

1. Previous State Funded Agreement

FOR STATE USE ONLY
DGS REGISTRATION NO.

CLEANUP AND ABATEMENT ACCOUNT
GRANT AGREEMENT
BETWEEN THE
STATE WATER RESOURCES CONTROL BOARD, hereinafter called "State" or "State Water Board"
AND

County of Orange, hereinafter called "Grantee"

Beach Monitoring, hereinafter called "Project"

AGREEMENT NO. 11-455-550

WHEREAS:

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

Water Code §13440 et seq

2. The Grantee has applied for funding from the State Water Pollution Cleanup and Abatement Account and has been determined by the State Water Board to be eligible for funding of cleanup and abatement activities pursuant to California Water Code, Division 7, Chapter 6, Article 3, sections 13440 et seq. This funding shall be used for beach monitoring programs which contribute to cleanup of waste or abate the effects of waste on waters of the state. Pursuant to these provisions of the Water Code the Grantee may obtain funding for reasonable and necessary costs of cleanup and abatement activities incurred on or after April 1, 2012 with all work to be completed by June 30, 2012 ; final invoice shall be submitted by July 30, 2012; and

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

State Water Board	Grantee: County of Orange, Health Care Agency
Name: Michael W. Gjerde, Grant Manager	Name: Larry Honeybourne, Project Director
Address: 1001 I Street, 15 th Floor	Address: 1241 E. Dyer Road, Suite 120
City, Zip: Sacramento, CA 95814	City, Zip: Santa Ana, CA 92705-5611
Phone: (916) 341-5283	Phone: (714) 433-6015
Fax: (916) 341-5543	Fax: (714) 433-6481
e-mail: mgjerde@waterboards.ca.gov	e-mail: lhoneybourne@ochca.com

- B. Direct all inquiries to:

State Water Board	Grantee:
Section: Division of Water Quality	Section: County of Orange, Health Care Agency 1241 E. Dyer Road, Suite120 Santa Ana, CA 92705-5611
Attention: Sally Meza, Program Analyst	Name: Larry Honeybourne, Grant Contact
Address: 1001 "I" Street, 15th Floor	Address: 1241 E. Dyer Road, Suite 120
City, Zip: Sacramento, CA 95814	City, Zip: Santa Ana, CA 92705-5611
Phone: (916) 341-5465	Phone: (714) 433-6015
Fax: (916) 341-5463	Fax: (714) 433-6481
e-mail: smeza@waterboards.ca.gov	e-mail: lhoneybourne@ochca.com

- C. Either party may make changes to the information above by giving written notice to the other party. Said changes should not require an amendment to this Grant agreement.

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- D. The maximum amount payable under this agreement shall not exceed Ninety three thousand, three hundred twenty two dollars (\$93,322).
- E. In the event the Grantee receives or will receive funds from other sources for work completed under this Grant Agreement, the State Water Board reserves the right to request repayment of funds.

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 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

John M. W. Moorlach

 Grantee Typed/Printed Name

County of Orange Board Chairman

 Title and Date

By: _____
 Victoria A. Whitney, Deputy Director
 State Water Resources Control Board,
 Division of Water Quality

Date

Reviewed by:
 Office of Chief Counsel
 Date:

EXHIBIT A
SCOPE OF WORK

A. WORK TO BE PERFORMED BY GRANTEE

1. Services to be Performed1.0 - Project Management and Administration

The Grantee shall be responsible for the performance of tasks as set forth herein, and for the preparation of products as specified in this Exhibit. The Project Director shall promptly notify the Contract Manager of events or proposed changes 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 Contract Contact and the Contract Manager.

- 1.1 Provide all technical and administrative services as needed for Agreement completion; monitor, supervise, and review all work performed; and coordinate budgeting and scheduling to assure that the Agreement is completed within budget, on schedule, and in accordance with approved procedures, applicable laws, and regulations.
- 1.2 Ensure that the Agreement requirements are met through completion of quarterly progress reports submitted to the Contract Manager by the end of the month following the end of the calendar quarter (March, June, September, and December) and through regular communication with the Contract Manager. The progress reports shall describe activities undertaken and accomplishments of each task during the quarter, milestones achieved, and any problems encountered in the performance of the work under this Agreement. This information shall include: number of sampling stations monitored, the number of samples collected, the number of stations posted or closed. This information may be provided via a report from the Southern California Coastal Water Research Project (SCCWRP) Beachwat.ch database but the county is responsible for data being complete.
- 1.3 Quarterly Invoices: 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. This shall include summaries of beach activities (such as number of samples collected, analyzed and reported along laboratory cost per sample and public notification expenses). All subcontractor activities and expenditures shall be documented in progress reports. Sampling sites and activities shall also be clearly identified by collection agency.

2.0 – Testing, and coordinating the testing of the waters

- 2.1 Testing, and coordinating the testing of, the waters adjacent to all public beaches within the jurisdiction of the County on at least a weekly basis from April 1 to October 31 of each year as required by and in accordance with Sections 115875 through 115915 of the Health and Safety Code (Exhibit A, Attachment I), and Sections 7952 through 7962 of Title 17 of the California Code of Regulations (Exhibit A, Attachment II).

Data Uploads Submittals

2.1 Grantee will submit all location.collection agency, monitoring, and notification data for all monitored sites to the State Water Resources Control Board (SWRCB) via transfer of the data through the SCCWRP database if applicable, or via the data input screens currently used for transmission of beach location, monitoring, and notification data to SWRCB at least monthly during the period of the contract on the 15th day following the month of data collection. While not required as part of this contract, we wish to encourage the weekly upload of data to improve public notification.

3.0 – Inspecting the public beaches

3.1 Inspecting the public beaches to determine whether the standards established pursuant to Sections 115875 through 115915 of the Health and Safety Code (Exhibit A, Attachment I), and Sections 7952 through 7962 of Title 17 of the California Code of Regulations (Exhibit A, Attachment II) are being complied with. If it is found that a public beach is in violation of the standards, restricting the use of, or closing, the public beach or portion thereof in which the violation occurs until the standard is complied with.

4.0 – Investigating any Complaints

4.1 Investigating any complaint by a person of a violation of any standard established pursuant to Sections 115875 through 115915 of the Health and Safety Code (Exhibit A, Attachment I), and Sections 7952 through 7962 of Title 17 of the California Code of Regulations (Exhibit A, Attachment II). If any violation of the standards is found, restricting the use of, or closing, the public beach or portion thereof until the standard is complied with.

5.0 – Posting and Closing Beaches

5.1 Whenever a public beach is posted, closed, or otherwise restricted in accordance with Sections 115875 through 115915 of the Health and Safety Code (Exhibit A, Attachment I), and Sections 7952 through 7962 of Title 17 of the California Code of Regulations (Exhibit A, Attachment II), informing the agency responsible for the operation and maintenance of the public beach within 24 hours of the posting, closure, or restriction.

5.2 Whenever any beach fails to meet the standards established pursuant to Sections 115875 through 115915 of the Health and Safety Code (Exhibit A, Attachment I), and Sections 7952 through 7962 of Title 17 of the California Code of Regulations (Exhibit A, Attachment II), at a minimum, posting the beach with conspicuous warning signs to inform the public of the nature of the problem and the possibility of risk to public health. A warning sign shall be visible from each legal primary beach access point as Identified In the coastal access inventory prepared and updated pursuant to Section 3053 of the Public Resources Code, and any additional access points identified by the Grantee.

6.0 – Establishing a telephone hotline and web based communication

6.1 Establishing a telephone hotline and web based forms of communication to inform the public of all beaches currently closed, posted, or otherwise restricted, and updating the telephone hotline and web as needed to convey changes in public health risks.

Submittals

6.1 Provide county communication information.

7.0 – Reporting any violation of the standards

7.1 Reporting any violation of the standards established pursuant to Sections 115875 through 115915 of the Health and Safety Code (Exhibit A, Attachment I), and Sections 7952 through 7962 of Title 17 of the California Code of Regulations (Exhibit A, Attachment II).to the State and a designated official of the local government having jurisdiction over land adjoining the coastal recreation waters for which the failure to meet applicable standards is identified.

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8.0 – Untreated Sewage Releases

- 8.1 In the event of a known untreated sewage release, immediately testing the waters adjacent to the public beach and taking action pursuant to Sections 115875 through 115915 of the Health and Safety Code (Exhibit A, Attachment I), and Sections 7952 through 7962 of Title 17 of the California Code of Regulations (Exhibit A, Attachment II).
- 8.2 In the event of an untreated sewage release that is known to have reached recreational waters adjacent to a public beach, immediately closing those waters until it has been determined that the waters are in compliance with the standards established pursuant to Sections 115875 through 115915 of the Health and Safety Code (Exhibit A, Attachment I), and Sections 7952 through 7962 of Title 17 of the California Code of Regulations (Exhibit A, Attachment II)

2. Schedule of Due Dates

ITEM #	ITEMS FOR REVIEW	ESTIMATED DUE DATE
1.2	Quarterly Reports	06/30/2012
1.3	Quarterly Invoices	07/30/2012
2.1	Data Uploads	May 15, 2012 June 15, 2012
6.1	Provide county Communication information.	June 01, 2012

3. Subcontract Requirements

As a requirement of this Agreement (and any amendments thereto), subcontracting is limited to \$50,000 or 25% of the total contract, whichever is less. If the total of all subcontracts exceeds the limitation, all subcontracts must be in accordance with the following conditions:

- A. Subcontracted service(s) must be selected by the primary grantee pursuant to a bidding process requiring at least three bids from responsible bidders. A bidding process is not required when a subcontractor(s) is one of the following entities:

Entities excluded from bidding:

- 1) Another state entity, including:
 - a) A governmental agency from any state (Public Contract Code § 10340)
 - b) A state college or state university from any state
 - 2) A local governmental entity or agency, including those created as a Joint Powers Authority (JPA)
 - 3) An auxiliary organization of the California State University (CSU), or a California community college
 - 4) The Federal Government
 - 5) A foundation organized to support the Board of Governors of the California Community Colleges, or
 - 6) An auxiliary organization of the Student Aid Commission established under Education Code § 69522.
- B. By signing this Agreement, the Grantee is certifying selection of a non-excluded subcontractor(s) was pursuant to a bidding process requiring at least three bids from responsible bidders.

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- C. In the event subcontracted service(s) cannot be selected through the bidding process as described in paragraph A above, the grantee then must submit to the State Water Board, in advance, name(s) of the subcontractor(s), services being provided, an explanation outlining the subcontractor(s) unique qualifications that qualified them to be selected through a non-competitive bid process, and the number of contracts awarded to them by the primary grantee in the last twelve months.

In this occurrence, the State Water Board must, in accordance with State guidelines, obtain approval that the primary Grantee's selection of the particular subcontractor(s) without competitive bidding was necessary in order to promote the State Water Board's program needs and was not done for the purpose of circumventing competitive bidding requirements (Public Contract Code § 10410).

The State Water Board will only pay overhead charges on the first \$25,000 for each subcontract.

EXHIBIT B
INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS

A. INVOICE PACKAGES

1. No disbursement under this Grant Agreement will be made except upon receipt of an acceptable Standard Form Payment Request duly executed by or on behalf of the Grantee. The Grantee's duly authorized representative, who has been approved by the State Water Board, must execute all Payment Request forms. A Payment Request form must accompany all invoice packages. The original invoice packages shall be submitted to the State Water Board's Grant Manager on a quarterly basis consistent with the reporting schedule in Line E (1) of this exhibit. The address for submittal is:

Michael Gjerde, Grant Manager
State Water Resources Control Board
Division of Water Quality
1001 "I" Street – 15th Floor
Sacramento, CA 95814

2. Payment of any invoice shall be made only after receipt of a complete, adequately supported, properly documented and accurately addressed invoice. Invoices received by the State Water Board that are not consistent with the approved format will be cause for 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. All invoices must be approved by the State Water Board's Grant Manager.
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.
4. Grantee shall provide proof of payment to the consultant or contractor for each invoice submitted for payment under this Grant. If the grantee is not able to demonstrate proof of payment, the State Water Board, at its discretion, may issue two-party checks for the payment of costs identified in Exhibit B, Budget. The two-party checks will require the endorsement of both Grantee and the company providing the services.
5. Notwithstanding any other provision of this Agreement, the Grantee agrees that the State Water Board may retain ten percent (10%) of the grant amount specified in this Agreement until "Notice of Completion/Final Inspection" from local regulatory agency of the Project is received.
6. The invoice shall contain the following information:
 - a. The word "INVOICE" and a sequential invoice number should appear in a prominent location at the top of the page(s);
 - b. The date of the invoice and the time period covered by the invoice, i.e., the term "from" and "to";
 - c. Printed name of the consultant or contractor;
 - d. Business address of the consultant or contractor, including P.O. Box, City, State, and Zip Code;
 - e. Printed name of the Grantee;
 - f. The number of the Agreement upon which the invoice is based;
 - g. The site address (location) where the work was performed.

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- h. All subcontractor(s) invoices must be listed on the invoice; a copy of the subcontractor invoice should be attached to the consultant/contractors invoice. All subcontractor(s) must have current and active license with California State Contractors License Board;
 - i. Original signature and date (in ink) of Grantee or its authorized representative.
 - l. An itemized account of the work for which the Grantee is seeking payment:
 - A brief description of the work performed, including dates of performance and the name or initials of the person performing the work;
 - The method of computing the amount due. On cost reimbursable agreements, invoices must be itemized based on the tasks specified in the Budget.
 - The total amount due; this should be in a prominent location in the lower right-hand portion of the last page and clearly distinguished from other figures or computations appearing on the invoice; the total amount due shall include all costs incurred by the Grantee under the terms of this Agreement; and
7. Final invoice shall be clearly marked "FINAL INVOICE" and submitted **NO LATER THAN July 30, 2012.** .
8. Remaining Balance. In the event the Grantee does not submit invoices requesting all of the funds encumbered under this Grant 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.

B. BUDGET CONTINGENCY CLAUSE

The maximum amount to be encumbered under this Agreement for the 2011-2012 fiscal year ending June 30, 2012 shall not exceed Ninety three thousand, three hundred twenty two dollars (\$93,322).

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 State Water Board 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.

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.

C. LINE ITEM BUDGET

<u>Personnel</u>		<u>Hourly Rate</u>	<u>Hours</u>		<u>Total Cost</u>
Env Health Spec II	\$	48.60	561.60	\$	27,293.76
Sr Env Health Aid	\$	29.17	561.60	\$	16,381.87
				\$	<u>43,675.63</u>

Includes 42.29% Fringe Benefit Rate

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<hr/> Operating Cost <hr/>	
Equipment - Beach Stakes, Signs, etc ...	\$ 3,105.64
<hr/> Other/Laboratory Costs <hr/>	
OC Public Health Lab 600 samples @ \$66.65/sample	<u>\$ 39,990.00</u>
Overhead 15%	\$ 6,550.74
TOTAL	<u>\$ 93,322.00</u>

D. 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 direct costs up to fifteen percent (15%) of the total grant amount including any amendment(s) thereto. Line item adjustments in excess of fifteen percent (15%) shall require a formal Agreement amendment.
2. Procedure to Request an Adjustment. Grantee may submit a request for an adjustment in writing to the State Water Board. 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 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 Grant 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.

E. REPORTS

1. PROGRESS REPORT. 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 (if applicable), and any problems encountered in the performance of the work under this Agreement. Grantee shall document all contractor activities and expenditures in progress reports.
 - 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 REPORT. Prepare a final Project Report that addresses, to the extent feasible, comments made by the Grant Manager on the interim Progress Reports. Submit an electronic copy of the final Report. This information shall include: number of sampling stations monitored, the number of samples collected, the

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number of stations posted or closed for the total period covered by this contract. This information may be provided via a report from the SCCWRP Beachwatch database but the county is responsible for data being complete.

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.

F. 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.

G. AUDIT DISALLOWANCES

The Grantee agrees it shall return any audit disallowances to the State Water Board.

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 4 and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability. (Civ. Code, §§1572-1573; Pen. Code, §§470, 489-490.)

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EXHIBIT C THE STATE WATER BOARD 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 State Water Board.
3. **ASSIGNMENT:** This grant is not assignable by the Grantee, either in whole or in part, without the consent of the State Water Board.
4. **AUDIT:** Grantee agrees that the State Water Board, 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 use of grant funds or performance of this Agreement. Grantee agrees to maintain such records for possible audit for a minimum of three (3) 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 this Agreement.
5. **CHILD SUPPORT COMPLIANCE ACT:** Grantee acknowledges that it recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code. Grantee, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
6. **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. This includes, but is not limited to, compliance with any applicable requirements contained in directives or orders issued pursuant to Division 7 of the Water Code.
7. **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 State Water Board 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.
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. **CONFLICT OF INTEREST:** Grantee certifies that it is in compliance with applicable state and/or federal conflict of interest laws.
10. **DISPUTES:** The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Grantee shall submit to the Deputy Director of the DWQ a written demand for a final decision. The decision of the Division, or his or her authorized representative, shall be reduced to writing and a copy thereof furnished to the Grantee and to the State Water Board's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days of the date of the Division decision, the State Water Board's Executive Director receives a written appeal. The Grantee's written appeal shall be fully supported by any factual information Grantee desires to be considered in the decision. The

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Executive Director's decision 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. 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 State Water Board, or any official or representative thereof, on any question of law.

11. **DRUG-FREE WORKPLACE REQUIREMENTS:** Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (commencing with Section 8350 of the Government Code) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace,
 - 2) the organization's policy of maintaining a drug-free workplace,
 - 3) any available counseling, rehabilitation, and employee assistance programs, and
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed project will:
 - 1) receive a copy of the organization's drug-free workplace policy statement, and
 - 2) agree to abide by the terms of the statement as a condition of employment on the project.

Failure to comply with these requirements may result in suspension of payments or termination of the grant or both, and Grantee may be ineligible for award of any future state grants if it is determined that any of the following has occurred: the Grantee has made false certification, or violated the certification by failing to carry out the requirements as noted above.

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:** This grant is governed by and shall be interpreted in accordance with the laws of the State of California.

14. **GRANT MODIFICATIONS:** The State Water Board 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 State Water Board a written statement setting forth the disagreement with the change.

15. **GRANTEE'S RESPONSIBILITIES FOR WORK:** The Grantee shall be responsible for work and for persons or entities engaged in work, including, but not limited to, subcontractors, suppliers, and providers of services. The Grantee shall be responsible for any and all disputes arising out of its contracts for work on the Project. The State will not mediate disputes between the Grantee and any other entity concerning responsibility for performance of work.

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16. **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.
17. **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 state.
18. **INSPECTION:** Throughout the term of this Agreement, the State Water Board shall have the right to inspect the project area to ascertain compliance with this Agreement.
19. **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 days' prior written notice to the State Water Board. 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.
20. **NONDISCRIMINATION:** During the performance of this Project, the Grantee and its contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, religion, color, national origin, ancestry, religious creed, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40) marital status, or denial of family-care leave. 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. Grantee and its contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing commission implementing Government Code Section 12990 (a-f), 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.

Grantee and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Grantee shall include the nondiscrimination and compliance provisions of this clause in all contracts to perform work at this Project.
21. **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 grant Agreement, or of any duty, covenant, obligation or undertaken established herein.
22. **NOTICE:** The Grantee shall promptly notify the State Water Board 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 State Water Board, and the State Water Board has given written approval for such change. The Grantee shall notify the State Water Board 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 the State Water Board's representatives. The Grantee shall promptly notify the State Water Board in writing of completion of work on the Project.
23. **OPERATIONS & MAINTENANCE:** The Grantee shall maintain and operate the facility and structures constructed or improved as part of the project throughout the term of this Agreement, consistent with the

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purposes for which this Grant was made. The Grantee assumes all operations and maintenance costs of the facilities and structures; the State Water Board shall not be liable for any cost of such maintenance, management or operation.

24. PAYEE DATA RECORD FORM (Std. 204). The Grantee must complete the Payee Data Record Form.
25. 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 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. 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.) 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; and
 - 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.
26. PREVAILING WAGES AND LABOR COMPLIANCE: If applicable, the Grantee agrees to be bound by all the provisions of State Labor Code 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 are being met.
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. 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 such 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.

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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 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 and the State against any loss or liability arising out of any claim or action brought against the State Water Board 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 § 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 provisions of this section shall survive the term of this Agreement.
30. **TIMELINESS:** Time is of the essence in this Agreement. The Grantee shall proceed with and complete the Project in an expeditious manner.
31. **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.
32. **TRAVEL AND PER DIEM:** Any reimbursement for necessary travel shall be at rates not to exceed those set by the California Department of Personnel Administration. These rates may be found at <http://www.dpa.ca.gov/personnel-policies/travel/hr-staff.htm>. 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.