

ATTACHMENT C



State of California - Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
P.O. Box 944209
Sacramento, CA 94244-2090
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



PROPOSITION 1 WATERSHED RESTORATION GRANT PROGRAM BIG CANYON HABITAT RESTORATION AND ADAPTATION PROJECT—PHASE 2 GRANT AGREEMENT NUMBER – Q1996008

GRANTOR: State of California, acting by and through
The California Department of Fish and Wildlife
P.O. Box 944209
Sacramento, CA 94244-2090

GRANTEE: Newport Bay Conservancy
600 Shellmaker Road
Newport Beach, CA 92660

SECTION 1 – LEGAL BASIS OF AWARD

The California Department of Fish and Wildlife (CDFW or Grantor) developed the Watershed Restoration Grant Program in response to the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1). Proposition 1 amended the California Water Code (CWC) to add article, Section 79737, authorizing the Legislature to appropriate funds to CDFW to fund multi-benefit ecosystem and watershed restoration and protection projects.

Pursuant to Fish and Game Code Section 1501.5(b), Grantor is authorized to enter into this Grant Agreement (Agreement) and to make an award to Newport Bay Conservancy (Grantee) for the purposes set forth herein. Grantee accepts the grant on the terms and conditions of this Agreement. Accordingly, Grantor and Grantee (Parties) hereby agree as follows:

SECTION 2 – GRANT AWARD

- 2.01 Grant:** In accordance with the terms and conditions of this Agreement, including Section 5.06 - General Terms and Conditions, Grantor shall provide Grantee with a maximum of \$638,740.00 (Grant Funds) to financially support and assist Grantee's implementation of Big Canyon Habitat Restoration and Adaptation Project - Phase 2 (Project).
- 2.02 Term:** The term of this Agreement is August 1, 2019, or upon Grantor approval, whichever is later, through March 15, 2023.

SECTION 3 – ELIGIBLE USES OF GRANT

Only Grantee expenditures that are necessary to implement the Project, comply with applicable federal and State of California law, and made in accordance with Section 6 -

Project Statement and Section 9 – Budget and Payment as set forth within this Agreement are eligible for reimbursement from the Grant Funds.

SECTION 4 – GRANTEE'S REPRESENTATIONS AND WARRANTIES

Grantee represents and warrants to Grantor as follows:

- 4.01 **Existence and Power:** Grantee is a non-public entity validly existing, and in good standing under the laws of California. Grantee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.
- 4.02 **Binding Obligation:** This Agreement has been duly authorized, executed and delivered on behalf of Grantee and constitutes the legal, valid, and binding obligation of Grantee, enforceable in accordance with the Agreement's terms.

SECTION 5 – GRANTEE'S AGREEMENTS

- 5.01 **Purpose:** This Agreement is entered into by the Parties for the purpose of providing financial support to Grantee to complete the Project, specifically the activities identified within Section 6 – Project Statement.
- 5.02 **Project:** Grantee shall complete activities as set forth in Section 6 – Project Statement.
- 5.03 **Use of Project Funds:** Grantee agrees that only Grantee expenditures that are necessary to implement the Project, comply with applicable federal and State of California law, and made in accordance with Section 6 – Project Statement and Section 9 – Budget and Payment as set forth within this Agreement are eligible for reimbursement from the Grant Funds. Grantee acknowledges that it may not transfer Grant Funds between or among budget line items without written approval from the CDFW Grant Manager in accordance with Section 9 – Budget and Payment.
- 5.04 **Eligibility of Funds:** In the event that the California Budget Act does not provide sufficient appropriations to allow Grantor to fund the Project at the level specified in Section 2 – Grant Award and Section 9 – Budget and Payment of this Agreement, Grantor reserves the right to modify this Agreement to reflect a reduction in available funds, as an alternative to termination.
- 5.05 **Submission of Reports:** Grantee shall comply with the format, content, and timing requirements set out in Section 8 – Reports. Failure to submit timely and accurate reports shall be considered evidence of non-compliance with this Agreement and shall permit termination of this Agreement by Grantor.
- 5.06 **General Terms and Conditions:** Non-Public Entities General Grant Provisions (Exhibit 1.b) is attached hereto and made a part of this Agreement.

- 5.07 Amendments:** This Agreement may only be amended in accordance with Section 5.06 – General Terms and Conditions. Grantee shall submit any request to amend any term of this Agreement in writing to the CDFW Grant Manager no later than 120 days prior to the end of the term of this Agreement. Grantee must include an explanation of and justification for any such request.
- 5.08 Acknowledgement of Credit:** Grantee shall include signage, to the extent practicable, informing the public that the Project received funds through the California Department of Fish and Wildlife from the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1, CWC § 79707 (g)). Further, Grantee shall include appropriate acknowledgement of credit to the Watershed Restoration Grant Program and its implementing agency, the California Department of Fish and Wildlife, for Grantor's financial support when using any data and/or information developed under this Agreement (e.g., in posters, reports, publications, presentations).
- 5.09 Labor Code Requirements; Prevailing Wage:** State grants may be subject to California Labor Code requirements, which include prevailing wage provisions. Certain State grants administered by the CDFW are not subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code. For more details, please refer to California Fish and Game Code Section 1501.5 and the Department of Industrial Relations website at <http://www.dir.ca.gov>. Grantee shall pay prevailing wage to all persons employed in the performance of any part of the Project if required by law to do so.
- 5.10 Environmental Compliance:** Grantee shall not proceed with on the ground implementation until California Environmental Quality Act compliance and all necessary permits and consultations are secured and Grantee has received a Notice to Proceed letter from the CDFW Grant Manager. Written permission must be obtained from landowner(s) for access to perform grant work; copies of such permission shall be provided to the CDFW Grant Manager.
- 5.11 California Business and Professions Code:** As may be necessary, Grantee shall be responsible for obtaining the services of appropriately licensed professionals to comply with the applicable requirements of the California Business and Professions Code including but not limited to Section 6700 et seq. (Professional Engineers Act) or Section 7800 et seq. (Geologists and Geophysicists Act).

If Grantee fails to perform in accordance with the compliance provisions of this Agreement, Grantor shall have sole discretion to delay, interrupt, or suspend the work for which the Grant Funds are supplied.

SECTION 6 – PROJECT STATEMENT

- 6.01 Introduction:** The Project will confer benefits to the entire Upper Newport Bay by restoring transitional habitat through removal of non-native vegetation, restoration

of hydrological functioning and establishment of native plant communities that will promote biodiversity, improve water quality, enhance flood protection and resilience to sea level rise and other stressors, and provide and support critical habitat for endangered species.

While restoration of Big Canyon entails multiple phases, this project focuses on implementation of Phase 2A, a 9.24 acre area of Big Canyon that is heavily impacted by invasive species, stream and flood plain erosion, degraded creek water quality by pollution from groundwater seepage, increased peak-flows during storm events, and year-round urban dry weather flows. Degraded habitat and high selenium concentrations at Big Canyon critically impact the Upper Newport Bay estuary making restoration of Big Canyon a priority for regional stakeholders.

6.02 Objectives: Specific objectives of this Project are to:

1. Remove exotics and invasive plants;
2. Create wetland habitat to greatly enhance and improve the resilience of the restored ecosystem;
3. Restore connectivity between Big Canyon Creek channel and floodplain;
4. Improve water quality of Big Canyon Creek; and
5. Restore, enhance, and improve resilience of riparian and upland habitats.

6.03 Project Description

6.03.1 Location: Grantee will implement the Project on approximately 9.24 acres of publicly owned land located at the Big Canyon Nature Park between Upper Newport Bay and the City of Newport Beach at 33.630580 latitude, -117.884160 longitude in Orange County, California (Property).

6.03.2 Project Site Access: Grantee shall cause the Landowner(s) to give Grantor, and Grantee's [its/their] employees and agents written permission to access the Property at least once every 12 months from the date of Grantor's Notice to Proceed until 25 years after the term of this Agreement (as set out in Section 2 – Grant Award) ends for purposes of inspections and monitoring. Such access shall be reasonably acceptable to the Landowner(s) and the requester following written or verbal request to Grantee. Grantee shall provide a copy of the access agreement to Grantor to include in Grantor's Agreement file prior to Grantee beginning any work at the Project site(s).

6.03.3 Materials and Equipment: Property acquisitions and equipment purchases must be consistent with Section 5.06 – General Terms and Conditions. Field supplies such as transect tapes, PVC, quadrat materials, bags, stakes, coir fiber, and weeding tools along with personal protection equipment such as boots, eyewear, and gloves will be purchased by Grantee for the Restoration Coordinator, Field Technician,

and Grantee volunteers. Permanent signage and plant materials (e.g., bulk seed and container plants) will be purchased by Grantee.

- 6.03.4 Project Implementation:** Consistent with Grantee's proposal for the Project, Grantee will complete the following tasks in accordance with Section 6.03.6 – Schedule of Due Dates and Deliverables:

Task 1 – Project Management and Administration

Grantee will provide technical and administrative services associated with performing and completing the work for this Project, including managing this Agreement, assuring all permits are finalized, delivering the final landowner access agreement, administering subcontracts, invoicing and payments, drafting and finalizing progress and final reports, and data management.

Subtask 1.1 – Data Management

Grantee Restoration Coordinator will coordinate data management activities. Grantee, its subcontractors and collaborators shall be responsible for ensuring that data collection, data acquisition, and/or data development activities will incorporate the standards expressed in CDFW's Scientific Integrity Policy (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=154775&inline>) and Scientific Data Governance Policy. Grantee shall submit a Data Management Plan. The CDFW Grant Manager will provide the Data Management Plan form upon Grant execution.

Grantee and its subcontractors and/or collaborators are responsible for ensuring that project data are collected using peer-approved methods, undergo a quality control and accuracy assessment process, include metadata that meet CDFW's minimum standards (<https://www.wildlife.ca.gov/Data/BIOS/Metadata>) and include documentation of the methods and quality assessments utilized, and are properly stored and protected until the Project has been completed and data have been delivered to as required under this Grant Agreement.

All scientific data collection efforts are required to include metadata files or records indicating at a minimum:

1. Who collected the data;
2. When the data was collected;
3. Where the data was collected;
4. How the data was collected (description of methods and protocols);
5. The purposes for which the data was collected;
6. Definitions of variables, fields, codes, and abbreviations used in the data, including units of measure;

7. The terms of any landowner access agreement(s), if applicable;
8. References to any related Department permits or regulatory actions;
9. Peer review or statistical consultation documentation; and
10. Data licensing and disclaimer language.

All data and associated metadata collected by or created under this Agreement are a required deliverable of this Agreement. All data deliverables should be budgeted for and included in the Project timeline as a part of this Agreement. A condition of final payment on this Agreement shall include the delivery of all related data assets. Geospatial data must be delivered in an industry-standard geospatial data format where applicable and documented with metadata in accordance with the CDFW Minimum Metadata Standards.

Data related to observation, occurrence or distribution of state or federal special status species or California Native Plant Society listed species shall be reported to the California Natural Diversity Database (CNDDB) using the online field survey form or other digital method.

The following Project information shall be uploaded by Grantee to Project Tracker (<http://ptrack.ecoatlas.org/>) in EcoAtlas (<http://www.ecoatlas.org/>): Project name, Project proponent and contact information, Project boundary [GIS polygon], Proposition 1 funding details, pertinent dates, activity type, and habitat types and amounts.

Water quality data generated by the Project will be collected in a manner that is compatible and consistent with the California Environmental Data Exchange Network (CEDEN, <http://www.ceden.org/>) (CWC §79704). Grantee shall upload relevant data to CEDEN and provide a receipt of successful data submission, generated by CEDEN, to the CDFW Grant Manager prior to submitting a Final Invoice.

Task 2 – Mobilization/Demobilization and Site Preparation

Surveys and construction for the proposed project will be subcontracted to Surveying contractor or Construction contractor, which will be determined later by Grantee. Prior to construction, biological, cultural, and geotechnical surveys will be performed by Surveying contractor. A construction survey will also be conducted by Construction contractor to determine markers and reference points that will guide construction activities. A Stormwater Pollution Prevention Plan (SWPPP) is required prior to construction and will also be developed by Construction contractor. Task 2 deliverables will include full details on mobilization and demolition activities in quarterly and final reports along with copies of the construction survey and draft and final versions of the SWPPP.

Task 3 – Removal of Invasive Vegetation

Construction contractor will first remove the invasive peppertrees and other invasive plants. In the peppertree areas, 6.83 acres will undergo extensive clearing and grubbing. Some clearing will be carried out outside the peppertree monoculture area to allow for stream restoration in two segments of the creek where the channel has been locally incised. Invasive plants will be selectively removed from an additional 2.4-acre riparian area. The total area of clearing, grubbing and selective vegetation removal is 9.24 acres. Removal and clearing of peppertrees and other exotics will involve shredding smaller limbs and foliage and chipping the large trunks and stems. The small limbs and foliage will require off-site disposal along with the peppertree seed. Where feasible, chipped material will be used for on-site trails to reduce off-site hauling. Where root mass from invasive trees provides stabilization of the stream bank, stabilizing of the creek will be implemented as discussed in Task 4 below.

Task 4 - Stream and Wetland Restoration

Following clearing and removal of invasive species, the site will be graded by Construction contractor to pull back incised channel banks to achieve gentler bank slopes, reconnecting the channel with its floodplain. The areas adjacent to the riparian corridors will be graded to extend the flood inundation at higher storm flows and provide conditions suitable for a wetter alkali meadow habitat. This will allow for a gradual transition from creek channel to floodplain wetlands to upland coastal scrub. The cleared and graded areas will be replanted with native coastal vegetation by Construction contractor. The Project will restore a mosaic of woody and herbaceous riparian vegetation along the creek corridor, wet alkali and high alkali meadow communities adjacent to the riparian corridor, and coastal sage scrub transitional habitat at higher elevations. The plant palette for these habitats will be tolerant of the high salinity soils that dominate the project area.

There are two creek segments totaling 680 feet within the project area where the channel is severely incised. Along the two incised creek segments, the channel bank will be pulled back by Construction contractor to create a gentler slope to provide connectivity between the channel and floodplain and support riparian vegetation. Within these segments, existing mature peppertrees have been established with extensive root systems that provide stabilization of the creek banks.

To provide bank stabilization where needed after the peppertrees are removed, Construction contractor will reconstruct and stabilize the bank by adding vegetated soil lifts. Encapsulated vegetated soil lifts planted with native riparian shrubs (e.g., mulefat, sandbar willow) will be used to construct and protect the banks, and to provide erosion control. Each lift

will be encapsulated in coir fiber that will biodegrade over the first two to three years, once the incorporated native riparian vegetation has established. This technique was used successfully in Phase 1. Within the upstream segment, the bank stabilization efforts will extend into areas of existing woody riparian mixed with invasive plants. In these areas, the extent of bank stabilization and grading has been limited to minimize disturbance of native plants but may include clearing of 0.5 acres to reconnect the flood way and stabilize creek banks.

Outside of the incised creek reaches, additional reaches will also be regarded by Construction contractor to pull back the existing channel banks and reconnect the floodplain, where appropriate. The grading will create a gentle slope where riparian vegetation will be planted within a 45-65-foot-wide riparian corridor, reducing bank erosion and improving water quality through natural filtration and infiltration. Outside the riparian corridor and within areas designated for peppertree removal, the site will be graded to level out depressions from peppertree root mass removal to reduce unnatural ponding and restore wet alkali meadow hydrology. In addition, Construction contractor will regrade a scour pond formed by wet weather flows from the storm drain outlet to reduce mosquito breeding habitat.

Task 5 - Revegetation and Habitat Restoration

Prior to site replanting, Construction contractor will install temporary irrigation followed by soil amendments that will include a mixture of woody mulch, gypsum, and compost. Native vegetation will be established by transplanting one-gallon container plants, installing live stakes, and hydroseeding where appropriate. Revegetation will be conducted by Construction contractor or the California Conservation Corps or the certified community local conservation corps. A 120-day plant establishment and maintenance period will begin after revegetation is complete. As-built drawings will be developed exhibiting the final outcomes of the project and submitted as a deliverable. Descriptions of key milestones associated with project activities for Tasks 3, 4, and 5 (e.g., clearing, grubbing, grading, erosion control, and revegetation) will be included in the quarterly and final reports.

Task 6 - Construction Inspection

The City of Newport Beach and Surveying contractor will perform project inspections and construction monitoring with assistance from Grantee. Inspections and monitoring will ensure that Construction contractor is achieving the quality, accuracy, and progress that are specified for the project and that all requirements for the permits and grant agreements are satisfied. Results of inspections and monitoring will be summarized in the quarterly and final reports.

Task 7 - Long-Term Management

Grantee, in collaboration with the City of Newport Beach and Surveying contractor, will develop a long-term management plan for the proposed restoration project based on the guidelines outlined in Big Canyon Nature Park Resource and Recreation Management Plan prepared by Dudek and Irvine Ranch Conservancy in 2016. Implementation of the long-term management plan will begin after Construction contractor successfully completes the 120-day plant establishment and maintenance period. A Field Technician will be hired by Grantee who will work with the Restoration Coordinator and Grantee volunteers to monitor the project area and implement the long-term management plan. Deliverables associated with this Task include draft and final versions of the long-term management plan. As implementation of the long-term management will begin immediately after the 120-day plant establishment and maintenance period is completed, results of these efforts will be summarized within quarterly and final progress reports completed by the Restoration Coordinator through the duration of this Agreement. Data collected during the quantitative and qualitative assessments will be uploaded to the EcoAtlas Project and the California Natural Diversity Database each year.

6.03.5 Long-Term Maintenance: Grantee shall ensure that the Project and Property are properly operated, used, and maintained consistent with the purposes (as stated in Section 6.01 – Introduction) and objectives (as stated in Section 6.02 – Objectives) of the Project for 25 years beyond the term of this Agreement. Grantor will not fund long-term maintenance activities outside of the term of this Agreement.

6.03.6 Schedule of Due Dates and Deliverables:

<u>Task</u>	<u>Description</u>	<u>Deliverables</u>	<u>Estimated Completion Dates</u>
1	Project Management and Administration	Quarterly Progress Reports	Due within 30 days following each calendar quarter (September, December, March, June)
		Monthly Invoices	Due within 30 days following each month
		Copies of Executed Subcontracts	Due within 30 days of executing agreements with each subcontractor
		Submit Project Data	March 15, 2023
		Draft Final Report	February 15, 2023
		Final Report	March 15, 2023

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<u>Task</u>	<u>Description</u>	<u>Deliverables</u>	<u>Estimated Completion Dates</u>
		Project Close-out Summary Report	March 15, 2023
		Final Invoice	March 31, 2023
2	Mobilization/Demobilization and Site Preparation	Draft and Final SWPPP	October 15, 2020
		Construction Survey	October 15, 2020
		Mobilization/demobilization update that can be within quarterly report(s)	Due with the Quarterly Progress Reports
3	Removal of Invasive Vegetation	Updates within Quarterly and Final Reports	Due with the Quarterly and Final Progress Reports
4	Stream and Wetland Restoration	Updates within Quarterly and Final Reports	Due with the Quarterly and Final Progress Reports
5	Revegetation and Habitat Restoration	Updates within Quarterly and Final Reports	Due with the Quarterly and Final Progress Reports
		As-built drawings	February 15, 2023
6	Construction Inspection	Results of inspection and monitoring included as updates within Quarterly and Final Reports	Reference Task 1- Quarterly and Final Progress Reports completion dates
7	Long-term Management	Draft Long-term Management Plan	September 15, 2021
		Final Long-term Management Plan	October 15, 2021
		Analysis of quantitative data	Due with the Quarterly and Final Progress Reports
		Post construction, qualitative and quantitative assessments	Due with the Quarterly and Final Progress Reports

SECTION 7 – CONTACTS

The point of contact may be changed at any time by either party by providing a 10 day advance written notice to the other party. The Parties hereby designate the following points of contact during the Term of this Agreement:

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CDFW Grant Manager:		Grantee Project Manager:	
Name:	Craig Zeff	Name:	Amanda Swanson
Title:	Environmental Scientist	Title:	Restoration Coordinator
Address:	P.O. Box 944209 Sacramento, CA 94244	Address:	600 Shellmaker Rd. Newport Beach, CA 92660
Phone:	(916) 445-0604	Phone:	(949) 439-5801
Email:	Craig.zeff@wildlife.ca.gov	Email:	Amanda.swanson@newportbay.org

Direct all administrative inquiries to:

CDFW Grant Coordinator:		Grantee Project Coordinator:	
Name:	Keng Saefong	Name:	Heather Cieslak
Title:	Associate Governmental Program Analyst	Title:	Operations Director
Address:	P.O. Box 944209 Sacramento, CA 94244	Address:	600 Shellmaker Road Newport Beach, CA 92660
Phone:	(916) 445-5350	Phone:	(949) 923-2269
Email:	Keng.saefong@wildlife.ca.gov	Email:	Heather.cieslak@newportbay.org

SECTION 8 – REPORTS

- 8.01 Progress Reports:** Grantee shall submit Quarterly Progress Reports that comply with the requirements below to the CDFW Grant Manager. The CDFW Grant Manager will provide Grantee with a sample Progress Report upon request.

Requirements:

1. Grantee name, the Project title, this Agreement number, and dates progress report covers;
2. Activities and tasks performed and/or completed, a summary of progress to date including progress since the last report, and a brief outline of upcoming work scheduled for the subsequent quarter;
3. Documentation of all subcontractor activities;
4. Updates on progress towards meeting project objectives, output and outcome performance measures;
5. Document delivery of any intermediate work products;
6. Costs incurred during the subject period, total of costs incurred to date, and the remaining balance;
7. Any problems encountered while performing the tasks and proposed solutions, timeline for resolution, and status of previously unresolved problems; and
8. Quarterly progress reports will be submitted electronically in PDF or Microsoft Word compatible format and conform to the template provided.

- 8.02 Draft and Final Reports:** Grantee shall submit a Draft Final Report and Final Report by the dates listed in Section 6.03.6 – Schedule of Due Dates and

Deliverables. Grantee shall submit a Draft Final Report, at least 30 days prior to Grantee's submission of the Final Report. The report shall summarize the life of the Agreement and describe the work and results pursuant to Section 6 – Project Statement. The Draft and Final Reports will be submitted, electronically, to the CDFW Grant Manager upon completion of the Project tasks. The CDFW Grant Manager will provide Grantee a sample Final Report template, upon request.

- 8.03 Project Close-Out Summary Report:** Grantee shall prepare and submit a Project Close-Out Summary Report, to the CDFW Grant Manager, in either PDF or Microsoft Word compatible format by the date listed in Section 6.03.6 – Schedule of Due Dates and Deliverables. Grantee's Project Close-Out Summary Report must summarize the Project's accomplishments consistent with the Watershed Restoration Grants Program goals. Grantee shall include a Final Invoice with the Project Close-Out Summary Report. The CDFW Grant Manager will provide Grantee with a Project Close-Out Summary Report template, upon request.

SECTION 9 – BUDGET AND PAYMENT

- 9.01 **Budget Details and Funding Summary:** Grantor will provide an amount not to exceed \$638,740.00 as detailed in the Line Item Budget Detail (Budget) below. Grantee or its partners will provide up to \$1,195,365.95 in funds or in-kind services as cost share to complete tasks described in Section 6 - Project Statement. Grantee will provide Grantor accurate records of all cost share with Grantee's Final Invoice.

Line Item Budget Detail	
A. PERSONNEL SERVICES	
Field Technician	\$12,960.00
Restoration Coordinator	\$25,958.00
Subtotal Personnel Services	\$38,918.00
Staff Benefits	\$4,670.00
Total Personnel Services	\$43,588.00
B. OPERATING EXPENSES: GENERAL	
Field Supplies: transect tapes, PVC, quadrat materials, bags, weeding tools, and Personal Protection Equipment (boots, eyewear, gloves, etc.)	\$1,500.00
Plant materials: bulk seed, container plants	\$71,446.00
Permanent signage	\$4,000.00
Subtotal Operating Expenses: General	\$76,946.00
C. OPERATING EXPENSES: SUBCONTRACTORS	
Surveying contractor --surveys, review of documentation, support with construction monitoring	\$65,000.00
Construction contractor – Clearing, grubbing, earthwork, erosion control, fine grading and soil prep, hydroseed, mulching, irrigation installment	\$310,860.00
California Conservation Corps or Certified Local Corps – selective tree removal, branch/limb removal infected with PHSB, planting container plpolyants	\$133,723.00
Subtotal Operating Expenses: Subcontractors	\$509,590
D. OPERATING EXPENSES: EQUIPMENT	
Equipment item	\$0.00
Subtotal Operating Expenses: Equipment	\$0.00
E. INDIRECT COSTS	
Indirect Charge Rate 7.148% (Applies to Sections A + B only)	\$8,616.00
F. GRAND TOTAL (A+B+C+D+E)	\$638,740.00

Any changes or modifications to a fund source below must be promptly reported to CDFW Grant Manager, in writing.

Funding Sources Summary			
Source of Funds	Cash	In-Kind	Total
CDFW Proposition 1 Grant Program	\$638,740.00	\$31,381.00	\$670,121.00
USFWS (via CA State Coastal Conservancy)	\$969,555.00	\$0.00	\$969,555.00
California State Coastal Conservancy	\$80,436	\$30,445.00	\$110,881.00
City of Newport Beach	\$0.00	\$35,000.00	\$35,000.00
Newport Bay Conservancy	\$0.00	\$48,548.95	\$48,548.95
Total Project Cost	\$1,688,731.00	\$145,374.95	\$1,834,105.95

9.01.1 Budget Flexibility: Grantee must submit all budget line item revision requests, in writing, to the CDFW Grant Manager, prior to implementing any changes. All proposed budget changes require prior approval from the CDFW Grant Manager, regardless of budgetary impact.

Informal Budget adjustments between existing line items may be permitted. Any revision to the Line Item Budget Detail must comply with Section 5.09 – Amendments. Considerations for informal Budget adjustments, if granted, must include:

1. Revisions which are consistent with the purpose, objectives, and description of the Project as detailed in Section 6 - Project Statement;
2. Revisions that do not increase or decrease the total Agreement amount;
3. Revisions that do not substitute key personnel; and
4. Line item shifts **within** a budget category (e.g. Field Supplies to Travel) up to \$25,000 or 10% of the Agreement amount, whichever is less.

Formal Budget adjustments will be considered by the Grantor, with prior approval from the CDFW Grant Manager. An amendment to the Agreement is required if a formal Budget adjustment is approved. Considerations for formal amendments, if granted, include:

1. Shifting Grant Funds between budget categories (e.g. Personnel Services to Operating Expenses);
2. Increasing or decreasing the total Agreement amount;

3. Substituting key personnel; or
4. Line item shifts **within** a budget category (e.g. Field Supplies to Travel) that exceeds \$25,000 or 10% of the Agreement amount, whichever is less.

9.02 Payment Provisions

- 9.02.1 Disbursements:** Grantor will disburse Grant Funds to Grantee not more frequently than monthly in arrears, upon receipt of an original itemized invoice and any required mandatory documentation as identified in Section 6.03.6 – Schedule of Due Dates and Deliverables.

Grant disbursements will be mailed to the following Grantee address:

Grantee Name:	Newport Bay Conservancy
Attention:	Amanda Swanson
Address:	600 Shellmaker Road Newport Beach, CA 92660

- 9.02.2 Invoice Documentation:** Each invoice for payment must be accompanied by a written description, not to exceed two pages in length, of Grantee's performance under this Agreement since the time the previous such report was prepared. The report shall describe the types of activities and specific accomplishments during the period for which the payment is being made rather than merely listing the number of hours worked during the reporting period. The Final Invoice must include a budget summary of all cost share expenditures by fund source, as applicable. The CDFW Grant Manager will provide Grantee with a sample invoice template upon request. The Final Invoice is due in accordance with Section 6.03.6 – Schedule of Due Dates and Deliverables. The invoice package must be either mailed hard copy or electronic submission to CDFW Grant Manager contact located in Section 7 – Contacts.

Requirements: The invoice shall contain the following information:

1. The word "Invoice" should appear in a prominent location at the top of the page(s);
2. Printed name of Grantee on company letterhead;
3. Grantee's business address, including P.O. Box, City, State, and Zip Code;
4. Name of the CDFW Region/Division being billed;
5. The invoice date and the time period covered; i.e., the term "from" and "to";
6. This Agreement number and the sequential number of the invoice (i.e., Qxx96xxx-Invoice 1);

7. The invoice must be itemized using the categories and following the format of the Budget;
8. The total amount due. This should be in a prominent location in the lower right-hand portion of the last page and clearly distinguished from other figures or computations appearing on the invoice. The total amount due shall include all costs incurred by Grantee under the terms of this grant;
9. The original signature of Grantee; and
10. Grantee must provide supporting documentation for the invoice and actual receipts.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of Grantor date set forth below the signature.

AUTHORIZED AGENT FOR GRANTEE

By:

Signature: Josie Bennett

Printed Name: Josie Bennett

Title: Newport Bay Conservancy Board Secretary
Restoration Committee Chair

Date: 9/4/19

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

By:

Signature: Valinda Roberts

Printed Name: Valinda Roberts

Title: Chief, Business Operations

Date: 9/26/19

ORIGINAL

This Agreement is exempt from DGS-OLS approval, per SCM 4.06.



CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
EXHIBIT 1b – NON-PUBLIC ENTITIES GENERAL GRANT PROVISIONS

Q1996008

Newport Bay Conservancy

1. **APPROVAL**: This Agreement is of no force or effect until signed by both Parties and approved by CDFW or Grantor. Grantee may not commence performance until such approval has been obtained.
2. **AMENDMENT**: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the Parties and approved as required. No oral understanding or Agreement not incorporated in this Agreement is binding on either of the Parties.
3. **ASSIGNMENT**: This Agreement is not assignable by Grantee, either in whole or in part, without the consent of the CDFW in the form of a formal written amendment.
4. **AUDIT**: Grantee agrees that CDFW, the Department of General Services (DGS), the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Grantee agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Grantee agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code, CCR Title 2, Section 1896).
5. **INDEMNIFICATION**: Grantee agrees to indemnify, defend and save harmless the State of California, CDFW, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all of Grantee's employees or agents, contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Grantee in the performance of this Agreement.
6. **DISPUTES**: Grantee shall continue with the responsibilities under this Agreement during any dispute.
7. **INDEPENDENT CONTRACTOR**: Grantee, and the agents and employees of Grantee, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of CDFW. Grantee acknowledges and promises that CDFW is not acting as an employer to any individuals furnishing services or work pursuant to this Agreement.
8. **NON-DISCRIMINATION CLAUSE**: During the performance of this Agreement, Grantee and its 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 (e.g., cancer), age (over 40), marital status, and denial of family care leave. Grantee and subcontractors shall ensure 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



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of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Grantee and its 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 Agreement.

- 9. 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 have force and effect and shall not be affected thereby.
- 10. LICENSES AND PERMITS (If Applicable):** Grantee is responsible for obtaining all licenses and permits required by law for accomplishing any work required in connection with this Agreement. Costs associated with permitting may be reimbursed under this Agreement only if approved in the budget detail and payment provisions section.
- 11. RIGHTS IN DATA:** Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or graphic work produced in the performance of this Agreement, are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, Grantee may copyright the same, except that, as to any work which is copyrighted by Grantee, the State reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.
- 12. CONTINGENT FUNDING:** It is mutually understood between the Parties that this Agreement may have been written before ascertaining the availability of State appropriation of funds for the mutual benefit of both Parties in order to avoid program and fiscal delays which would occur if this Agreement were executed after that determination was made.

This Agreement is valid and enforceable only if sufficient funds are made available pursuant to the California State Budget Act for the fiscal year(s) covered by this Agreement for the purposes of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Legislature of any statute enacted by the Legislature which may affect the provisions, terms or funding of this Agreement in any manner.

It is mutually agreed that if the Legislature does not appropriate sufficient funds for the Agreement, the State has the option to terminate the Agreement under the termination clause or to amend the Agreement to reflect any reduction of funds. CDFW has the option to invalidate the contract under the 30-day cancellation clause or to amend the Agreement to reflect any reduction in Grant Funds.



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13. RIGHT TO TERMINATE:

- a. This agreement may be terminated by mutual consent of both parties or by any party upon thirty (30) days written notice and delivered by USPS First Class or in person.
- b. In the event of termination of this Agreement, Grantee shall immediately provide CDFW an accounting of all funds received under this Agreement and return to CDFW all Grant Funds received under this Agreement which have not been previously expended to provide the services outlined within this Agreement.
- c. Any such termination of this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination. CDFW shall reimburse Grantee for all allowable and reasonable costs incurred by it for the Project, including foreseeable and uncancellable obligations. Upon notification of termination from CDFW, Grantee shall use its reasonable efforts to limit any outstanding financial commitments.

14. CONFIDENTIALITY OF DATA: Grantee shall protect from disclosure all information made available by CDFW. Grantee shall not be required to keep confidential any data or information which is publicly available, independently developed by Grantee, or lawfully obtained from third parties. Written consent of CDFW must be obtained prior to disclosing information under this Agreement.

15. DISCLOSURE REQUIREMENTS: Any document or written report prepared in whole or in part pursuant to this Agreement shall contain a disclosure statement indicating that the document or written report was prepared through an Agreement with CDFW. The disclosure statement shall include this Agreement number and dollar amount of all Agreements and subcontracts relating to the preparation of such documents or written reports. The disclosure statement shall be contained in a separate section of the document or written report.

If Grantee or any subcontractor(s) are required to prepare multiple documents or written reports, the disclosure statement may also contain a statement indicating that the total Agreement amount represents compensation for multiple documents or written reports. Grantee shall include in each of its subcontracts for work under this Agreement, a provision which incorporates the requirements stated within this section.

16. USE OF SUBCONTRACTOR(S): If Grantee desires to accomplish part of the services through the use of one (1) or more subcontractors, the following conditions must be met:

- a. Grantee shall submit any subcontracts to CDFW for inclusion in the grant file;
- b. The Agreement between the primary Grantee and the subcontractor must be in writing;
- c. The subcontract must include specific language which establishes the rights of the auditors of the State to examine the records of the subcontractor relative to the services and materials provided under the Agreement; and
- d. Upon termination of any subcontract, CDFW Grant Manager shall be notified immediately, in writing.



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Grantee shall ensure any subcontract in excess of \$100,000 entered into as a result of this Agreement contains all applicable provisions stipulated in this Agreement.

17. POTENTIAL SUBCONTRACTOR(S): Nothing contained in this Agreement or otherwise shall create any contractual relation between CDFW, and any subcontractor(s) and no subcontract shall relieve Grantee of its responsibilities and obligations hereunder. Grantee agrees to be as fully responsible to CDFW for the acts and omissions of its subcontractor(s) and of persons directly employed or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Grantee. Grantee's obligation to pay its subcontractor(s) is an independent obligation from CDFW's obligation to make payments to Grantee. As a result, CDFW shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.

18. TRAVEL AND PER DIEM (if applicable): Grantee agrees to pay reasonable travel and per diem to its employees under this Agreement. The reimbursement rates shall not exceed those amounts identified in the California Department of Human Resources travel reimbursement guidelines. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from CDFW.

19. LIABILITY INSURANCE (as applicable): Unless otherwise specified in the Agreement, upon submitting a signed Agreement to the State, Grantee shall also furnish to the State either proof of self-insurance or a certificate of insurance stating that there is liability insurance presently in effect for Grantee of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined. Grantee agrees to make the entire insurance policy available to the State upon request.

The certificate of insurance will include provisions a, b, and c, in their entirety:

- a. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to the State;
- b. The State of California, its officers, agents, employees, and servants are included as additional insured, by insofar as the operations under this Agreement are concerned; and
- c. The State will not be responsible for any premiums or assessments on the policy.

Grantee agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Grantee agrees to provide, prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of this Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the DGS, and Grantee agrees that no work or services shall be performed prior to giving of such approval. In the event Grantee fails to keep in effect, at all times, insurance coverage as herein provided, the State may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

CDFW will not provide for, nor compensate Grantee for any insurance premiums or costs for any type or amount of insurance. The insurance required above, shall cover all Grantee supplied



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personnel and equipment used in the performance of this Agreement. When applicable, if subcontractors performing work under this Agreement do not have insurance equivalent to the above, Grantee's liability shall provide such coverage for the subcontractor, except for coverage for error, mistake, omissions, or malpractice, which shall be provided by the subcontractor if such insurance is required by the State.

20. GRANTEE STAFF REQUIREMENTS: Grantee represents that it has or shall secure at its own expense, all staff required to perform the services described in this Agreement. Such personnel shall not be employees of or have any contractual relationship with CDFW or any other governmental entity.

21. PROPERTY ACQUISITIONS AND EQUIPMENT PURCHASES: Property, exclusive of real property, as used in this exhibit shall include the following:

- a. Equipment – Tangible property (including furniture and electronics) with a unit cost of \$5,000 or more and a useful life of four (4) years or more. Actual cost includes the purchase price plus all costs to acquire, install, and prepare the equipment for its intended use.
- b. Furniture, including standard office furnishings including desks, chairs, bookcases, credenzas, tables, etc.
- c. Portable Assets, including items considered 'highly desirable' because of their portability and value, e.g., calculators, computers, printers, scanners, shredders, cameras, etc.
- d. Electronic Data Processing (EDP) Equipment, including all computerized and auxiliary automated information handling, including system design and analysis; conversion of data; computer programming; information storage and retrieval; voice, video and data communications; requisite system controls; simulation and all related interactions between people and machines.

Grantee may purchase property under this Agreement only if specified in the budget detail and payment provisions section. All property purchased by Grantee is owned by Grantee. CDFW does not claim title or ownership to the property but, requires Grantee to maintain accountability for all property purchased with grant funds.

Title or ownership to property with a unit cost of \$5,000 or more may be retained by Grantee or Grantor upon end of the grant cycle; final disposition will be coordinated by CDFW's Grant Manager.

Before property purchases made by Grantee are reimbursed by CDFW, Grantee shall submit paid Grantee receipts identifying the Grant Agreement Number, purchase price, description of the item(s), serial number(s), model number(s), and location, including street address where property will be used during the term of this Agreement. Said paid receipts shall be attached to Grantee's invoice(s).



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Grantee shall keep, and make available to Grantor, adequate and appropriate records of all property purchased with the Grant Funds.

Prior written authorization by the CDFW Grant Manager shall be required before Grantee will be reimbursed for any property purchases not specified in the budget. Grantee shall provide to CDFW Grant Manager, all particulars regarding the necessity for such property and the reasonableness of the cost.

Property will only be considered for purchase approval if no other equipment owned by the applicant is available and suitable for the project.

Grant Funds cannot be used to reimburse the project for equipment obtained prior to the beginning of the grant term.

Grant Funds cannot be used for property if specifically prohibited in the authorizing legislation or restricted in the terms of the program.

Should this Agreement be cancelled for any reason, any property purchased with grant funds shall be returned to Grantor.

State policies and procedures applicable to procurement with nonfederal funds, shall apply to procurement by Grantee under this Agreement, provided that procurements conform to applicable State law and the standards identified in this exhibit. These include, but are not limited to: statutes applicable to State agencies; statutes applicable to State colleges and universities; public works projects; the California Constitution governing University of California contracting, the State Administrative Manual; statutes applicable to specific local agencies; applicable city and county charters and implementing ordinances including policies and procedures incorporated in local government manuals or operating memoranda.