

STANDARD TERMS

1. ACCOUNTING AND DEPOSIT OF GRANT DISBURSEMENT:

- a) Separate Accounting of State Grant Disbursements and Interest Records: The Grantee shall account for the money disbursed pursuant to this Agreement separately from all other Grantee's funds. The Grantee shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. The Grantee shall keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of such funds. The Grantee shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by the State at any and all reasonable times.
- b) Disposition of Money Disbursed: All money disbursed pursuant to this Agreement shall be deposited, administered, and accounted for pursuant to the provisions of applicable law.
- c) Remittance of Unexpended Funds: The Grantee, within a period of sixty (60) days from the final disbursement from the State to the Grantee of State Grant funds, shall remit to the State any unexpended funds that were disbursed to the Grantee under this Agreement and were not needed to pay Eligible Project Costs.
- d) Interim and Final Audits: The State reserves the right to conduct an audit at any time between the execution of this Agreement and the completion of the Project, with the costs of such audit borne by the State. After completion of the Project, the State may require the Grantee to conduct a final audit, at the State's expense.

Pursuant to Government Code Section 8546.7, the contracting parties shall be subject to the examination and audit of the State for a period of three years after project completion. All Grantee's records and the Grantee's subcontractors related to this agreement shall be retained for at least three years after project completion.

2. **ACKNOWLEDGEMENT OF CREDIT:** The Grantee shall include appropriate acknowledgement of credit to the State and to all cost-sharing partners for their support when promoting the Project, erecting signs at the project site, or using any data and/or information developed under the Agreement.
3. **AMENDMENT:** This Agreement may be amended at any time by mutual agreement of the parties, except insofar as any proposed amendments are in

any way contrary to applicable law. Requests by the Grantee for amendments must be in writing stating the amendment request and the reason for the request.

4. **AMERICANS WITH DISABILITIES ACT:** By signing this Agreement, Grantee assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
5. **ANTITRUST CLAIMS:** Grantee shall comply with all applicable laws and regulations regarding securing competitive bids and undertaking competitive negotiations in Grantee's contracts with other entities for acquisition of goods, and services and construction of public works with funds provided by the State under this Agreement.
6. **APPROVAL:** This Agreement is of no force or effect until signed by all parties to the agreement. Grantee may not submit invoices or receive payment until has all required signatures have been obtained.
7. **AVAILABILITY OF FUNDS:** Work to be performed under this contract is subject to availability of funds through the State's normal budget process.
8. **CALIFORNIA CONSERVATION CORPS:** As required in Water Code section 79038(b), Grantee shall examine the feasibility of using the California Conservation Corps or community conservation corps to accomplish the habitat restoration, enhancement and protection activities listed in the Scope of Work (Exhibit C), and shall use the services of one of these organizations whenever feasible.
9. **CLAIMS DISPUTE:** Any claim that the Grantee may have regarding the performance of this agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the Project Manager, Department of Water Resources, within thirty (30) days of the Grantee's knowledge of the claim. Project Manager and Grantee shall then attempt to negotiate a resolution of such claim and process an amendment to this Agreement to implement the terms of any such resolution.
10. **COMPETITIVE BIDDING AND PROCUREMENTS:** Grantee shall comply with all applicable laws and regulations securing competitive bids and undertaking competitive negotiations in Funding Recipient's contracts with other entities for acquisition of goods and services and construction of public works with funds provided by State under this Funding Agreement.
11. **CONDITIONS FOR DISBURSEMENT:** The State shall have no obligation to disburse money under this Agreement unless and until the Grantee has satisfied

- a) For Construction Projects, the Grantee must submit to the State, final plans and specifications certified by a California Registered Civil Engineer or equivalent documentation as to compliance with the approved Project.
- b) The Grantee must submit a written statement by an authorized representative that it has obtained all necessary permits, easements, rights-of-way and approvals as may be required by other State, federal, and/or local agencies, as specified in Section 11 of this Agreement.
- c) The Grantee must demonstrate compliance with the California Environmental Quality Act and if applicable the National Environmental Policy Act by submitting copies of any environmental documents, including environmental impact reports, environmental impact statements, negative declarations, mitigation agreements, legal notices and environmental permits as may be required prior to modifying the Project site.
- d) The Grantee must demonstrate continuing availability of sufficient funds to complete the Project.
- e) The Grantee shall develop, and submit for State approval, a plan to minimize the impacts to adjacent landowners (California Water Code Section 79041, Division 26, Chapter 5, Article 2.5). This plan may require completion of a hydrologic and hydraulic study, and if so the specifications will be included in Exhibit C, the project Scope of Work.

12. CONFLICT OF INTEREST:

a) Current State Employees:

No state officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

No state officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

b) Former State Employees:

For the two year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the Agreement while employed in any capacity by any state agency.

For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed Agreement within the twelve-month period prior to his or her leaving state service.

c) City/County/Non Profit Employees:

No employee, officer, employer or agency of the City/County/Non Profit shall participate in the selection or in the award or administration of a contract supported by State Funds if a conflict of interest, real or apparent, would be involved. The City/County/Non Profit shall comply with all applicable laws on conflict of interest including, but not limited to the following: Public Contract Code (PCC) Sections 10335.5 et seq., PCC Sections 10365.5 et seq., PCC Sections 10410 et seq., and Government Code Sections 1090 et seq., and 8100 et seq.

13. DRUG-FREE WORKPLACE CERTIFICATION: By signing this contract, the Grantee hereby certifies under penalty of perjury under the laws of the State of California that the Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

1. Publish a statement notifying employees, contractors and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors or subcontractors for violations.
2. Establish a Drug-Free Awareness Program to inform employees, contractors and subcontractors about all of the following:
 - a. The dangers of drug abuse in the workplace,
 - b. The Grantee's policy of maintaining a drug-free workplace,
 - c. Any available counseling, rehabilitation and employee assistance programs, and
 - d. Penalties that may be imposed upon employees, contractors or subcontractors for drug abuse violations.
3. Every employee, contractor and subcontractor who works under this Agreement:

- a. Will receive a copy of the Grantee's drug-free policy statement, and
- b. Will agree to abide by terms of the Grantee's statement as a condition of employment, contract or subcontract.

14. **EASEMENTS:** Where the Grantee acquires property in fee title or funds improvements to property already owned in fee by the Grantee using grant funds provided through this Agreement, an appropriate easement or other title restriction providing for floodplain preservation and agricultural and/or wildlife habitat conservation for the subject property in perpetuity, approved by the State, shall be conveyed to a regulatory or trustee agency or conservation group acceptable to the State. The easement or other title restriction must be in first position ahead of any recorded mortgage or lien on the property unless this requirement is waived by the State.

Where the Grantee acquires an easement under this Agreement, the grantee agrees to monitor and enforce the terms of the easement, unless the easement is subsequently transferred to another land management or conservation organization or entity with State permission, at which time monitoring and enforcement responsibilities will transfer to new easement owner.

Failure to provide an easement acceptable to the State can result in termination of this Agreement.

15. **ELIGIBLE PROJECT COSTS:** Grantee shall apply State Grant funds received only to eligible project costs, as identified in Exhibit D - Budget.
16. **GOVERNING LAW:** This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
17. **INDEMNIFICATION:** Grantee shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liabilities for any claims and damages (including inverse condemnation) that may arise out of the Project and this Agreement, including, but not limited to any claims or damages arising from the planning, design, construction, maintenance and/or operation of levee rehabilitation measures for this Project and any breach of this Agreement. Grantee shall require its contractors to name the State, its officers, agents, and employees as additional insureds on their liability insurance for activities undertaken pursuant to this Agreement.
18. **INSPECTIONS OF PROJECT BY STATE:** The State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Agreement. This right shall extend to any subcontracts, and the Grantee shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Agreement with the State.

19. **INSPECTIONS OF BOOKS, RECORDS AND REPORTS:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Funding Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Funding Agreement. Failure or refusal by Grantee to comply with this provision shall be considered a breach of this Funding Agreement, and the State may withhold disbursements to Grantee or take any other action it deems necessary to protect its interests as provided in the Funding Agreement.

20. **LABOR COMPLIANCE PLAN:** Prior to awarding a contract for public works projects funded in whole or in part from Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, or any other source of funding so requiring, the grantee shall comply with Public Resources Code Section 75075, which requires adoption and enforcement of a labor compliance program pursuant to subdivision (b) of Labor Code Section 1771.5 for application to the funded public works project. At the State's request, Grantee must promptly submit written evidence of its compliance with Labor Compliance Program requirements. [This item will need to be changed for Prop 1E projects]

21. **NONDISCRIMINATION:** During the performance of this Agreement, the Grantee, its contractors, and subcontractors 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, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Grantee and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Grantee and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Govt. Code § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et. seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code § 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Grantee and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Funding Agreement.

22. **PROHIBITION AGAINST DISPOSAL OF PROPERTY WITHOUT STATE PERMISSION:** The Grantee shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, without prior permission of the State. The Grantee shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of the Grantee to meet its obligations under this Agreement, without prior written permission of the State. The State may require that the proceeds from the disposition of any real or personal property be remitted to the State to be applied to the Grantee's indebtedness under this Agreement.
23. **REIMBURSEMENT CLAUSE:** If applicable, travel and per diem expenses to be reimbursed under this contract shall be the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations.
24. **SEVERABILITY:** 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 have force and effect and shall not be affected thereby.
25. **SUCCESSOR AND ASSIGNS:** This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto. No assignment or transfer of this Agreement or any part thereof, rights hereunder, or interest herein by the Grantee shall be valid unless and until it is approved by the State and made subject to such reasonable terms and conditions as the State may impose.
26. **TERMINATION WITHOUT CAUSE:** The State may terminate this Agreement without cause on 30 days advance written notice. The Grantee shall be reimbursed for all reasonable expenses incurred up to the date of termination.
27. **TERMINATION FOR CAUSE:** The State may terminate this Agreement and be relieved of any payments should the Grantee fail to perform the requirements of this Agreement at the time and in the manner herein provided including but not limited to reasons of default under Standard Term 29 – Termination By Grantee.
28. **TERMINATION BY GRANTEE:** Subject to State approval which may be reasonably withheld, Grantee may terminate this Agreement and be relieved of contractual obligations. In doing so, Grantee must provide a reason(s) for termination. Grantee must submit all progress reports summarizing accomplishments up until termination date.
29. **THIRD PARTY BENEFICIARIES:** The parties to this Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this

Agreement, or any duty, covenant, obligation or understanding established herein.

30. **TIMELINESS:** Time is of the essence in this Agreement.

31. **WITHHOLDING OF GRANT FUNDS BY STATE:**

(a) **Withholding clause:** The State, at its discretion, may withhold ten percent (10%) of the funds requested by the Grantee for reimbursement of eligible Project Costs until the Project is completed and Final Report is received. Withheld funds may be released upon completion of milestones identified in Exhibit C, the project Scope of Work.

(b) **Additional Conditions for Withholding:** If the State determines that the Project is not being completed substantially in accordance with the provisions of this Agreement or that the Grantee has failed in any other respect to comply substantially with the provisions of this Agreement, and if the Grantee does not remedy any such failure to the State's satisfaction, the State may withhold from the Grantee all or any portion of the State Grant commitment and take any other action that it deems necessary to protect its interests.

32. **WORKERS' COMPENSATION:** The Grantee affirms that it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of that code, and the Grantee affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.