

ATTACHMENT D

STATE OF CALIFORNIA

STANDARD AGREEMENT

Std.2 (Grant - Rev 01/18)

AGREEMENT NUMBER 18-142	AM. NO.
TAXPAYERS FEDERAL EMPLOYER IDENTIFICATION NO. 33-0545786	

THIS AGREEMENT, made and entered into this _____ day of _____, _____
in the State of California, by and between State of California, through its duly elected or appointed, qualified and acting

TITLE OF OFFICER ACTING FOR STATE Executive Officer	AGENCY State Coastal Conservancy	, hereafter called the Conservancy, and
GRANTEE'S NAME Newport Bay Naturalists and Friends dba Newport Bay Conservancy		, hereafter called the Grantee.

The Grantee, for and in consideration of the covenants, conditions, agreements, and stipulations of the Conservancy hereinafter expressed, does hereby agree as follows:

SCOPE OF AGREEMENT

Pursuant to Chapter 6 of Division 21 of the California Public Resources Code, the State Coastal Conservancy ("the Conservancy") hereby grants to the Newport Bay Naturalists and Friends dba Newport Bay Conservancy ("the grantee") a sum not to exceed \$1,049,991 (one million forty-nine thousand nine hundred ninety-one dollars), subject to this agreement. The grantee shall use these funds to complete the following project ("the project") at Big Canyon Nature Park in Newport Beach, CA in the County of Orange, as shown on Exhibit 1 , which is incorporated by reference and attached.

The provisions on the following pages constitute a part of this agreement.
IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon the date first above written.

STATE OF CALIFORNIA		GRANTEE			
AGENCY State Coastal Conservancy		GRANTEE (If other than an individual, state whether a corporation, partnership, etc.) Newport Bay Naturalists and Friends dba Newport Bay Conservancy			
BY (Authorized Signature) 		BY (Authorized Signature) 			
PRINTED NAME AND TITLE OF PERSON SIGNING Samuel Schuchat, Executive Officer		PRINTED NAME AND TITLE OF PERSON SIGNING Randall English, President			
ADDRESS & PHONE NUMBER 1515 Clay Street, 10th Floor Oakland, CA 94612 Phone: (510) 286-1015		ADDRESS & PHONE NUMBER P.O. Box 10804 Newport Beach, CA 92658 Phone: (949) 933-9654			
AMOUNT ENCUMBERED BY THIS DOCUMENT \$1,049,991.00	PROGRAM/CATEGORY (CODE AND TITLE) Local Assistance	FUND TITLE/PROP NO. Water Quality, Supply, ...(Prop 1) / Federal Trust Fund Authority			<p>I certify that this agreement is exempt from Department of General Services' approval.</p> <p>Erlinda Corpuz Procurement and Contracts Manager</p>
PRIOR AMOUNT ENCUMBERED FOR THIS AGREEMENT \$-0-	FUND ITEM	CHAPTER	STATUTE	FISCAL YEAR	
	3760-101-0890 = \$969,555.00 (F19AP00153/15.614)(USFWS)	14	2017	17/18	
	3760-101-608300007(B5862) = \$15,436.00	14	2017	17/18	
	3760-101-608300007(B5862) = \$65,000.00	23	2016	16/17	
TOTAL AMOUNT ENCUMBERED TO DATE \$1,049,991.00	PROJECT NAME Big Canyon Creek Restoration				
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.					
SIGNATURE OF ACCOUNTING OFFICER 		DATE			

☐ GRANTEE ☐ ACCOUNTING ☐ PROJECT MANAGER ☐ CONTROLLER ☐ STATE AGENCY

SCOPE OF AGREEMENT (Continued)

The grantee will prepare final designs and implement restoration of 11 acres of coastal sage upland, riparian, and freshwater marsh habitats as Phase 2A of the [for the Big Canyon Creek Restoration and Adaptation Project](#), within the 60-acre Big Canyon Nature Park. Specifically, the grantee will remove a dense, invasive Brazilian peppertree forest, lay back Big Canyon Creek's banks to address incision and reconnect the creek to the floodplain, and restore native habitats that are resilient to the newly-arrived invasive beetle Polyphagous Shot Hole Borer. The project will also enhance public access and education with improved trails and closure of illegal trails, as provided in the project description of the mitigated negative declaration for the [for the Big Canyon Creek Restoration and Adaptation Project](#).

The grantee shall carry out the project in accordance with this agreement and a work program, as provided in the "WORK PROGRAM" section, below. The grantee shall provide \$109,145 (one hundred nine thousand one hundred forty-five dollars) and any funds beyond those granted under this agreement which are needed to complete the project.

CONDITIONS PRECEDENT TO CONSTRUCTION AND DISBURSEMENT

The grantee shall not begin construction of the project and the Conservancy shall not be obligated to disburse any funds unless and until the following conditions precedent have been met:

1. The board of directors of the grantee has adopted a resolution designating positions whose incumbents are authorized to negotiate and execute this agreement and amendments to it on behalf of the grantee.
2. The Executive Officer of the Conservancy ("the Executive Officer") has approved in writing:
 - a. A work program for the project, as provided in the "WORK PROGRAM" section, below.
 - b. A plan for installation of signs and acknowledgment of Conservancy support, as provided in the "SIGNS AND ACKNOWLEDGMENT" section, below.

**CONDITIONS PRECEDENT TO CONSTRUCTION AND
DISBURSEMENT**(Continued)

- c. All contractors that the grantee intends to retain in connection with the project. The grantee must provide written evidence to the Conservancy that each contractor has complied with the bonding requirements described in the “BONDING” section, below.
3. The grantee has provided written evidence to the Conservancy that:
 - a. All permits and approvals necessary to the completion of the project under applicable local, state and federal laws and regulations have been obtained.
 - b. The grantee has provided for required insurance coverage, including additional insured endorsement, as described in the “INSURANCE” section, below.
4. The grantee and the Conservancy and, if any portion of the property on which the project will be constructed is not owned by the grantee, then the owner of that property], have entered into, and the grantee has recorded, an agreement to protect the public interest in the improvements or facilities constructed under this agreement, as required by Public Resources Code section 31116(c).
5. Additionally, no Conservancy funds shall be disbursed until the grantee has provided the Executive Officer with evidence that all other public funds available for the project have been expended.
6. The grantee has completed and returned to the Conservancy the Federal Sub-Awardee Questionnaire.

Notwithstanding the above, the grantee may begin to prepare plans, specifications and engineering work upon meeting conditions precedent no. **1 and no. 2**, and upon the Executive Officer’s review and approval of a separate work program (tasks, budget and timeline) and approval of any contractors that the grantee will retain to perform the work.

ADDITIONAL GRANT CONDITION[S]

The grantee shall also meet the following conditions:

1. In carrying out the project, the grantee shall ensure compliance with all applicable impact avoidance, minimization and mitigation measures and monitoring and reporting requirements for the project identified in the *Big Canyon Coastal Habitat Restoration and Adaptation Project—Phase 2A Initial Study and Mitigated Negative Declaration*, and the Mitigation Monitoring and Reporting Program and the National Environmental Policy Act.

Prior to the release of funds for construction, the grantee shall provide evidence of completion of the following:

2. Wetland **and** Riparian Area Monitoring Plan. A plan to collect and report monitoring data in a manner that is compatible and consistent with the Statewide Wetland and Riparian Area Monitoring Program framework (currently available at http://www.mywaterquality.ca.gov/monitoring_council/wetland_workgroup/index.html).
3. Baseline Condition Report. A “Level 2” baseline wetland and riparian assessment utilizing the California Rapid Assessment Method (CRAM) within the year prior to the beginning of project construction, unless otherwise agreed upon in writing by the Conservancy and the grantee. (More information is available at <http://www.cramwetlands.org/>). The baseline CRAM assessment’s budget and timeline shall be included in the grantee’s approved Work Plan. The CRAM assessment shall be completed by a certified CRAM practitioner and the data shall be uploaded at <http://www.cramwetlands.org/>.
4. The Publication of Project Information. The grantee shall upload project information, including periodic monitoring data, to the project tracker for “EcoAtlas”, an online database and web-based viewer of stream and wetland maps, restoration information, and monitoring results (currently available at <http://ptrack.ecoatlas.org/>), to track project information and aggregate data.
5. Plan for Completion of Post-Construction CRAM Assessment. A budget and timeline for the collection of at least one additional CRAM assessment following construction of the project and prior to the completion date of the grant agreement in order to document the change in wetland condition at the project site.

ADDITIONAL CONDITIONS RELATED TO FEDERAL GRANT

In carrying out the project, the grantee acknowledges that the Conservancy is disbursing \$969,555 from the USFWS National Coastal Wetlands Conservation (NCWC) Grant, attached as Exhibit 2 to this agreement and incorporated by reference. The grantee shall comply with all applicable terms and conditions that may be required by the NCWC grant (attached as exhibit B) to the Conservancy or that may be necessary to enable the Conservancy to comply with terms and conditions of the grants, including the following:

1. Compliance with all applicable terms and conditions of the NCWC Grant agreement with the Conservancy, which is attached as Exhibit 2 to this agreement including, but not limited to compliance with the USFWS Financial Assistance Award Terms and Conditions, for awards effective as of January 1, 2017 (available at <http://www.fws.gov/grants/atc.html>).
2. Compliance with NEPA, Section 7 of the ESA, Magnuson-Stevens Fishery Conservation and Management Act, the Bald and Golden Eagle Protection Act, and Section 106 of the NHPA.
3. U.S. Department of the Interior PA Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements (DOI 2010 form), available at <http://www.doi.gov/archive/nbc/formsmgt/forms/di2010.pdf>.
4. Provide information, reports and forms required of the Conservancy by the NCWC Grant, including the following:
 - a. Information necessary to report under the Federal Funding Transparency Act by completing the Federal Funding Transparency Act Reporting form attached as Exhibit C.
 - b. Lobbying Certification (www.grants.gov Lobbying Form), available at http://apply07.grants.gov/apply/forms/sample/GG_LobbyingForm-V1.1.pdf.
 - c. Assurances: Construction Programs (SF 424D), available at http://apply07.grants.gov/apply/forms/sample/Mandatory_SF424D-V1.1.pdf.
 - d. Financial status reports (accounting for funds – Standard Form (SF) 425) as and when specified in the NCWC Grant award letter (page 3, under the heading “Reporting Requirements”).

ADDITIONAL CONDITIONS RELATED TO FEDERAL GRANT (Continued)

- e. Performance reports, as and when specified in the NCWC Grant award letter (page 3, under the heading “Reporting Requirements”) Also see 2 C.F.R. § 200.327 et seq. The grantee is encouraged to submit federal reporting data in metric units of measurement to facilitate federal reporting of program accomplishments.
 - f. Conflict of Interest Disclosures and Other Mandatory Disclosures, as required in the NCWC Grant award letter (page 4, under the headings “Conflict of Interest Disclosures” and “Other Mandatory Disclosures”).
5. Funds must be used consistent with the applicable provisions of the Buy American Act (41 USC 10a, et seq.).
6. Compliance with the requirements of the federal Administrative Requirements found at 2 C.F.R. Part 200, Subparts A through D (<http://www.ecfr.gov/cgi-bin/text-idx?SID=66f1eac60ecb3f2fcd992313ae9775dc&node=pt2.1.200&rgn=div5>). These requirements include, *but are not limited to*, the following:
- a. Record retention and access requirements related to record under 2 CFR §200.333 et seq.
 - b. Procurement Standards, found at 2 CFR §§200.317– 200, which require the grantee to: use specified methods of procurement (§200.320); take all specified affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible (§200.321); perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, currently \$150,000, but periodically adjusted for inflation. (§200.323); and to incorporate into any procurement contract the contracts must contain the applicable provisions described in Appendix II to Part 200— Contract Provisions for non-Federal Entity Contracts Under Federal Awards (2 CFR §200.326).
 - c. Cost Principles found at 48 CFR § 1, Subpart 31.2, found at <https://www.ecfr.gov/cgi-bin/textidx?c=ecfr&SID=d7b71a950c5af733ac0a257c19fc578c&rgn=div6&view=text&node=48:1.0.1.5.30.2&idno=48>.

ADDITIONAL CONDITIONS RELATED TO FEDERAL GRANT (Continued)

7. The grantee shall comply with federal Davis Bacon Act and the Department of Labor regulations concerning the Davis-Bacon Act and other federal and state wage and hour laws. When required by the Davis-Bacon Act, the Department of Labor's (DOL) government-wide implementation of the Davis-Bacon Act, or by Federal program legislation, all laborers and mechanics employed by contractors or subcontractors to work on construction contracts in excess of \$2,000 financed by Federal assistance funds must be paid wages not less than those established for the locality of the project (prevailing wage rates) by the DOL. Non-federal entities must include in their construction contracts a requirement that the contractor or subcontractor comply with the requirements of the Davis-Bacon Act and the DOL regulations. In addition, the grantee must comply with Pres. Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60)(all construction contracts awarded in excess of \$10,000); the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3) (for contracts for construction or repair); and Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5) (construction contracts awarded in excess of \$2,000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers).
8. The grantee shall comply with the requirements specified in 2 CFR Part 25, requiring that the grantee register and maintain current its Central Contractor Registration and obtain a Data Universal Numbering System (DUNS) identification number. On execution of this Agreement, the grantee shall provide the Conservancy with its current DUNS number.
9. The grantee shall comply with the requirements specified in 2 CFR Part 175, prohibiting specified acts involving "trafficking in persons" by the grantee or its employees during the term of the federal grant, as required by the Trafficking Victims Protection Act (TVA, 22 U.S. C. 7101, et seq.). The grantee, its employees, sub-recipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards. ("Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given the TVPA, (22 U.S.C. 7102) The U.S. Fish and Wildlife Service may unilaterally terminate this award, without penalty, if a sub-recipient that is a private entity—

ADDITIONAL CONDITIONS RELATED TO FEDERAL GRANT (Continued)

- a. Is determined to have violated an applicable prohibition in paragraph 9; or
- b. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph 9 through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by U.S Fish and Wildlife Service.

TERM OF AGREEMENT

This agreement shall take effect when signed by both parties and received in the offices of the Conservancy together with the resolution described in the “CONDITIONS PRECEDENT TO CONSTRUCTION AND DISBURSEMENT” section of this agreement. An authorized representative of the grantee shall sign the first page of the originals of this agreement in ink.

This agreement shall run from its effective date through February 28, 2041 (“the termination date”) unless otherwise terminated or amended as provided in this agreement. However, all work shall be completed by March 31, 2021 (“the completion date”). The grantee shall submit a final Request for Disbursement no later than February 28, 2021.

AUTHORIZATION

The signature of the Executive Officer of the Conservancy on this agreement certifies that at its May 16, 2019 meeting, the Conservancy adopted the resolution included in the staff recommendation attached as Exhibit 3. This agreement is executed under that authorization.

Standard Provisions

WORK PROGRAM

Before beginning construction, the grantee shall submit a detailed work program to the Executive Officer for review and written approval of its consistency with the purposes of this grant agreement. The work program shall include:

1. Construction plans and specifications: which have been certified by a licensed architect or registered engineer, or approved by the grantee's Public Works Director.
2. A schedule of completion for the project specifically listing the completion date for each project component and a final project completion date.
3. A detailed project budget. The project budget shall describe all labor and materials costs of completing each component of the project, including the grantee's labor and materials costs and costs to be incurred under a contract with any third party retained by the grantee for work under this agreement. For each project component, the project budget shall list all intended funding sources, including the Conservancy and USFWS' grant, the grantee's required contribution and all other sources of monies, materials, or labor. The grantee shall review the plans on-site with Conservancy staff.

If all or any part of the project to be funded under this agreement will be performed by third parties ("contractors") under contract with the grantee, then the grantee shall, prior to initiating any contractor selection process, submit the selection package, including any applicable construction plans and specifications that have been certified or approved as described above, to the Executive Officer for review and written approval as to consistency with the purposes of this grant agreement. Upon approval by the Executive Officer, the grantee shall proceed with the contractor selection process. Prior to final selection of a contractor, the grantee shall submit to the Executive Officer for written approval the names of all contractors that the grantee intends to hire. The grantee shall then comply with the above paragraph regarding submission and approval of a work program prior to construction.

disbursing \$969,555 from the USFWS National Coastal Wetlands Conservation (NCWC) Grant, attached as Exhibit 2 to this agreement and incorporated by reference. The work program may be modified without amendment of this agreement upon the grantee's submission of a modified work program and the Executive Officer's written approval of it. However, if this agreement and the work program are inconsistent, the agreement shall control.

SIGNS AND ACKNOWLEDGMENT

Prior to beginning the project, the grantee shall submit a plan to the Executive Officer for the installation of signs and acknowledgment of Conservancy support. Except as the Executive Officer agrees otherwise, the plan shall commit the grantee to mention the Conservancy's support in its project-related press releases, contacts with the media, and social media postings, and on its website.

The grantee shall install and maintain a sign or signs visible from the nearest public roadway identifying the project, acknowledging Conservancy assistance and displaying the Conservancy's logo, and directing the public to the project]. The Conservancy shall provide to the grantee specifications for the signs. The signs shall also acknowledge funding from the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) by using the official logo prepared by the California Natural Resources Agency, which the Conservancy has available in various file formats.] The grantee may incorporate the required information into other signs as approved by the Executive Officer. In special circumstances, where the placement of signs or the general specifications are inappropriate, the Executive Officer may approve alternative, more appropriate methods for acknowledging the sources of funding. The grantee shall submit plans describing the number, design, placement and wording of the signs, or the specifications of a proposed, alternative method. The Conservancy will withhold final disbursement until the signs are installed as approved by the Conservancy.

If the grantee intends to use any contractors on any portion of the project to be funded under this agreement, construction shall not begin until each contractor has furnished a performance bond in favor of the grantee and in favor of the Conservancy, individually or as a co-obligee, in the following amounts: for faithful performance, one hundred percent (100%) of the contract value; and for labor and materials, one hundred percent (100%) of the contract value. This requirement shall not apply to any contract for less than \$20,000.

Any bond furnished under this section shall be executed by an admitted corporate surety insurer licensed in the State of California.

COSTS AND DISBURSEMENTS

When the Conservancy determines that all “CONDITIONS PRECEDENT TO CONSTRUCTION AND DISBURSEMENT” have been fully met, the Conservancy shall disburse to the grantee, in accordance with the approved project budget, a total amount not to exceed the amount of this grant, as follows:

The withholding for this agreement is five percent. The Conservancy shall disburse funds for costs incurred to date, less five percent, upon the grantee’s satisfactory progress under the approved work program, and upon the grantee’s submission of a “Request for Disbursement” form, which shall be submitted no more frequently than monthly but no less frequently than quarterly. The Conservancy shall disburse the five percent withheld upon the grantee’s satisfactory completion of construction and compliance with the “PROJECT COMPLETION” section, below, and upon the Conservancy’s acceptance of the project.

The Conservancy will reimburse the grantee for expenses necessary to the project when documented by appropriate receipts. The Conservancy will reimburse travel and related expenses at actual costs not to exceed the rates provided in Title 2, Division 1, Chapter 3, Subchapter 1, Article 2 of the California Code of Regulations (“CCR”), except that reimbursement may be in excess of these rates upon documentation that these rates are not reasonably available to the grantee. Reimbursement for the cost of operating a private vehicle shall not, under any circumstance, exceed the current rate specified by the State of California for unrepresented state employees as of the date the cost is incurred. The Conservancy will reimburse the grantee for other necessary expenses if those expenses are reasonable in nature and amount taking into account the nature of the project, its location, and other relevant factors.

The grantee shall request disbursements by filing with the Conservancy a fully executed “Request for Disbursement” form (available from the Conservancy). The grantee shall include in the form its name and address, the number of this agreement, the date of the submission, the amount of the invoice, the period during which the work was actually done, and an itemized description, including time, materials, and expenses incurred of all work done for which disbursement is requested. Hourly rates billed to the Conservancy, and specified in the approved work program budget shall be equal to the actual compensation paid by grantee to employees, which may include employee benefits. The form shall also indicate cumulative expenditures to date, expenditures during the reporting period, and the unexpended balance of funds under the grant agreement.

COSTS AND DISBURSEMENTS (Continued)

An authorized representative of the grantee shall sign the forms. Each form shall be accompanied by:

1. All receipts and any other source documents for direct expenditures and costs that the grantee has incurred.
2. Invoices from contractors that the grantee engaged to complete any portion of the work funded under this agreement and any receipts and any other source documents for costs incurred and expenditures by any such contractor, unless the Executive Officer makes a specific exemption in writing.
3. A supporting progress report summarizing the current status of the project and comparing it to the status required by the work program (budget, timeline, tasks, etc.) including written substantiation of completion of the portion of the project for which the grantee is requesting disbursement.

The grantee's failure to fully execute and submit a Request for Disbursement form, including attachment of supporting documents, will relieve the Conservancy of its obligation to disburse funds to the grantee until the grantee corrects all deficiencies.

EXPENDITURE OF FUNDS AND ALLOCATION OF FUNDING AMONG BUDGET ITEMS

The total amount of this grant may not be increased except by written amendment to this agreement. The grantee shall expend funds consistent with the approved project budget. Expenditure on items contained in the approved project budget, other than overhead and indirect costs, may vary by as much as ten percent without prior approval by the Executive Officer, provided that the grantee first submits a revised budget to the Conservancy and requests disbursement based on the revised budget. Any deviation greater than ten percent, and any deviation that shifts funds from approved budget items into an overhead or indirect costs category, must be identified in a revised budget approved in advance and in writing by the Executive Officer. The Conservancy may withhold payment for items which exceed the amount allocated in the project budget by more than ten percent and which have not received the approval required above. Any increase in the funding for any particular budget item shall mean a decrease in the funding for one or more other budget items unless there is a written amendment to this agreement.

PROJECT COMPLETION

Within thirty days of completion of construction of the project, the grantee shall supply the Conservancy with evidence of completion by submitting a final report which includes:

1. A report certifying completion of the project according to the approved work program, including photographs documenting project completion.
2. Documentation that signs are installed as required by the “SIGNS AND ACKNOWLEDGMENT” section of this agreement.
3. A fully executed final “Request for Disbursement.”
4. A final inspection report by a licensed architect or registered engineer or the grantee’s Public Works Director, and a copy of “as built” drawings of the completed project.
5. Evidence that the following activities have been completed:
 - a. Post-Construction Condition Report. A “Level 2” CRAM wetland **or riparian** assessment following project construction and prior to the project completion date. An updated budget (including an identified funding source) and timeline for the post-construction “Level 2” CRAM assessment required in the ADDITIONAL GRANT CONDITIONS section, above. The CRAM assessment shall be completed by a certified CRAM practitioner and the data shall be uploaded at <http://www.cramwetlands.org/>.
 - b. Update Project Information. All relevant project information has been updated in the project tracker on EcoAtlas (currently available at <http://ptrack.ecoatlas.org/>) to reflect completion of the project.

Within thirty days of grantee’s submission of the above, the Conservancy shall determine whether the grantee has satisfactorily completed the project. If so, the Conservancy shall issue to the grantee a letter of acceptance of the project. The project shall be deemed complete as of the date of the letter.

EARLY TERMINATION, SUSPENSION AND FAILURE TO PERFORM

Before the project has commenced, either party may terminate this agreement for any reason by providing the other party with seven days notice in writing.

Before the project is complete, the Conservancy may terminate or suspend this agreement for any reason by providing the grantee with seven days notice in writing. In either case, the grantee shall immediately stop work under the agreement and take all reasonable

EARLY TERMINATION, SUSPENSION AND FAILURE TO PERFORM

(Continued)

measures to prevent further costs to the Conservancy. The Conservancy shall be responsible for any reasonable and non-cancelable obligations incurred by the grantee in the performance of this agreement prior to the date of the notice to terminate or suspend, but only up to the undisbursed balance of funding authorized in this agreement. Any notice suspending work under this agreement shall remain in effect until further written notice from the Conservancy authorizes work to resume.

If the grantee fails to complete the project as required, or fails to fulfill any other obligations of this agreement prior to the termination date, the grantee shall be liable for immediate repayment to the Conservancy of all amounts disbursed by the Conservancy under this agreement. The Conservancy may, at its sole discretion, consider extenuating circumstances and not require repayment for work partially completed. This paragraph shall not be deemed to limit any other remedies the Conservancy may have for breach of this agreement.

Before the project is complete, the grantee may terminate this agreement for any reason by providing the Conservancy with seven days notice in writing and repaying to the Conservancy all amounts disbursed by the Conservancy under this agreement. The Conservancy may, at its sole discretion, consider extenuating circumstances and allow early termination without repayment for work partially completed.

The parties expressly agree to waive, release and relinquish the recovery of any consequential damages that may arise out of the termination or suspension of this agreement under this section.

The grantee shall include in any agreement with any contractor retained for work under this agreement a provision that entitles the grantee to suspend or terminate the agreement with the contractor for any reason on written notice and on the same terms and conditions specified in this section.

OPERATION AND MAINTENANCE

The grantee shall use, manage, maintain and operate the project throughout the term of this agreement consistent with the purposes for which the Conservancy's grant was made. The grantee assumes all operation and maintenance costs of these facilities and structures; the Conservancy shall not be liable for any cost of maintenance, management, or operation. The grantee may be excused from its obligations for operation and

OPERATION AND MAINTENANCE (Continued)

maintenance during the term of this agreement only upon the written approval of the Executive Officer.

For purposes of this agreement, “operation costs” include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses. “Maintenance costs” include ordinary repairs and replacements of a recurring nature necessary to prolong the life of capital assets and basic structures, and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures.

MITIGATION

Without the written permission of the Executive Officer, the grantee shall not use or allow the use for mitigation (in other words, to compensate for adverse changes to the environment elsewhere) of any portion of real property on which the Conservancy has funded construction. In providing permission, the Executive Officer may require that all funds generated in connection with any authorized or allowable mitigation on the real property shall be remitted promptly to the Conservancy. As used in this section, mitigation includes, but is not limited to, any use of the property in connection with the sale, trade, transfer or other transaction involving carbon sequestration credit or carbon mitigation.

INSPECTION

Throughout the term of this agreement, the Conservancy shall have the right to inspect the project area to ascertain compliance with this agreement.

INDEMNIFICATION AND HOLD HARMLESS

The grantee shall be responsible for, indemnify and hold harmless the Conservancy, its officers, agents, and employees from any and all liabilities, claims, demands, damages, or costs, including, without limitation, litigation costs and attorneys fees, resulting from or arising out of the willful or negligent acts or omissions of the grantee, its officers, agents, contractors, subcontractors, and employees, or in any way connected with or incident to this agreement, except for the active negligence of the Conservancy, its officers, agents, or employees. The duty of the grantee to indemnify and hold harmless includes the duty to defend as provided in Civil Code section 2778. This agreement supersedes any right

INDEMNIFICATION AND HOLD HARMLESS (Continued)

the grantee may have as a public entity to indemnity and contribution as provided in Gov. Code Sections 895 et seq.

The grantee waives any and all rights to any type of express or implied indemnity or right of contribution from the State, its officers, agents, or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this agreement.

Nothing in this agreement is intended to create in the public or in any member of it rights as a third-party beneficiary under this agreement.

The obligations in this “INDEMNIFICATION AND HOLD HARMLESS” section shall survive termination of this agreement.

INSURANCE

The grantee shall procure and maintain insurance, as specified in this section, against claims for injuries to persons and damage to property that may arise from or in connection with any activities of the grantee or its agents, representatives, employees, volunteers, or contractors associated with the project undertaken pursuant to this agreement.

As an alternative, with the written approval of the Executive Officer, the grantee may satisfy the coverage requirement in whole or in part through: (a) its contractors’ procurement and maintenance of insurance for work under this agreement, if the coverage otherwise fully satisfies the requirements of this section; or (b) the grantee’s participation in a “risk management” plan, self insurance program or insurance pooling arrangement, or any combination of these, if consistent with the coverage required by this section.

The grantee shall maintain property insurance, if required below, throughout the term of this agreement. Any required errors and omissions liability insurance shall be maintained from the effective date through two calendar years after the completion date. The grantee shall maintain all other required insurance from the effective date through the completion date.

INSURANCE (Continued)

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:
 - a. Insurance Services Office (“ISO”) Commercial General Liability coverage, occurrence basis (Form CG 00 01) or comparable.
 - b. Automobile Liability coverage: ISO Form Number CA 0001, Code 1 (any auto).
 - c. Workers’ Compensation insurance as required by the Labor Code of the State of California, and Employer’s Liability insurance.

2. Minimum Limits of Insurance. The grantee shall maintain coverage limits no less than:

a. General Liability: <i>(Including operations, products and completed operations, as applicable)</i>	\$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the activities under this agreement, or the general aggregate limit shall be twice the required occurrence limit.
b. Automobile Liability:	\$1,000,000 per accident for bodily injury and property damage.
c. Worker’s Compensation	As required by law with Employer’s Liability of no less than \$1,000,000

3. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Executive Officer.

INSURANCE (Continued)

4. Required Provisions Concerning the Conservancy and the State of California.

- a. Each insurance policy required by this section shall be endorsed to state that coverage shall not be canceled by either party, except after thirty days' prior written notice by first class mail has been given to the Conservancy; or in the event of cancellation of coverage due to nonpayment, after ten days prior written notice to the Conservancy. The grantee shall notify the Conservancy within two days of receipt of notice that any required insurance policy will lapse or be cancelled. At least ten days before an insurance policy held by the grantee lapses or is cancelled, the grantee shall provide the Conservancy with evidence of renewal or replacement of the policy.
- b. The grantee hereby grants to the State of California, its officers, agents, employees, and volunteers, a waiver of any right to subrogation which any insurer of the grantee may acquire against the State of California, its officers, agents, employees, and volunteers, by virtue of the payment of any loss under such insurance. Grantee agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the grantee has received a waiver of subrogation endorsement from the insurer.
- c. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
 - (i) The State of California, its officers, agents, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the grantee; and with respect to liability arising out of work or operations, including completed operations, performed by or on behalf of the grantee including materials, parts or equipment furnished in connection with the work or operations.
 - (ii) For any claims related to this agreement, the grantee's insurance coverage shall be primary insurance as respects the State of California, its officers, agents and employees, and not excess to any insurance or self-insurance of the State of California.
 - (iii) The limits of the additional insured coverage shall equal the limits of the named insured coverage regardless of whether the limits of the named insurance coverage exceed those limits required by this agreement.

INSURANCE (Continued)

5. Acceptability of Insurers. Insurance shall be placed with insurers admitted to transact business in the State of California and having a current Best's rating of "B+:VII" or better or, in the alternative, acceptable to the Conservancy and approved in writing by the Executive Officer.
6. Verification of Coverage. The grantee shall furnish the Conservancy with original certificates and amendatory endorsements, or copies of the applicable policy language, effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Executive Officer before work commences. The Conservancy may require, at any time, complete, certified copies of all required insurance policies, including endorsements affecting the coverage.
7. Contractors. The grantee shall include all contractors as insureds under its policies or shall require each contractor to provide and maintain coverage consistent with the requirements of this section. To the extent generally available, grantee shall also require each professional contractor to provide and maintain Errors and Omissions Liability insurance appropriate to the contractor's profession and in a reasonable amount in light of the nature of the project with a minimum limit of liability of \$1,000,000
8. Premiums and Assessments. The Conservancy is not responsible for premiums and assessments on any insurance policy.

AUDITS/ACCOUNTING/RECORDS

The grantee shall maintain financial accounts, documents, and records (collectively, "records") relating to this agreement, in accordance with the guidelines of "Generally Accepted Accounting Principles" ("GAAP") published by the American Institute of Certified Public Accountants. The records shall include, without limitation, evidence sufficient to reflect properly the amount, receipt, deposit, and disbursement of all funds related to the implementation of the project, and the use, management, operation and maintenance of the real property]. Time and effort reports are also required. The grantee shall maintain adequate supporting records in a manner that permits tracing from the request for disbursement forms to the accounting records and to the supporting documentation.

AUDITS/ACCOUNTING/RECORDS (Continued)

Additionally, the U.S. Fish and Wildlife Service, the U.S. Inspector General, the Conservancy or their agents may review, obtain, and copy all records relating to performance of the agreement. The grantee shall provide the Conservancy or its agents with any relevant information requested and shall permit the Conservancy or its agents access to the grantee's premises upon reasonable notice, during normal business hours, to interview employees and inspect and copy books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this agreement and any applicable laws and regulations.

The grantee shall retain the required records for a minimum of three years following the later of final disbursement by the Conservancy, and the final year to which the particular records pertain. The records shall be subject to examination and audit by the Conservancy and the Bureau of State Audits during the retention periods.

If the grantee retains any contractors to accomplish any of the work of this agreement, the grantee shall first enter into an agreement with each contractor requiring the contractor to meet the terms of this section and to make the terms applicable to all subcontractors.

The Conservancy may disallow all or part of the cost of any activity or action that it determines to be not in compliance with the requirements of this agreement.

The grantee shall conduct an audit in accordance with Title 2, Code of Federal Regulations, Part 200 (2 CFR 200). The audit shall be conducted at least every two years, completed within twelve months after the end of the grantee's fiscal year, and submitted to the Conservancy within thirty days after the completion of the audit. The Conservancy shall provide technical assistance to the grantee, at the grantee's request, for meeting the requirements of 2 CFR 200.

NONDISCRIMINATION

During the performance of this agreement, the grantee and its contractors shall not deny the agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The grantee shall insure that the evaluation

NONDISCRIMINATION (Continued)

and treatment of employees and applicants for employment are free of such discrimination. The grantee and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the Conservancy to implement such article. The grantee shall permit access by representatives of the Department of Fair Employment and Housing and the Conservancy upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or the Conservancy shall require to ascertain compliance with this clause. The grantee and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

The grantee shall include the nondiscrimination and compliance provisions of this clause in all contracts to perform work under this agreement.

PREVAILING WAGE

Work done under this grant agreement may be subject to the prevailing wage and other related requirements of the California Labor Code, Division 2, Part 7, Chapter 1, sections 1720-1861. If required by law to do so, the grantee shall pay prevailing wage to all persons employed in the performance of any part of the project and otherwise comply with all associated requirements and obligations.

The grantee shall review applicable statutory provisions and the regulations adopted under the provisions and the information available on the Department of Industrial Relations website (<http://www.dir.ca.gov/Public-Works/PublicWorks.html>) to determine its responsibilities. The grantee may also review the Conservancy publication, *Information on Current Status of Prevailing Wage Laws for State Coastal Conservancy Grantees (March 2015)*, available from the Conservancy on request, for additional information.

DRUG-FREE WORKPLACE

The grantee's signature on this agreement constitutes the certification required by Government Code Section 8355, which requires that all state grantees provide a drug-free workplace by doing all of the following:

(1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions that will be taken against employees for violations of the prohibition.

(2) Establishing a drug-free awareness program to inform employees about all of the following:

- a. The dangers of drug abuse in the workplace.
- b. The person's or organization's policy of maintaining a drug-free workplace.
- c. Any available drug counseling, rehabilitation, and employee assistance programs.
- d. The penalties that may be imposed upon employees for drug abuse violations.

(3) Requiring that each employee engaged in the performance of the grant be given a copy of the drug-free workplace statement and that, as a condition of employment on the grant, the employee agrees to abide by the terms of the statement.

UNION ORGANIZING

By signing this agreement, grantee acknowledges the applicability of Government Code Sections 16645 through 16649 to this agreement and certifies that no state funds disbursed by this agreement will be used to assist, promote or deter union organizing. If grantee makes expenditures to assist, promote or deter union organizing, grantee agrees to maintain records sufficient to show that no state funds, including the funds provided under this agreement, have been used for these purposes, and shall provide these records to the Attorney General upon request.

INDEPENDENT CAPACITY

The 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 the State of California.

ASSIGNMENT

Without the written consent of the Executive Officer, the grantee may not assign this agreement in whole or in part.

TIMELINESS

Time is of the essence in this agreement.

EXECUTIVE OFFICER'S DESIGNEE

The Executive Officer shall designate a Conservancy project manager who shall have authority to act on behalf of the Executive Officer with respect to this agreement. The Executive Officer shall notify the grantee of the designation in writing.

AMENDMENT

Except as expressly provided in this agreement, no changes in this agreement shall be valid unless made in writing and signed by the parties to the agreement. No oral understanding or agreement not incorporated in this agreement shall be binding on any of the parties.

SURVIVAL

The obligations in the "INDEMNIFICATION AND HOLD HARMLESS" section, above, shall survive the termination of this agreement.

LOCUS

This agreement is deemed to be entered into in the County of Alameda.