ITEM NO. 17

STAFF REPORT

CITY OF OCEANSIDE

DATE: December 3, 2014

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **ADOPTION OF A RESOLUTION AUTHORIZING ENTERING INTO A GRANT AGREEMENT WITH THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD FOR A CLEAN BEACHES INITIATIVE GRANT PROJECT**

SYNOPSIS

Staff and the Water Utilities Commission recommend that the City Council adopt a resolution authorizing the City to enter into a grant agreement with the California State Water Resources Control Board to receive a requested amount of $330,000 in funds for the Clean Beaches Initiative to conduct the Buccaneer Beach and Loma Alta Creek Microbial Source Tracking Study Project; and authorize the City Manager to execute all associated grant documents.

BACKGROUND

The Clean Beaches Initiative (CBI) grant program, administered by the California State Water Resources Control Board (SWRCB), provides funding for implementation and research projects that aim to restore and protect the water quality of coastal and near shore waters. Of particular focus are projects that reduce the impacts of poor water quality which pose a risk to public health at California's beaches.

On July 9, 2014, the City of Oceanside submitted a conceptual application for the CBI research grant program to fund a project to identify the sources of fecal indicator bacteria in the Loma Alta Creek Watershed and Buccaneer Beach. The project will utilize new research guidelines and water quality testing methods endorsed by the SWRCB. The project is intended to achieve the following objectives:

- Determine the specific sources and locations of bacterial contribution to Loma Alta Creek, Loma Alta Slough and Buccaneer Beach
- Develop an understanding of environmental conditions which elevate bacteriological risks to public health
- Develop and evaluate management actions that will eliminate the sources of bacterial contribution
- Utilize the study results in long-term watershed planning efforts consistent with State regulatory mandates and permits

On September 30, 2014, The City of Oceanside was invited by the SWRCB to submit a detailed application to move into the next stage of candidate selection for project funding. As part of the application package, the SWRCB requires a Council resolution authorizing the City to enter into a grant agreement with the SWRCB Division of Financial Assistance if funds are awarded.

ANALYSIS

Buccaneer Beach at the mouth of Loma Alta Creek is one of the City's most popular beaches and provides year-round activities such as surfing, sunbathing and wildlife viewing. At various times throughout the year, Buccaneer Beach is intermittently exposed to high loads of bacteria when the creek is flowing to the ocean. Historical water quality data show significant correlations between these flow events and beach indicator bacteria levels which exceed State public health standards. These events often result in beach advisory postings to protect the public from health risks associated with contacting contaminated waters.

Both the Loma Alta Slough and shoreline of the outlet are currently listed by the SWRCB as impaired water bodies for indicator bacteria, as required under Section 303(d) of the Federal Clean Water Act. In 2005 the City of Oceanside was awarded a CBI grant to construct an ultraviolet treatment facility at the Loma Alta Slough which disinfects the creek water prior to discharging to the beach. During the summer months, creek flows are blocked from the beach by a sand berm and the system has proven effective at reducing exceedances of indicator bacteria standards at Buccaneer Beach. However, during winter storm events and throughout the spring and fall seasons, the highly dynamic state of the sand berm results in intermittent flows to the beach, carrying bacteria from the Slough and watershed upstream. These flows exceed the design capacity of the ultraviolet system and are therefore not treated. This Project attempts to identify the sources of bacteria in these flows affecting Buccaneer Beach and throughout the Loma Alta Creek watershed, and develop appropriate management actions to eliminate such sources.

The project will reference the California Microbial Source Identification Manual throughout the study design and implementation process. The manual provides a standardized technical approach endorsed by the SWRCB for designing scientifically defensible bacteria source identification studies. Among the research methods included are sanitary sewer system surveys and genetic-based bacterial water quality testing.

This study will provide the City with valuable information to meet existing water quality objective mandates and future goals to ensure protection of both public health and beneficial uses of Buccaneer Beach and the Loma Alta Slough.

FISCAL IMPACT

Primary funding for CBI grant projects comes from The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84), and the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002 (Proposition 40). For this project, a total of $330,000 in State grant funds has been requested.

There is no anticipated fiscal impact at this time for the Project. As a designated research project under the Clean Beaches Initiative grant program, no local cost match is required from the City. Upon receipt of grant, in-kind services of approximately $45,000 over the life of the Project will be provided by the City in the form of existing personnel costs for grant and consultant contract management will be budgeted. The life expectancy of the Project is estimated to be three years.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff and the Water Utilities Commission recommend that the City Council adopt a resolution authorizing the City to enter into a grant agreement with the California State Water Resources Control Board to receive a requested amount of $330,000 in funds for the Clean Beaches Initiative to conduct the Buccaneer Beach and Loma Alta Creek Microbial Source Tracking Study Project; and authorize the City Manager to execute all associated grant documents.

PREPARED BY:

Jason Dafforn
Water Utilities Division Manager

SUBMITTED BY:

Steven R. Jepsen
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Assistant City Manager

James R. Riley, Financial Services Director

ATTACHMENTS:

1) Clean Beaches Initiative Grant Program Grant Agreement Template
2) Resolution

ATTACHMENT 1

FOR STATE USE ONLY
DGS REGISTRATION NO.

CLEAN BEACHES GRANT PROGRAM
GRANT AGREEMENT
BETWEEN THE
STATE WATER RESOURCES CONTROL BOARD, hereinafter called "State" or "State Water Board"
AND

NAME OF GRANTEE, hereinafter called "Grantee"

[NAME OF PROJECT], hereinafter called "Project"

AGREEMENT NO. XX-XXX-XXX

The State and Grantee hereby agree as follows:

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

Water Code, § 79543 (Proposition 50 Coastal Nonpoint Source Pollution Control)

PURPOSE. State shall provide a grant to and for the benefit of Grantee for the purpose of _____.

GRANT AMOUNT. The maximum amount payable under this Agreement shall not exceed $<INSERT AMOUNT>.

TERM OF AGREEMENT. The term of the Agreement shall begin on MONTH 1, 201X, and continue through final payment plus (choose one) thirty-five (35)/thirty-six (36) years unless otherwise terminated or amended as provided in the Agreement. HOWEVER, ALL WORK SHALL BE COMPLETED BY MONTH 1, 201X. ABSOLUTELY NO FUNDS MAY BE REQUESTED AFTER MONTH 1, 201X.

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

State Water Board		Grantee: Grantee Name	
Name:	Name, Grant Manager	Name:	Name, Project Director
Address:		Address:	
City, Zip:		City, Zip:	
Phone:	(XXX) XXX-XXXX	Phone:	(XXX) XXX-XXXX
Fax:	(XXX) XXX-XXXX	Fax:	(XXX) XXX-XXXX
e-mail:	name@waterboards.ca.gov	e-mail:	

Direct all inquiries to:

State Water Board		Grantee: Grantee Name	
Section:	Division of Financial Assistance	Section:	Section Name, if any
Attention:	Name, Program Analyst	Name:	Name, Grant Contact
Address:	1001 I Street, 17th Floor	Address:	
City, Zip:	Sacramento, CA 95814	City, Zip:	
Phone:	(916) XXX-XXXX	Phone:	(XXX) XXX-XXXX
Fax:	(916) 341-5296	Fax:	(XXX) XXX-XXXX
e-mail:	name@waterboards.ca.gov	e-mail:	

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 – WORK TO BE PERFORMED BY THE GRANTEE
Exhibit B	INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS
Exhibit C	GENERAL TERMS & CONDITIONS
Exhibit D	SPECIAL CONDITIONS – CLEAN BEACHES GRANT PROGRAM

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

_____
Grantee Typed/Printed Name

_____
Title

_____
Date

By: _____
James Maughan, Acting Deputy Director
State Water Resources Control Board,
Division of Financial Assistance

_____
Date

_____
Reviewed by:
Office of Chief Counsel
Date:

EXHIBIT A
SCOPE OF WORK – WORK TO BE PERFORMED BY THE GRANTEE

A. PLANS AND GENERAL COMPLIANCE REQUIREMENTS

1. In order for the State Water Board and Regional Water Quality Control Board (Regional Water Board) staff to verify work was adequately performed or conducted, Global Positioning System (GPS) information for project site and monitoring locations must be identified for this Project prior to any disbursements. Submittal requirements for GPS data are available at: http://www.waterboards.ca.gov/water_issues/programs/grants_loans/grant_info/index.shtml#plans.

2. The Grantee shall prepare and submit a Monitoring and Reporting Plan (MRP) that does all of the following: 1) identifies the nonpoint source(s) of pollution to be prevented or reduced by the Project; 2) describes the baseline water quality or quality of the environment to be addressed; 3) describes the manner in which the Project will be effective in preventing or reducing pollution and in demonstrating the desired environmental results; and 4) describes the monitoring program, including, but not limited to, the methodology, frequency, and duration of monitoring.

   The MRP shall be organized as follows, and may be submitted as separate documents or in one report.

   2.1 Project Assessment and Evaluation

   Project Assessment and Evaluation Plan (PAEP) describes the manner in which the Project will be effective in preventing or reducing pollution and in demonstrating the desired environmental results. The PAEP details the methods of measuring Project benefits and reporting them in accordance with a PAEP. Grantee shall not implement monitoring and performance assessment and/or evaluation actions prior to PAEP approval by the Grant Manager. Guidance for preparing the PAEP is available at http://www.waterboards.ca.gov/water_issues/programs/grants_loans/paep/index.shtml.

   2.2 Monitoring Plan

   All projects that include water quality or environmental monitoring must prepare a Monitoring Plan (MP). At a minimum, all MPs must: 1) describe the baseline water quality or quality of the environment to be addressed; 2) identify the non-point source(s) of pollution to be prevented or reduced by the Project; and 3) provide GPS information for all sampling locations. Furthermore, every project must collect pre- and post-AB 411 (Health and Saf. Code, § 115875 et seq.) data from the local county environmental health department for analysis in the final report.

   The MP must include a description of the monitoring program and objectives, types of constituents to be monitored, methodology, the frequency and duration of monitoring, and the sampling location for the monitoring activities.

   Any costs related to monitoring data collected prior to and not supported by the approved MP will not be reimbursed. Changes to the MP must be submitted to the Grant Manager for review and a decision regarding approval prior to implementation. Guidance for preparing an MP is available at: http://www.waterboards.ca.gov/water_issues/programs/grants_loans/grant_info/index.shtml#plans.

   2.3 Quality Assurance and Project Plan

   If water quality monitoring is undertaken, the Grantee shall also prepare, maintain, and implement a Quality Assurance Project Plan (QAPP) in accordance with the State Water Board's Surface Water Ambient Monitoring Program's (SWAMP) QAPP and data reporting requirements, and the USEPA QAPP, EPA AQ/R5, 3/01. Water quality monitoring data includes physical, chemical, and biological monitoring of any surface water. The QAPP shall be submitted to the State Water Board's Quality Assurance Officer for review and a decision regarding approval. Any costs related to monitoring data collected prior to and not supported by the approved QAPP will not be reimbursed. Guidance

for preparing the QAPP is available at:
http://www.waterboards.ca.gov/water_issues/programs/grants_loans/grant_info/index.shtml#plans.

The Grantee shall upload a pdf version of the final approved document(s) to the Financial Assistance Application Submittal Tool (FAAST) system.

2.4 Data Management

The Grantee shall upload all water quality data obtained through its implementation of the MP to the California Environmental Data Exchange Network (CEDEN). The Grantee shall also provide a receipt of successful data submission, which is generated by CEDEN, to the Grant Manager prior to submitting a final invoice. Guidance for submitting data, including required minimum data elements and data formats, is available at http://www.ceden.org or the Regional Data Centers (RDCs) (Moss Landing Marine Lab, San Francisco Estuary Institute, Southern California Coastal Water Research Project, or Central Valley RDC). Contact information for the RDCs is included in the CEDEN web link.

3. Activities supported by grant funds are projects under the California Environmental Quality Act (CEQA) and must comply with CEQA requirements. Work on the Project cannot begin until the State Water Board has reviewed the CEQA documentation submitted by the Grantee and given environmental clearance. If the work is conducted on federal land, the Grantee must also comply with the National Environmental Policy Act (NEPA). Proceeding with work subject to CEQA and/or NEPA without environmental clearance by the State Water Board shall constitute a breach of a material provision of this Agreement.

4. If public agency approvals, entitlements or permits are required, such approvals, entitlements or permits must be obtained and signed copies submitted to the Grant Manager before work begins. If the Project is carried out on lands not owned by the Grantee, the Grantee must obtain adequate rights of way for the useful life of the Project.

5. State Disclosure Requirements – Include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

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

Signage shall be posted in a prominent location at Project site (if applicable) or at the Grantee's headquarters and shall include the State Water Board color logo (available from the Program Analyst):

and the following disclosure statement:

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

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

B. PROJECT-SPECIFIC REQUIREMENTS

The State Water Board Program Analyst inserts a detailed Project-specific scope of work. Be as specific as appropriate for the Project being funded. The scope must be consistent with the proposed scope contained in the application and the required revisions identified during the review process. Do not include purely speculative statements or purely historical statements. For example, say "Conduct restoration work from X stretch of creek to Y stretch of creek to remove exotic flora (including X plant, if known)", etc. DON'T SAY "Grantee is concerned about invasive flora in the watershed. This type of flora hurts the habitat for aquatic species." What we want to know is WHAT THE GRANTEE IS ACTUALLY GOING TO DO.

1. Heading of Work Item

    1.1 Work to be performed.

    1.2 Work to be performed.

        1.2.1 Work to be performed.

TABLE OF ITEMS FOR REVIEW

ITEM	DESCRIPTION	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A – SCOPE OF WORK – TO BE PERFORMED BY THE GRANTEE			
A.	PLANS AND GENERAL COMPLIANCE REQUIREMENTS		
1.	GPS information for Project site and monitoring locations	Day 90	
2.	Monitoring and Reporting Plan		
2.1.	Project Assessment and Evaluation Plan (PAEP)	Day 90	
2.2.	Monitoring Plan (MP)	Day 90	
2.3.	Quality Assurance Project Plan (QAPP)	Day 90	
2.4	Proof of Water Quality Data Submission to CEDEN	Before Final Invoice	
3.	Copy of final CEQA/NEPA Documentation	Month/Day/Year	
4.	Public Agency Approvals, Entitlements or Permits		As Needed
B.	PROJECT-SPECIFIC REQUIREMENTS		
1.	{Title of work item to be reviewed}		Month Year
	{Name of item to be reviewed}		Month Year
	{Name of item to be reviewed}		Month Year
EXHIBIT B – INVOICING, BUDGET DETAIL, AND REPORTING PROVISIONS			
A.	INVOICING		Quarterly
G.	REPORTS		
1.	Progress Reports within forty-five (45) days following the end of the calendar quarter (March, June, September, and December)		Quarterly
2.	Annual Progress Summaries		Annually by 9/30
3.	Natural Resource Projects Inventory (NRPI) Survey Form	Before Final Invoice	
4.	Draft Project Report	Month/Day/Year	
5.	Final Project Report	Month/Day/Year	
6.	Final Project Summary	Before Final Invoice	
7.	Final Project Inspection and Certification	Before Final Invoice	

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 G.1 of this exhibit. The address for submittal is:

   Name, Grant Manager
   State Water Resources Control Board
   Division of Financial Assistance
   1001 I Street, 16th 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 as well as to support matching 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 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.

6. 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.

7. The invoice shall contain the following information:

   a. The date of the invoice;

   b. The time period covered by the invoice, i.e., the term "from" and "to";

   c. The total amount due; and

d. Original signature and date (in ink) of Grantee or its authorized representative.

e. Final invoice shall be clearly marked "FINAL INVOICE" and submitted NO LATER THAN MONTH 1, 201X.

B. PROHIBITION OF INDIRECT COSTS

The grant funds for this Agreement are the proceeds from the sale of general obligation bonds. As such, grant funds may not be used for any indirect costs. "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; non-project-specific accounting and personnel services performed within the Grantee organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; and, generic overhead or markup. Any invoice submitted including Indirect Costs will cause that invoice, in its entirety, to be disputed and will not be paid until the dispute is resolved. This prohibition applies to the Grantee and any subcontract or sub-agreement for work on the Project that will be reimbursed with grant funds pursuant to this Agreement. (Gov. Code, § 16727.)

C. BUDGET CONTINGENCY CLAUSE

The maximum amount to be encumbered under this Agreement for the 201X-1X fiscal year ending June 30, 201X shall not exceed TYPE OUT DOLLAR AMOUNT (ALPHA) DOLLARS ($NUMERIC).

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 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 shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to the Grantee to reflect the reduced amount.

D. LINE ITEM BUDGET

	PROP 50	MATCH	TOTAL
Direct Project Administration Costs	$	$	$
Planning/Design/Engineering/Environmental	$	$	$
Equipment ($5,000 or more per item) (Itemize each piece of equipment)	$	$	$
Construction/Implementation	$	$	$
Monitoring/Performance	$	$	$
Education/Outreach	$	$	$
TOTAL	$	$	$

E. BUDGET LINE ITEM FLEXIBILITY

1. Line Item Adjustment(s). Subject to the prior review and approval of the Grant Manager, adjustments between existing line item(s) may be used to defray allowable direct costs up to fifteen percent (15%) of the total grant amount (excluding Match Funds) including any amendment(s) thereto. Line item adjustments in excess of fifteen percent (15%) shall require a formal Agreement amendment. If the Line Item Budget includes an amount for Personnel Services, that amount is based on the hours, classifications, and rates submitted by the Grantee in its application. Any changes to the hours, classifications, and rates must be approved, in advance and in writing, by the Grant Manager.

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.

F. MATCH FUNDS

1. The Grantee agrees to provide match funds in the amount of TYPE OUT DOLLAR AMOUNT (ALPHA) DOLLARS ($NUMERIC) (Match Funds) for this Project. This Match Funds amount is based on Line Item Budget categories, funding sources, and amounts submitted by the Grantee in its application and during the negotiation of this Agreement. Any Match Funds line item changes or adjustments in Match Funds classifications or sources requested by the Grantee must be approved, in advance and in writing, by the Grant Manager.

2. If, upon completion of the Project, the Grantee has provided match funds in an amount that is less than the Match Funds amount set forth in paragraph F.1 above, then the State Water Board may proportionately reduce the Grant amount and/or the Grantee's Match Funds amount, provided the reduced amount(s) satisfy statutory requirements and State Water Board guidelines.

G. REPORTS

1. PROGRESS REPORT. The Grantee shall submit quarterly progress reports to the State Water Board's Grant Manager within forty-five (45) days 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. The 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. ANNUAL PROGRESS SUMMARIES. Prepare and provide an Annual Progress Summary annually by September 30. The summary must be no more than two (2) pages, and shall include pictures as appropriate. Upload an electronic copy of the Annual Progress Summary in pdf format to the FAAST system. The summary shall include the following:

   a. A summary of the conditions the Project is meant to alleviate, the Project's objective, the scope of the Project, and a description of the approach used to achieve the Project's objective.

b. A summary of the progress made to date, significant milestones achieved, and the current schedule of completing the Project.

c. An evaluation of the effectiveness of the Project to date in preventing or reducing pollution and alleviating the Project's original conditions.

3. NATURAL RESOURCE PROJECTS INVENTORY (NRPI) SURVEY FORM. At the completion of this Project, the Grantee shall complete and submit electronically a NRPI Project Survey Form found at http://www.ice.ucdavis.edu/nrpi.

4. DRAFT FINAL PROJECT REPORT. Prepare and submit to the Grant Manager, for review and comment, a Draft Final Project Report in a format provided by the Grant Manager.

5. FINAL PROJECT REPORT. Prepare a Final Project Report that addresses, to the extent feasible, comments made by the Grant Manager on the Draft Final Project Report. Submit one (1) reproducible master, and an electronic copy of the final. Upload an electronic copy of the final report in pdf format to the FAAST system.

6. FINAL PROJECT SUMMARY. Prepare a brief summary of the information contained in the Final Project Report, including before and after photographs, as appropriate. Upload an electronic copy of the Final Project Summary in pdf format to the FAAST system.

7. FINAL PROJECT INSPECTION AND CERTIFICATION. Upon completion of the Project, the Grantee shall provide for a final inspection and shall certify that the Project has been completed in accordance with this Agreement, any final plans and specifications submitted to the State Water Board, and any amendments or modifications thereto. If the Project involved the planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, or other professionals, the final inspection and certification shall be conducted by a California Registered Civil Engineer or other appropriate California registered professional. The results of the final inspection and certification shall be provided to the Grant Manager.

8. 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.

H. 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.

I. AUDIT DISALLOWANCES

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

J. 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.)

EXHIBIT C
GENERAL TERMS & 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 written consent of the State Water Board.

4. AUDIT: The Grantee agrees the State Water Board, the Bureau of State Audits, the Governor of the State, or the Internal Revenue Service, 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 thirty-five (35)/thirty-six (36) 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. (Gov. Code, § 8546.7; Pub. Contract Code, § 10115 et seq.)

5. BONDING: Where contractors are used, the Grantee shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Grantee in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than $25,000.00. (Civ. Code, § 3247 et seq.; Pub. Contract Code, § 7103.)

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. Without limitation of the foregoing, the Grantee agrees that, to the extent applicable, the Grantee will comply with the provisions of the adopted environmental mitigation plan for the term of this Agreement, or the useful life of the Project, whichever is longer.

7. 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.

8. CONFLICT OF INTEREST: The Grantee certifies that it is in compliance with applicable state and/or federal conflict of interest laws.

9. CONTINUOUS USE OF PROJECT; LEASE OR DISPOSAL OF PROJECT: The Grantee agrees that, except as provided in the Agreement, it will not abandon, substantially discontinue use of, lease, or dispose of the Project or any significant part or portion thereof during the useful life of the Project without prior written approval of the Deputy Director of the Division. Such approval may be conditioned as determined to be appropriate by the Deputy Director of the Division, including a condition requiring repayment of all grant funds or any portion of all remaining grant funds covered by this Agreement together with accrued interest and any penalty assessments which may be due.

10. DAMAGES FOR BREACH AFFECTING TAX EXEMPT STATUS: In the event that any breach of any of the provisions of this Agreement by the Grantee shall result in the loss of tax exempt status for any state bonds, or if such breach shall result in an obligation on the part of the State to reimburse the federal government by

reason of any arbitrage profits, the Grantee shall immediately reimburse the state in an amount equal to any damages paid by or loss incurred by the State due to such breach.

11. DATA MANAGEMENT: This Project includes appropriate data management activities so that Project data can be incorporated into appropriate statewide data systems.

12. DISPUTES: The Grantee shall continue with its responsibilities under this Agreement during any dispute. Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Deputy Director of the Division, or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Grantee and to the State Water Board's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Grantee, the Grantee mails or otherwise furnishes a written appeal of the decision to the State Water Board's Executive Director. The decision of the State Water Board's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Grantee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Grantee shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement. This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.

13. ENVIRONMENTAL CLEARANCE (CEQA/NEPA/STREAMBED ALTERATION):

    a. No work that is subject to the California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA) may proceed under this Agreement until documents that satisfy the CEQA/NEPA process are received by the Grant Manager and the State Water Board has given environmental clearance. No work that is subject to an Environmental Impact Report or a Mitigated Negative Declaration may proceed until and unless approved by the Deputy Director of the Division. Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. Proceeding with work subject to CEQA and/or NEPA without environmental clearance by the State Water Board shall constitute a breach of a material provision of this Agreement.

    b. If this Project includes modification of a river or stream channel, it must fully mitigate environmental impacts resulting from the modification. The Grantee must provide documentation that the environmental impacts resulting from such modification will be fully mitigated considering all of the impacts of the modification and any mitigation, environmental enhancement, and environmental benefit resulting from the Project, and whether, on balance, any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the Project.

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 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 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, contractors, 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, 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, to the extent that they are properly allocable to costs for which the Grantee has been reimbursed by the State 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 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 the Project records and location are public records.

20. INSURANCE: Throughout the useful life of the Project, the Grantee shall provide and maintain insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Agreement, if any. This insurance shall be issued by a company or companies admitted to transact business in the State of California. The insurance policy shall contain an endorsement specifying that the policy will not be cancelled or reduced in coverage without thirty (30) days 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.

21. NONDISCRIMINATION:

    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, and denial of family care leave.

    b. The Grantee, its consultants, and contractors shall ensure 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 C.F.R. 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 grant Agreement, or of any duty, covenant, obligation or undertaking established herein.

23. NOTICE:

a. 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.

b. 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.

c. 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.

d. Discovery of any unexpected endangered or threatened species, as defined in the federal or California Endangered Species Acts. Should a federal or state 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 or state Endangered Species Acts.

e. 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 State Water Board's representatives.

f. The Grantee shall promptly notify the State Water Board in writing of completion of work on the Project.

g. The Grantee shall promptly notify the State Water Board in writing of any cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more and of any circumstance, combination of circumstances, or condition, which is expected to or does delay completion of construction for a period of ninety (90) days or more beyond the estimated date of completion of construction previously provided.

24. OPERATIONS & MAINTENANCE: The Grantee shall maintain and operate the facility and structures constructed or improved as part of the Project throughout the useful life of the Project, consistent with the purposes for which this Grant was made. The Grantee assumes all operations and maintenance costs of the facilities and structures; the State Water Board shall not be liable for any cost of such maintenance, management or operation. The Grantee may be excused from operations and maintenance only upon the written approval of the Deputy Director of the Division. For purposes of this Agreement, "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses. "Maintenance costs" include ordinary repairs and replacements of a recurring nature necessary to prolong the life of capital assets and basic structures, and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures.

25. 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. 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. 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 C.F.R. § 31.35; Gov. Code, § 4477) www.epls.gov. The Grantee certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or Grantee;

b. Have not within a three (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.

26. PREVAILING WAGES AND LABOR COMPLIANCE: If applicable, the Grantee agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. The Grantee certifies that it will reimburse the Department of Industrial Relations (DIR) for DIR's reasonable and directly-related costs of labor compliance monitoring and enforcement pursuant to: Labor Code, sections 1771.3 or 1771.5; and, sections 16450 through 16452, or section 16454 of title 8 of the California Code of Regulations. Current DIR requirements may be found at http://www.dir.ca.gov/lcp.asp.

27. 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, or design, or other work requiring interpretation and proper application of engineering 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 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.

28. RECORDS: Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles, the Grantee agrees to:

a. Establish an official file for the Project which shall adequately document all significant actions relative to the Project;

b. Establish separate accounts which will adequately and accurately depict all amounts received and expended on this Project, including all grant funds received under this Agreement;

c. Establish separate accounts which will adequately depict all income received which is attributable to the Project, especially including any income attributable to grant funds disbursed under this Agreement;

d. Establish an accounting system which will adequately depict final total costs of the Project, including both direct and indirect costs;

e. Establish such accounts and maintain such records as may be necessary for the state to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and,

f. If 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.

29. 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.

30. RIGHTS IN DATA: The Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, audio and video recordings, 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.

31. 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, 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 provisions of this section shall survive the term of this Agreement.

32. SUPPLEMENTAL ENVIRONMENTAL PROJECTS: Grant Funds shall not be used for supplemental environmental projects required by Regional Water Boards.

33. 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.

34. 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.

35. TIMELINESS: Time is of the essence in this Agreement. The Grantee shall proceed with and complete the Project in an expeditious manner.

36. TRAVEL AND PER DIEM: Any reimbursement for necessary travel 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.

37. 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.

38. 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.

39. USEFUL LIFE OF PROJECT: For the purpose of this Agreement, the useful life of any constructed portions of this Project begins upon completion of construction and continues until fifty (50) years thereafter for pipelines and structures and twenty (20) years for all else.

40. 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, or in the United States District Court in and for the Eastern District of California. The Grantee hereby waives any existing sovereign immunity for the purposes of this Agreement.

41. WAIVER AND RIGHTS OF THE STATE WATER BOARD: 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.

42. WATER RIGHTS: The Grantee acknowledges that its eligibility for this Grant award is conditioned on its compliance with Water Code section 5103(e)(1), if applicable. The Grantee further certifies that it <SELECT ONE, BASED ON GRANTEE'S SELF-CERTIFICATION, is not required to file a Statement of Diversion and Use pursuant to Water Code section 5101 or, has filed and will continue to file its required Statements of Diversion with State Water Board in accordance with Water Code sections 5101 and 5103.>

43. WATERSHED MANAGEMENT PLAN CONSISTENCY: The Grantee certifies that any watershed protection activity undertaken as part of this Project will be consistent with the applicable, adopted, local watershed management plans and the applicable Water Quality Control Plan (Basin Plan and/or Statewide) adopted by a Regional Water Board or the State Water Board, where such plans exist. Any such activity occurring in the San Gabriel and Los Angeles watersheds shall be consistent with the San Gabriel and Los Angeles River Watershed and Open Space Plan as adopted by the San Gabriel and Lower Los Angeles Rivers and Mountain Conservancy and Santa Monica Mountains Conservancy.

44. 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.

EXHIBIT D
SPECIAL CONDITIONS - CLEAN BEACHES GRANT PROGRAM

1. The Grantee certifies that this is a Project to restore and protect the water quality and environment of coastal waters, estuaries, bays and nearshore waters, or groundwater. Further, the Grantee hereby warrants and represents that this Project is capable of contributing to sustained, long-term water quality or environmental restoration or protection benefits for a period of twenty (20) years and to address the causes of degradation, rather than symptoms.

2. The Grantee certifies that this Project has not received any funds from the Proposition 13 Coastal Nonpoint Source Control Program (Wat. Code, § 79148 et seq.). The Grantee further certifies that it will not apply for and hereby withdraws any outstanding applications for funds from the Proposition 13 Coastal Nonpoint Source Control Program for this Project, including any future phases of the Project.

3. The Grantee certifies that it is an entity defined under section 79148.8 of the California Water Code.

4. The Grantee certifies that this Project is intended to produce sustained, long-term water quality or environmental restoration or protection benefits for a period of twenty (20) years.

5. The Grantee certifies that this Project is intended to address the causes of degradation, rather than symptoms.

6. The Grantee in good faith represents that this Project is consistent with water quality and resource protection plans prepared, implemented, or adopted by the State Water Board, the applicable Regional Water Board, and the California Coastal Commission.

7. Notwithstanding Exhibit A, the Grantee shall submit a monitoring and reporting plan that will do all of the following:

   a. Identify the nonpoint source or sources of pollution to be prevented or reduced by Project;

   b. Describe the baseline water quality or quality of the environment to be addressed;

   c. Describe the manner that Project will prevent or reduce pollution and demonstrate desired environmental results; and,

   d. Describe the monitoring program, including, but not limited to, the methodology, and the frequency and duration of monitoring.

8. Notwithstanding Exhibit A, upon completion of the Project, the Grantee shall submit a report to the State Water Board that summarizes the completed activities and indicates whether the purposes of the Project have been met. The report shall include information collected by the recipient in accordance with the Project monitoring and reporting plan, including a determination of the effectiveness of the Project in preventing or reducing pollution, and the results of the monitoring program.

9. The Grantee shall inform the State Water Board with regard to necessary public agency approvals, entitlements, and permits that may be necessary to implement the Project. The Grantee shall certify to the State Water Board, at the appropriate time, that it has obtained those approvals, entitlements, and permits.

10. The Grantee certifies that if a recovery plan for coho salmon, steelhead trout, or other threatened or endangered aquatic species exists, this Project is consistent with such a plan and, if feasible, implements actions in such a plan.

11. Where applicable, the Grantee shall include a monitoring component as part of this Project that allows the integration of data into statewide monitoring effort, including but not limited to the State Water Board's Surface Water Ambient Monitoring Program (SWAMP) or Groundwater Ambient Monitoring and Assessment (GAMA) Program.

12. The Grantee certifies that it is providing a match in the amount of at least 20% (for projects from $1,000,000 to $5,000,000, 15% (for projects less than $1,000,000), 75% for sewer infrastructure projects, OR, FOR DISADVANTAGED COMMUNITIES, 10% (for projects from $1,000,000 to $5,000,000), 5% (for projects less than $1,000,000) of the capital costs to be spent on this Project, as such costs are defined under Public Resources Code section 32025.

13. The Grantee certifies that in no event will it complete this Project later than Month of 201X. It acknowledges that this condition is a material condition of this grant agreement.

14. The Grantee certifies that its Project area falls under the jurisdiction of the California Coastal Commission and/or the San Francisco Bay Conservation and Development Commission.

15. The Grantee certifies that this Project has not received any funds from the Proposition 13 Coastal Nonpoint Source Control Program (Wat. Code, § 79148 et seq.) The Grantee further certifies that it will not apply for and hereby withdraws any outstanding applications for funds from the Proposition 13 Coastal Nonpoint Source Control Program for this Project, including any future phases of the Project.

16. If applicable, the Grantee certifies that if it is an Urban Water Supplier as defined in Water Code section 10617, the Department of Water Resources has determined that the Grantee is eligible to receive grant funds.

17. The Grantee certifies that its schedule for implementation of water demand management measures has been approved by the Department of Water Resources. Implementation of these management measures by the dates provided constitutes a material provision of this Agreement. The Grantee acknowledges that failure to adhere to its schedule may result in termination of this Agreement and immediate repayment of all grant funds disbursed hereunder.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AUTHORIZING THE CITY'S ENTRANCE INTO A CLEAN BEACHES INITIATIVE GRANT PROGRAM AGREEMENT WITH THE STATE OF CALIFORNIA AND DESIGNATING A REPRESENTATIVE TO SIGN THE AGREEMENT, AND ANY AMENDMENTS THERETO, FOR THE BUCCANNER BEACH AND LOMA ALTA CREEK MICROBIAL SOURCE IDENTIFICATION STUDY PROJECT

WHEREAS, the City of Oceanside applied for a Clean Beaches Initiative research grant to conduct the Buccaneer Beach and Loma Alta Creek Microbial Source Identification Study Project (Project);

WHEREAS, the City of Oceanside was invited to submit a detailed application for the Clean Beaches Initiative Grant Program by the State of California acting by and through the State Water Resources Control Board;

WHEREAS, the State Water Resources Control Board, prior to awarding funds, requires a resolution authorizing the City to enter into an Agreement with the State of California for the Project, designating the City Manager to act as signatory for the City to enter into the Agreement, and any amendments thereto, for the Project;

WHEREAS, the Project shall demonstrate the capability of contributing to sustained long term water quality restoration or protection benefits following completion of the Buccaneer Beach and Loma Alta Creek Microbial Source Tracking Study Project.

NOW, THEREFORE, the City Council of the City of Oceanside does resolve as follows:

SECTION 1. Pending award of grant funds by the State of California, The City of Oceanside is hereby authorized to enter into an Agreement with the State of California for the Buccaneer Beach and Loma Alta Creek Microbial Source Identification Study Project, and;

SECTION 2. The City Manager is hereby authorized to sign the Agreement and any amendments thereto.

PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this _____day of _____, 2014, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

_____
MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY