WDPF Funds may only reimburse for expenses incurred during the California Fiscal Year (i.e., July 1 through June 30).

E. BUDGET LINE ITEM FLEXIBILITY

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

F. REPORTS

1. PROGRESS REPORT. The Grantee shall submit quarterly progress reports to the State Water Board's Grant Manager by the thirtieth (30th) of the month following the end of the calendar quarter (March, June, September, and December).
 - a. The progress reports shall provide a brief description of the work performed, accomplishments during the quarter, milestones achieved, monitoring results, and any problems encountered in the performance of the work under this Agreement. The Grantee shall document all contractor and subcontractor activities and expenditures in progress reports. The description of activities and accomplishments of each task during the quarter shall be in sufficient detail to provide a basis for payment of invoices. Information to be provided shall include, but is not limited to:
 - i. the number and location of sampling stations monitored;

- ii. the number of samples collected;
 - iii. the number of stations posted and/or closed;
 - iv. laboratory costs per sample; and,
 - v. any applicable public notification expenses
 - vi. the web address, telephone number and other methods of public communication
- b. The invoice should accompany the progress report. The invoice should reflect charges for the work completed during the reporting period covered by progress report. The invoice cannot be paid prior to submission of a progress report covering the invoice reporting period.
2. FINAL PROJECT SUMMARY. Prepare a brief summary including: (1) all of the information contained in the Progress Reports submitted; (2) estimated and actual costs of the Project, including a description and amount of any funds from sources other than this Agreement necessary to complete the Project; (3) any appropriate photos or graphics; and (4) any additional information deemed appropriate by the Project Director or Grant Manager. Submit an electronic copy of the Final Project Summary in pdf format to the Grant Manager.
3. The Grantee agrees to expeditiously provide, during work on the Project and throughout the term of this Agreement, such reports, data, information, and certifications that may be reasonably required by the State Water Board or to fulfill any reporting requirements of the federal government.

G. 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.

H. FRAUD AND MISUSE OF PUBLIC FUNDS

All invoices submitted shall be accurate and signed under penalty of perjury. Any and all costs submitted pursuant to this Agreement shall only be for the tasks set forth herein. The Grantee shall not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any eligible costs for which the Grantee is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is illegal and constitutes fraud. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements of grant funds and/or termination of this Agreement requiring the repayment of all funds disbursed hereunder. Additionally, the Deputy Director of the Division of Financial Assistance may request an audit pursuant to Exhibit C, paragraph 5 and refer the matter to the Inspector General's Office, USEPA Office of Inspector General, the appropriate U.S. Attorney's Office, or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability.

Funding Conditions and Exclusions:

1. The State Water Board's disbursement of funds is contingent on the Grantee's compliance with the terms and conditions of this Agreement.
2. The Grantee will not seek reimbursement of any Project costs that have been reimbursed from other funding sources.
3. The Grantee shall not request a disbursement unless that cost is allowable, reasonable, and allocable.
4. The Grantee agrees that it shall not be entitled to interest earned on undisbursed Project funds.

EXHIBIT C
GENERAL TERMS & CONDITIONS

1. **AGRICULTURAL WATER MANAGEMENT PLAN CONSISTENCY:** If the Grantee is an agricultural water supplier as defined by Water Code section 10608.12, Grantee must comply with Agricultural Water Management Planning requirements as mandated by Water Code section 10852.
2. **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.
3. **APPROVAL:** The Grantee will not proceed with any work on the Project until authorized in writing by the State Water Board.
4. **ASSIGNMENT:** This Grant is not assignable by the Grantee, either in whole or in part, without the written consent of the State Water Board.
5. **AUDIT:** The Grantee agrees that the State Water Board, the Bureau of State Audits, the Governor of the State, or any authorized representative of the foregoing shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Division of Financial Assistance (Division), at its option, may call for an audit of financial information relative to the Project, where the Deputy Director of the Division determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of federal requirements. Where such an audit is called for, the audit shall be performed by a certified public accountant independent of the Grantee and at the cost of the Grantee. The audit shall be in the form required by the Division. The Grantee agrees to maintain such records for a possible audit for a minimum of seven (7) years after final payment, unless a longer period of records retention is stipulated. The Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Grantee agrees to include a similar right of the State to audit records and interview staff in any contract related to performance of this Agreement. The Grantee agrees it shall return any audit disallowances to the State Water Board.
6. **CLAIMS:** Any claim of the Grantee is limited to the rights, remedies, and claims procedures provided to the Grantee under this Agreement.
7. **COMPETITIVE BIDDING:** Grantee shall adhere to any applicable, state or local requirements for competitive bidding and applicable labor laws.
8. **COMPLIANCE WITH LAW, REGULATIONS, ETC.:** The Grantee represents that it is compliance with, and shall 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 maintain compliance with applicable program guidelines and policies of the State Water Resources Control Board; all state law requirements set forth in this Exhibit C.
9. **COMPUTER SOFTWARE:** The Grantee certifies that it has appropriate systems and controls in place to ensure that grant 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.
10. **CONFLICT OF INTEREST:** The Grantee certifies that it is in compliance with applicable state and/or federal conflict of interest laws.
11. **DATA MANAGEMENT:** This Project includes appropriate data management activities so that Project data can be incorporated into appropriate statewide data systems.
12. **DELTA PLAN CONSISTENCY FINDINGS:** If the Grantee is a state or local public agency and the Project is covered by the Delta Plan, Grantee must submit certification of project consistency with the Delta Plan to the

Delta Stewardship Council according to the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.

13. **DISPUTES:** The Grantee shall continue with its responsibilities under this Agreement during any dispute. The Recipient may appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute. This section does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law. This section 5.8 relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.
14. **FISCAL MANAGEMENT SYSTEMS AND ACCOUNTING STANDARDS:** The Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of state law, federal law, or this Agreement. The Grantee further agrees that it will maintain separate Project accounts in accordance with generally accepted accounting principles.
15. **GOVERNING LAW:** This Grant Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
16. **GRANTEE'S RESPONSIBILITY FOR WORK:** The Grantee shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, consultants, contractors, subcontractors, suppliers, and any provider of services. The Grantee shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to payment disputes with contractors and subcontractors. The State will not mediate disputes between the Grantee and any other entity concerning responsibility for performance of work.
17. **INCOME RESTRICTIONS:** The Grantee agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Grantee under this Agreement shall be paid by the Grantee to the State Water Board, to the extent that they are properly allocable to costs for which the Grantee has been reimbursed by the State Water Board under this Agreement.
18. **INDEPENDENT ACTOR:** The Grantee, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of the State Water Board.
19. **INSPECTION:** The State Water Board, the Bureau of State Audits, or any authorized representative of the foregoing, shall have suitable access to the Project site or Project records at all reasonable times during Project implementation and thereafter for the useful life of the Project to ascertain compliance with this Agreement and its goals. The Grantee acknowledges that, except for a subset of information regarding archaeological records, the Project records and locations are public records, including but not limited to all of the submissions accompanying the application, all of the documents incorporated by reference into this Agreement, and all reports, disbursement requests, and supporting documentation submitted hereunder. The Grantee acknowledges that the Project records and locations are public records.
20. **INSURANCE:** Throughout the term of this Agreement, the Grantee shall provide and maintain insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures integral to completion of this Project, if any. If the Grantee instead maintains a self-insurance program, then the Grantee shall provide proof of such program and notify the State Water Board in writing of any material amendment to the self-insurer's articles, charter, or agreement of incorporation, association or co-partnership which alters its coverage of the Project. In the event of any damage to or destruction of Project facilities or structures, the net proceeds of insurance shall be applied to the reconstruction, repair or

replacement of the damaged or destroyed facilities or structures. The Grantee shall begin such reconstruction, repair, or replacement as expeditiously as possible and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the larger system shall be free of all claims and liens.

21. NONDISCRIMINATION CLAUSE:

- a. During the performance of this Agreement, the Grantee and its consultants and contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status.
- b. The Grantee, its consultants, and contractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- c. The Grantee, its consultants, and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- d. The Grantee, its consultants, and contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement, if any.
- e. The Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement. Failure by the Grantee to carry out these requirements and applicable requirements of 40 CFR. part 33 is a breach of a material provision of this Agreement which may result in its termination.

22. NO THIRD PARTY RIGHTS: The parties to this grant Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation or undertaking established herein.

23. NOTICE:

- a. The Grantee shall notify the State Water Board in writing within five (5) working days of bankruptcy, insolvency, receivership or similar event of the Grantee, or actions taken pursuant to state law in anticipation of filing for bankruptcy.
- b. The Grantee shall notify the State Water Board within ten (10) working days of any litigation pending or threatened against Recipient regarding its continued existence, consideration of dissolution, or reincorporation;
- c. The Grantee shall notify the State Water Board and at least ten (10) working days prior to any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by State Water Board's representatives.
- d. The Grantee shall notify the State Water Board prior to conducting construction, monitoring, demonstration, or other implementation activities such that State Water Board and/or Regional Water Board staff may observe and document such activities.
- e. The Grantee shall promptly notify the State Water Board of the following:
 - i. Events or proposed changes that could affect the scope, budget, or work performed under this Agreement. The Grantee shall undertake no substantial change in the scope of the Project until written notice of the proposed change has been provided to the State Water Board, and the State Water Board has given written approval for such change. Any circumstance, combination of circumstances, or condition, which is expected to or does delay completion of the Project for a

period of ninety (90) days or more beyond the estimated date of completion of the Project previously provided to the Division.

- ii. Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during implementation of the Project, the Grantee agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Deputy Director of the Division has determined what actions should be taken to protect and preserve the resource. The Grantee agrees to implement appropriate actions as directed by the Division.
 - iii. Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during implementation of the Project, the Grantee agrees to promptly notify the Deputy Director of the Division. This notification is in addition to the Grantee's obligations under the federal Endangered Species Act.
 - iv. Completion of work on the Project.
24. PERMITS, CONTRACTING, AND DEBARMENT: The Grantee shall procure all permits and licenses necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. The Grantee shall comply in all material respects with all applicable federal, state and local laws, rules and regulations. Any contractors, outside associates, or consultants required by the Grantee in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified and agreed to during negotiations for this Agreement, if any, or as are specifically authorized by the State Water Board's Grant Manager during the performance of this Agreement. Any substitutions in, or additions to, such contractors, associates, or consultants, shall be subject to the prior written approval of the State Water Board's Grant Manager. For any work related to this Agreement, the Recipient shall not contract with any individual or organization on the State Water Board's List of Disqualified Businesses and Persons that is identified as debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which funding under this Agreement is authorized. The State Water Board's List of Disqualified Businesses and Persons is located at http://www.waterboards.ca.gov/water_issues/programs/ustcf/dbp.shtml.

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, the California Department of Industrial Relations (DIR), the State Water Board, or the Grantee;
 - b. Have not within a three (3)-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and,
 - d. Have not within a three (3)-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.
25. PROFESSIONALS: The Grantee agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for. All technical reports required pursuant to this Agreement that involve planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, architectural or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to Business and Professions Code, sections

5536.1, 6735, 7835, and 7835.1. To demonstrate compliance with California Code of Regulations, title 16, sections 415 and 3065, all technical reports must contain a statement of the qualifications of the responsible registered professional(s). As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.

26. **RECORDS:** Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles, the Grantee agrees to:
- Establish an official file for the Project which shall adequately document all significant actions relative to the Project;
 - 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;
 - 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;
 - Establish an accounting system which will adequately depict final total costs of the Project, including both direct and indirect costs;
 - 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,
 - If a Force Account is used by the Grantee for any phase of the Project, establish an account that documents all employee hours, and associated tasks charged to the Project per employee.
 - The Grantee agrees to maintain all records, supporting documents, and statistical records relating to the Project for a possible audit for a minimum of seven (7) years after Project completion, unless a longer period is required in writing by the State Water Board or USEPA. If litigation, claim or audit is started during the three year retention period, records must be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.
27. **RELATED LITIGATION:** Under no circumstances may a Grantee use funds from any disbursement under this Grant Agreement to pay costs associated with any litigation the Grantee pursues against the State Water Board or any Regional Water Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Grantee agrees to complete the Project funded by this Agreement or to repay all of the grant funds plus interest.
28. **RIGHTS IN DATA:** The Recipient 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 are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Recipient may copyright the same, except that, as to any work which is copyrighted by the Recipient, the State Water Board reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Recipient upon request.
29. **STATE REVIEWS AND INDEMNIFICATION:** The parties agree that review or approval of Project applications, documents, permits, plans and specifications or other Project information by the State Water Board is for administrative purposes only, including conformity with application and eligibility criteria, and expressly not for the purposes of design defect review or construction feasibility, and does not relieve the Grantee of its responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out the Project. To the extent permitted by law, the Grantee agrees to indemnify, defend and hold harmless the State Water Board, the State of California and their officers, employees, and agents (collectively "Indemnified Parties") against any loss or liability arising out of any claim or action brought against the Indemnified Parties from and against any and all losses, claims, damages, liabilities or expenses,

of every conceivable kind, character and nature whatsoever arising out of, resulting from, or in any way connected with (1) the Project or the conditions, occupancy, use, possession, conduct or management of, work done in or about, or the planning, design, acquisition, installation or construction, of the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the California Hazardous Waste Control Law and California Water Code section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System; or, (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Grantee for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement. To the fullest extent permitted by law, the Grantee agrees to pay and discharge any judgment or award entered or made against the State Water Board and/or the State with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The Grantee shall also provide for the defense and indemnification of the Indemnified Parties in any contractual provision extending indemnity to the Grantee in any contract let for the performance of any work under this Agreement, and shall cause the Indemnified Parties to be included within the scope of any provision for the indemnification and defense of the Grantee in any contract or subcontract. The provisions of this section shall survive the term of this Agreement.

30. **STATE WATER BOARD ACTION, COSTS, AND ATTORNEY FEES:** The Grantee agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State Water Board as a result of breach of this Agreement by the Grantee, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by the State Water Board shall not preclude the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own filing costs and attorney fees.
31. **SUPPLEMENTAL ENVIRONMENTAL PROJECTS:** Grant funds shall not be used for supplemental environmental projects required by Regional Water Boards.
32. **TERMINATION, IMMEDIATE REPAYMENT, INTEREST:** This Grant Agreement may be terminated by written notice at any time prior to completion of the Project, at the option of the State Water Board, upon violation by the Grantee of any material provision after such violation has been called to the attention of the Grantee and after failure of the Grantee to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the State Water Board. In the event of termination, the Grantee agrees, upon demand, to immediately repay to the State Water Board an amount equal to the amount of grant funds disbursed to the Grantee prior to such termination. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Grantee to the date of full repayment by the Grantee.
33. **TIMELINESS:** Time is of the essence in this Agreement. The Grantee shall proceed with and complete the Project in an expeditious manner.
34. **TRAVEL AND PER DIEM:** Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources. These rates may be found at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred by the Grantee. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the Grant Manager.
35. **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.

36. **URBAN WATER MANAGEMENT:** The Grantee certifies that this Project complies with the Urban Water Management Planning Act (Water Code, § 10610 et seq.) This shall constitute a condition precedent to this Agreement.
37. **URBAN WATER SUPPLIER:** If the Grantee is an "urban water supplier" as defined by Water Code section 10617, Grantee must charge each customer for actual water volume measured by water meter according to the requirements of Water Code sections 526 and 527. Section 527 further requires that such suppliers not subject to section 526 install water meters on all municipal and industrial service connections within their service area by 2025.
38. **VENUE:** The State Water Board and the Grantee hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California. The Grantee hereby waives any existing sovereign immunity for the purposes of this Agreement.
39. **WAIVER AND RIGHTS OF THE STATE WATER BOARD:** Any waiver of rights by the State Water Board with respect to a default or other matter arising under the Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State Water Board provided for in this Agreement are in addition to any other rights and remedies provided by law.
40. **WATER CONSERVATION AND EFFICIENCY PROGRAMS:** The Grantee acknowledges that it has appropriate water conservation and efficiency programs in place, and that this provision constitutes a condition of the grant award. A web link with examples of water conservation and efficiency programs is available at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/conservation.shtml. The Grantee also agrees to comply with the State Water Board's Drought Emergency Water Conservation regulations in sections 863-866 of title 23 of the California Code of Regulations. If applicable, the Grantee agrees to include a discussion of progress and compliance in its reports submitted pursuant to Exhibit B of this Agreement.
41. **WATER RIGHTS:** The Grantee acknowledges that its eligibility for this Grant award is conditioned on its compliance with Water Code section 5103, if applicable. The Grantee further certifies that it is not required to file a Statement of Diversion and Use pursuant to Water Code section 5101.
42. **WITHHOLDING OF GRANT DISBURSEMENTS:** The State Water Board may withhold all or any portion of the grant funds provided for by this Agreement in the event that the Grantee has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or the Grantee fails to maintain reasonable progress toward completion of the Project.