

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

County of Santa Barbara, hereinafter called "Grantee"

Beach Monitoring, hereinafter called "Project"

AGREEMENT NO. 12-048-250

The State and the Grantee hereby agree as follows:

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

Health & Safety Code, § 115881 – Public Beach Safety Program  
Water Code, § 13260, subd. (d)(2) – Waste Discharge Permit Fund (WDPF) – Public Beach Safety Grant Program  
Clean Water Act (CWA) § 406(b) – Beaches Environmental Assessment and Coastal Health Program

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

FUNDING. Funds for this Project were provided by a federal grant Cooperative Agreement No. CU-00T80901-0 from the United States Environmental Protection Agency (USEPA) to the State Water Board to implement California's Public Beach Safety Program pursuant to the Beaches Environmental Assessment and Coastal Health (BEACH) program. (33 U.S.C. § 1346(b).)

GRANT AMOUNT. The maximum amount payable under this Agreement shall not exceed \$75,361. Global Positioning System (GPS) locations for any monitoring must be identified prior to any disbursements.

TERM OF AGREEMENT. The term of the Agreement shall begin on July 1, 2012 and continue through final payment plus three (3) years unless otherwise terminated or amended as provided in the Agreement. **HOWEVER, ALL WORK SHALL BE COMPLETED BY SEPTEMBER 30, 2013. ABSOLUTELY NO FUNDS MAY BE REQUESTED AFTER NOVEMBER 1, 2013.**

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

State Water Board	Grantee:
Name: Michael Gjerde, Grant Manager	Name: Larry Fay, Project Director
Address: 1001 "I" Street, 15th Floor	Address: 2125 s. Centerpointe Pkwy., Rm 333
City, Zip: Sacramento, CA 95814	City, Zip: Santa Maria, CA 93455
Phone: (916) 341-5283	Phone: (805) 346-8463
Fax: (916) 341-5284	Fax: (805) 346-8485
e-mail: mgjerde@waterboards.ca.gov	e-mail: L.Fay@sbcphd.org

Direct all inquiries to:

State Water Board	Grantee:
Section: Division of Water Quality	Section: County of Santa Barbara, Environmental Health Services 2125 S. Centerpointe Pkwy., Rm 333 Santa Maria, CA 93455
Attention: Carolyn Brookshire, Program Analyst	Name: David Brummond, Grant Contact
Address: 1001 "I" Street, 15th Floor	Address: 2125 S. Centerpointe Pkwy., Rm. 333
City, Zip: Sacramento, CA 95814	City, Zip: Santa Maria, CA 93455
Phone: (916) 341-5477	Phone: (805) 346-7348
Fax: (916) 341-5463	Fax: (805) 346-8485
e-mail: cbrookshire@waterboards.ca.gov	e-mail: David.Brummond@sbcphd.org

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

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

- Exhibit A SCOPE OF WORK
- Exhibit B INVOICING, BUDGET D ETAIL AND REPORTING PROVISIONS
- Exhibit C GENERAL TERMS & CONDITIONS
- Exhibit D SPECIAL CONDITIONS – BEACH GRANT REQUIREMENTS

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

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

\_\_\_\_\_  
Grantee Typed/Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title and Date

Reviewed by:  
Office of Chief Counsel  
Date:

EXHIBIT A  
SCOPE OF WORK

A. PLANS AND GENERAL COMPLIANCE REQUIREMENTS

1. Quality Assurance. The Grantee shall prepare, maintain, and implement quality assurance (QA) documents and procedures in accordance with the State Water Board's Surface Water Ambient Monitoring Program (SWAMP) Data must be submitted to the State Water Board and formatted according to California Environmental Exchange Network (CEDEN) data templates. CEDEN data templates are available at: <http://ceden.org/>. The QA procedures and documents (e.g. laboratory standard operating procedures) must be SWAMP compatible (i.e. meet SWAMP Measurement Quality Objectives (MQO) for marine waters). Guidance for SWAMP compatible bacteria and pathogen monitoring procedures and data is outlined in the Draft SWAMP MQO, Appendix A for Fresh and Marine Waters (Table A3 (DRAFT): Measurement Quality Objectives\* - Bacteria and pathogens). The Draft SWAMP MQO document may be found at: [http://www.waterboards.ca.gov/water\\_issues/programs/ocean/index.shtml](http://www.waterboards.ca.gov/water_issues/programs/ocean/index.shtml). Additional guidance for preparing the QA is available at: [http://www.waterboards.ca.gov/water\\_issues/programs/swamp/tools.shtml#qa](http://www.waterboards.ca.gov/water_issues/programs/swamp/tools.shtml#qa).
2. If landowner agreements are required, signed copies must be submitted to the Grant Manager before works begins.
3. If permits are required, the permits must be obtained and signed copies submitted to the Grant Manager before work begins.
4. Federal and 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 or utilizing data prepared 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 and the U.S. Environmental Protection Agency under the Federal Beaches Environmental Assessment and Coastal Health Program (Clean Water Act section 406[b]). The contents of this document do not necessarily reflect the views and policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.” (Gov. Code, § 7550, 40 C.F.R. § 31.20)

5. The Grantee shall also include in each of its contracts for work under this Agreement a provision that incorporates the Federal and State Disclosure Requirements stated within Item 4. (Gov. Code, § 7550)

B. WORK TO BE PERFORMED BY GRANTEE

1. Project Management and Administration. The Project Director shall promptly notify the Grant Manager of any event or proposed change that could affect the scope, budget, or schedule of work performed under this Agreement. Unless otherwise specified in the Agreement, all submittals shall be provided to both the Program Analyst and the Grant Manager.
  - a. Provide all technical and administrative services as necessary for Agreement completion, including: monitor, supervise, and review all work performed; and coordinate budgeting and scheduling to ensure that work is completed within budget, on schedule, and in accordance with approved procedures, applicable laws, and regulations.
  - b. Ensure that the Agreement requirements are met through completion of quarterly progress reports as specified in Exhibit B, Item E.1 of this Agreement. This information may be provided via a report from the Southern California Coastal Water Research Project (SCCWRP) BeachWatch Database. However, the Grantee is responsible for data being complete and accurate.

2. Testing and assessment
  - a. Test and assess the waters adjacent to all public beaches within the Grantee's jurisdiction at least weekly between April 1 to October 31 of each year in accordance with Health and Safety Code sections 115875 through 115915 and California Code of Regulations sections 7952 through 7962. Additional testing and assessment may be authorized upon written approval of the Grant Manager.
  - b. Submit all location, collection agency, monitoring, and notification data for all monitored sites to the State Water Board through the transfer of the data through the SCCWRP BeachWatch Database, if applicable, or through the data input screens currently used for transmission of beach location, monitoring, and notification data to the State Water Board at least monthly on the fifteenth (15<sup>th</sup>) day following the month of data collection.
3. If the testing and assessment performed in Item B.2 above results in a determination that any public health standard, as set forth in Health and Safety Code sections 115875 through 115915 and California Code of Regulations sections 7952 through 7962 (Public Health Standard), is being violated, the Grantee shall restrict the use of, or close the public beach or a portion thereof in which the violation has occurred until the public health standard is attained.
4. Investigate any complaint by a person of a violation of any Public Health Standard. If a violation of a Public Health Standard is found, the Grantee shall restrict the use of, or close, the public beach or a portion thereof until the Public Health Standard is attained.
5. Report any violation of any Public Health Standard to the Grant Manager, the applicable Regional Water Quality Control Board (Regional Water Board) and any appropriate local government agency official having jurisdiction over the land adjacent to the public beach where the violation has occurred.
6. Posting and closing beaches.
  - a. Whenever a public beach is posted, closed, or otherwise restricted in accordance with Items B.3 and/or B.4 above, the Grantee shall inform the public agency or entity responsible for the operation and maintenance of the public beach within twenty-four (24) hours of the posting, closure, or restriction.
  - b. Whenever a public beach is posted, closed, or otherwise restricted in accordance with Items B.3 and/or B.4 above, the Grantee shall at a minimum, post the beach with conspicuous warning signs to inform the public of the nature of the problem and the possible public health risk. A warning sign shall be visible from each primary beach access point as identified in the coastal access inventory prepared and updated pursuant to Public Resources Code section 30531, and any additional access points identified by the Grantee.
7. Establish and/or maintain a telephone hotline and web-based forms of communication to inform the public of all public beaches currently closed, posted, or otherwise restricted within its jurisdiction. The Grantee shall update the telephone hotline and web-based forms of communication as needed to convey changes in public health risks.
8. In the event of a release of untreated sewage, the Grantee shall immediately test and assess the waters adjacent to any affected public beach in accordance with Health and Safety Code sections 115875 through 115915 and California Code of Regulations sections 7952 through 7962.
9. In the event of an untreated sewage release that is known to have reached recreational waters adjacent to a public beach, the Grantee shall immediately close those waters until it has been determined that the waters are in compliance Public Health Standards.

TABLE OF ITEMS FOR REVIEW

Item	DESCRIPTION	CRITICAL DUE DATE	ESTIMATED DUE DATE
<b>EXHIBIT A – SCOPE OF WORK</b>			
A.	PLANS AND COMPLIANCE REQUIREMENTS		
1.	Quality Assurance documents and procedures	Day 90 after execution of agreement	
2.	Land Owner Agreement(s) (If applicable)	Before work begins	
3.	Applicable Permits (If applicable)	Before work begins	
B.	WORK TO BE PERFORMED BY GRANTEE		
2.b.	Submit Testing and Assessment Data	15th of each month	15 <sup>th</sup> of each month
<b>EXHIBIT B – INVOICING, BUDGET DETAIL, AND REPORTING PROVISIONS</b>			
A.	INVOICING		Quarterly
E.	REPORTS		
1.	Progress Reports by the twentieth (30 <sup>th</sup> ) of the month following the end of the calendar quarter (March, June, September, and December)		Quarterly
2.	Final Project Summary	Before final invoice	
<b>EXHIBIT D – SPECIAL CONDITIONS – BEACH GRANT REQUIREMENTS</b>			
1.	Lobbying Certification		With final report
2.	MBE/WBE Documentation ( <a href="http://www.epa.gov/osdbu/pdfs/5700_52a.pdf">http://www.epa.gov/osdbu/pdfs/5700_52a.pdf</a> )		Quarterly

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 Grant Manager on a quarterly basis consistent with the reporting schedule in Section E.1 of this Exhibit. The address for submittal is:

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

2. Invoices submitted in any other format than the one provided by the State Water Board will cause an invoice to be disputed. In the event of an invoice dispute, the 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 Grant Manager has the responsibility for approving invoices.
3. Supporting documentation (e.g., receipts) must be submitted with each invoice to request reimbursement for grant funds invoiced. The amount claimed for the Personnel Services line item and Professional and Consultant Services line item must include a calculation formula (i.e. hours or days worked times the hourly or daily rate = total amount claimed). Invoice payment shall be made only after receipt of a complete, adequately supported, properly documented and accurately addressed invoice.
4. The Grantee shall not request disbursement for any cost until such cost has been incurred and has been paid by or is due and payable by the Grantee. Although it is agreed that actual payment of such cost by the Grantee is not required as a condition of the grant disbursement, all grant disbursements received by the Grantee shall be paid to contractors and vendors within thirty (30) days from receipt of the funds. In the event that the Grantee fails to disburse grant funds to contractors or vendors within thirty (30) days from receipt of the funds, the Grantee shall immediately return such funds to the State Water Board. Interest shall accrue on such funds from the date of disbursement through the date of mailing of funds to the State Water Board. If the Grantee held such funds in interest-bearing accounts, any interest earned on the funds shall also be due to the State Water Board.
5. Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or guidelines.
6. Notwithstanding any other provision of this Agreement, the State Water Board may withhold all or any portion of the funds provided for by this Agreement in the event that:
  - a. The Grantee has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
  - b. The Grantee fails to maintain reasonable progress toward completion of the Project.
7. Notwithstanding any other provision of this Agreement, the Grantee agrees that the State Water Board may retain an amount equal to ten percent (10%) of the grant amount specified in this Agreement until completion of the Project to the reasonable satisfaction of the State Water Board. Any retained amounts due to the Grantee will be promptly disbursed to the Grantee, without interest, upon completion of the Project.

8. The invoice shall contain the following information:
  - a. The date of the invoice;
  - b. The invoice number and State Water Board Agreement number;
  - c. The time period covered by the invoice, i.e., the term "from" and "to";
  - d. The total amount due; and
  - e. Original signature and date (in ink) of Grantee or its authorized representative.
  - f. Final invoice shall be clearly marked "FINAL INVOICE" and submitted NO LATER THAN NOVEMBER 1, 2013.

**B. PROHIBITION OF MANAGEMENT FEES AND INDIRECT COSTS**

Management fees or similar charges in excess of the direct costs are prohibited. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under the Agreement. Similarly the payment of indirect costs is prohibited. "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Grantee; accounting and personnel services performed within the Grantee organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining facilities; tuition and conference fees; and, generic overhead or markup. 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 pursuant to this Agreement.

**C. BUDGET CONTINGENCY CLAUSE**

The maximum amount to be encumbered under this Agreement for the 2012-13 fiscal year ending June 30, 2013 shall not exceed Seventy Five thousand Three hundred sixty one dollars (\$75,361).

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, by Executive Order, or by order of the Department of Finance, 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

Position Title	WDPF State Funds	406(b) Federal Funds
Personnel Services		
Total Personnel Services	\$20,516	\$9,606
Operating Expenses (Prorated for Project)		
Total Operating Expenses (travel)	\$825	\$410
Laboratory Costs		
Total Laboratory Costs	\$30,020	\$13,984
<b>TOTAL</b>	<b>\$51,361</b>	<b>\$24,000</b>

Note: WDPF Funds may only reimburse for expenses incurred during the California Fiscal Year (i.e., July 1 through June 30). 406(b) Funds may only reimburse for expenses incurred during the Federal Fiscal Year (i.e., October 1 through September 30).

D. BUDGET LINE ITEM FLEXIBILITY

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

E. REPORTS

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



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

#### 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. 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 Water Quality 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.)

#### I. ACCOUNTING STANDARDS AND FEDERAL SINGLE AUDIT ACT

The Grantee agrees to comply with federal standards for financial management systems. The Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Grantee agrees to be bound by and to comply with, the provisions and requirements of the federal Single Audit Act of 1984 (Pub. L. 98-502) Office of Management and Budget (OMB) Circular No. A-133, and updates or revisions thereto. The Grantee will maintain separate Project accounts in accordance with generally accepted accounting principles. The Grantee shall comply with "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" promulgated by the U.S. General Accounting Office. (40 C.F.R. § 35.3135[1]). The Grantee agrees it shall return any audit disallowances to the State Water Board.

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 that the State Water Board, the Bureau of State Audits, the Governor of the State, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, any member of Congress, the President of the United States, 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 Water Quality (Division), at its option, may call for an audit of financial information relative to the Project, where 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 three (3) 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 or federal government to audit records and interview staff in any contract related to performance of this Agreement. The Grantee agrees it shall return any audit disallowances to the State Water Board.
5. **COMPLIANCE WITH LAW, REGULATIONS, ETC.:** The Grantee agrees that it will, at all times, comply with and require its consultants, contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements.
6. **COMPUTER SOFTWARE:** The Grantee certifies that it has appropriate systems and controls in place to ensure that grant funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
7. **CONFLICT OF INTEREST:** The Grantee certifies that it is in compliance with applicable state and/or federal conflict of interest laws.
8. **DATA MANAGEMENT:** This Project includes appropriate data management activities so that Project data can be incorporated into appropriate statewide data systems.
9. **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.

10. **GOVERNING LAW:** This Grant Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
11. **GRANTEE'S RESPONSIBILITY FOR WORK:** The Grantee shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, consultants, contractors, subcontractors, suppliers, and any provider of services. The Grantee shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to payment disputes. The State will not mediate disputes between the Grantee and any other entity concerning responsibility for performance of work.
12. **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.
13. **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.
14. **INSPECTION:** The Grantee agrees to insure that the State Water Board, the Governor of the State, the USEPA, the Office of Inspector General, any member of Congress, the President of the United States, or any authorized representative of the foregoing, will have suitable access to the Project site at all reasonable times during Project implementation and thereafter for a minimum of three (3) years after final payment of Project funds. The Grantee acknowledges that the Project records and locations are public records.
15. **INSURANCE:** Throughout the life of the Project, the Grantee shall maintain a self-insurance program against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Agreement, if any. Proof of such a program must be provided by the Grantee to the State Water Board. The Grantee shall notify the State Water Board in writing of any material amendment to the self-insurer's articles, charter, or agreement of incorporation, association or co-partnership which alters its coverage of the Project. In the event of any damage to or destruction of 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.
16. **NONDISCRIMINATION CLAUSE:**
  - a. During the performance of this Agreement, the Grantee and its consultants and contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
  - b. The Grantee, its consultants, and contractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
  - c. The Grantee, its consultants, and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
  - d. The Grantee, its consultants, and contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement, if any.

- e. The Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement. Failure by the Grantee to carry out these requirements and applicable requirements of 40 C.F.R. part 33 is a breach of a material provision of this Agreement which may result in its termination.
17. NO THIRD PARTY RIGHTS: The parties to this grant Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation or undertaking established herein.
18. NOTICE:
- a. 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.
  - b. Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of the Project for a period of ninety (90) days or more beyond the estimated date of Completion of the Project previously provided to the Division.
  - c. 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.
  - d. The Grantee shall promptly notify the State Water Board in writing of completion of work on the Project.
19. 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](http://www.epls.gov).
20. PROFESSIONALS: The Grantee agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for.
21. 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.
22. 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.
23. 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.
24. 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.
25. 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.

26. **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.
27. **TIMELINESS:** Time is of the essence in this Agreement. The Grantee shall proceed with and complete the Project in an expeditious manner.
28. **TRAVEL AND PER DIEM:** Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the 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.
29. **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.
30. **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.
31. **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.
32. **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 is not required to file a Statement of Diversion and Use pursuant to Water Code section 5101.
33. **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 – BEACH GRANT REQUIREMENTS

1. The Grantee shall not use Project funds, including match funds, to engage in lobbying the federal or state governments or in litigation against the United States or the State of California. The Grantee's Chief Executive Officer agrees to provide a written statement certifying that none of the funds have been used to engage in the lobbying of the federal or state governments or in litigation against the United States or the State of California. The certification is due ninety (90) days after the end of the Project period and shall be submitted with the final report. The Grantee shall comply with 40 C.F.R. part 34, New Restrictions on Lobbying.
2. The Grantee shall comply with Small, Minority, and Women's Business (MBE/WBE) requirements as outlined in the State Water Board "Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities," including, but not limited to the following:
  - a. Include "fair share" percentages in bid documents, and
  - b. Follow the six affirmative steps stated in 40 C.F.R. sections 30.44(b), 31.36(e), 35.3145(d), or 35.6580(a), as appropriate.

If applicable, the Grantee agrees to report DBE utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334.

3. The Grantee shall comply with 40 C.F.R. part 34, New Restrictions on Lobbying, and include language of this provision in award documents for all sub-awards exceeding \$100,000, and require that sub-recipients submit certification and disclosure forms accordingly. Any sub-recipient who makes a prohibited expenditure under 40 C.F.R. part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
4. No grant funds may be used to engage in lobbying of the federal government or in litigation against the United States.
5. The Grantee shall use recycled paper for all reports which are prepared as a part of this Agreement. The Grantee shall comply with the requirements set forth in section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. § 6962). Regulations issued under RCRA section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the USEPA. These guidelines are listed in 40 C.F.R. part 247.
6. The salary rate paid to individual consultants retained by the Grantee or the Grantee's consultants or contractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills and if the terms of the contract provide the Grantee with the responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. As of January 1, 2012, the rate is \$596.00 per day and \$74.50 per hour. This rate does not include overhead or travel costs. Sub-agreements with firms or individuals for services which are awarded using the procurement requirements in 40 C.F.R. parts 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the Grantee with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. Any reimbursement for necessary travel and per diem shall be pursuant to Exhibit C.
7. Any and all conferences, meetings, conventions, or training spaces funded in whole or in part by this Agreement shall comply with the Federal Hotel and Motel Fire Safety Act of 1990.
8. The Grantee shall fully comply with, and require contractors and subcontractors as applicable to comply with, Subpart C of 40 C.F.R. part 32, entitled "Responsibilities of Participants Regarding Transactions."

9. The Grantee agrees that water quality data collected under this Agreement shall be delivered to the State Water Board such that it may be entered into the Beach Watch Database and evaluated to determine the status and trends of coastal beach water quality in California.
10. The Grantee shall prevent fraud, waste, and the abuse of Project funds. The Grantee and any sub-recipient must promptly refer to the USEPA's Inspector General and the State Water Board any credible evidence that a principal, employee, agent, sub-grantee contractor, subcontractor, or other person, has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Agreement or sub-agreements funded, in whole or in part, by this Agreement.
11. The Grantee certifies that it, its employees, its sub-recipients and its sub-recipients' employees receiving any funds pursuant to this Agreement, shall not engage in severe forms of trafficking in persons during the term of this Agreement; procure a commercial sex act during the term of this Agreement; or used forced labor in the performance of this Agreement or any subcontracts awarded pursuant to this Agreement.
12. The Grantee certifies that it is not a subsidiary of the Association of Community Organizations for Reform Now (ACORN). The Grantee further certifies that no funds provided pursuant to this Agreement may be used for sub-awards, sub-grants, and/or contracts to ACORN or any of its subsidiaries. The Grantee acknowledges that this condition is a material condition of this Agreement. Any violation of this paragraph shall result in termination of this Agreement and the Grantee shall repay any and all funds disbursed hereunder.
13. The Grantee certifies that is has received a Data Universal Numbering System (DUNS) number and has provided its DUNS number to the Grant Manager prior to execution of this Agreement.
14. The Grantee certifies that from during Federal Fiscal Year 2011-2012 (October 1, 2011 through September 30, 2012), it has not received eighty percent (80%) or more of its gross annual revenue and/or \$25,000,000 or more in annual gross revenue from federal financial assistance subject to the federal Transparency Act, as defined in Code of Federal Regulations, title 2, section 170.320.