

VESSEL PUMPOUT FACILITY INSTALLATION,
VESSEL PUMPOUT AND FLOATING RESTROOM
PUMPOUT EQUIPMENT GRANT AGREEMENT

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ARTICLE 1 - DEFINITIONS

- A. "Allowable Project Costs": Those permitting, planning, signage, labor, design, material and construction costs which are necessarily incurred by the Grantee for the purpose of completing the Project and are covered by the Grant as eligible Grant activities; such Project Costs shall not include any expenses incurred prior to the start of the Grant Performance Period of this Agreement nor any expenses incurred for ineligible activities unless otherwise noted in the Project Scope and Cost Estimate (Exhibit B).
- B. "Department": Department of Parks and Recreation, Division of Boating and Waterways.
- C. "Date of Acceptance" for Installation Agreements: The date specified on the Project Completion Certification and which denotes the beginning of the seven (7) year portion of the grant term in accordance with Article 2 of this Exhibit.
- D. "Grant": Funds provided pursuant to Harbors and Navigation Code Section 72.75 and the Federal Clean Vessel Act of 1992 (50 CFR Part 85) to finance all or part of the Project Costs.
- E. "Grant Agreement": Contract that identifies terms, conditions, and obligations of each signatory agency.
- F. "Grantee": The entity identified as Grantee on the face page of the Agreement.
- G. "Grant Performance Period": The time during which the grantee may carry out the work authorized by the grant agreement.
- H. "Open and Available to the Public": All users shall have full and reasonable access to the facilities for the purpose of sewage disposal.
- I. "Project": The Project Scope attached and made part of the Agreement as Exhibit B.
- J. "Project Area": The area described in Exhibit B within which the Project will be undertaken.
- K. "Project Completion Certification" for Installation Agreements: Fully executed Notice of Completion, or equivalent, which states the Grantee has accepted the

Project as complete on a specific date (Date of Acceptance).

ARTICLE 2 - TERM OF AGREEMENT

- A. For installation projects, the term of this Agreement, subject to the provisions for prior termination, shall begin on the first date of the Grant Performance Period of the Agreement and shall continue for seven (7) years from the date that the Project is accepted by the Department.
- B. This Agreement may be extended, amended, or canceled upon written agreement of both the Department and the Grantee.

ARTICLE 3 - GRANT

- A. The Department hereby grants up to **Type out the amount (\$XX,XXX.XX)**, to the Grantee, for **operation and maintenance** of the floating restrooms **(or: installation of the pumpout facility OR installation of the pumpout equipment)** at **Project Location** in compliance with the regulations of the Clean Vessel Act (50 CFR Part 85).
- B. The Grant shall not exceed SEVENTY FIVE PERCENT (75%) of the allowable Project Costs. The Grantee shall contribute the remaining TWENTY FIVE PERCENT (25%).
- C. The Grant provides for reimbursement with Federal Funds [FED CATALOG 15.616].
- D. The Project work shall be in accordance with the approved Project Scope and Cost Estimate, attached as Exhibit B which is made part of this Grant Agreement.
- E. This Grant is subject to the terms and conditions in Exhibits A, B, C and D of this Agreement.

ARTICLE 4 - COMPLIANCE WITH LAW, REGULATION, AND POLICY

- A. Grantee shall comply with all applicable laws and regulations of the State of California, U.S. Fish and Wildlife Code of Federal Regulations (2 CFR 200, 50 CFR 85), Equal Opportunity (41 CFR 60-1.4(b)), Copeland "Anti-Kickback" Act (40 U.S.C. 3145), Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), "Rights to Inventions Made by Nonprofit Organizations and Small

Business Firms Under Government Grants, Contracts and Cooperative Agreements” (37 CFR Part 401), Clean Air Act (42 U.S.C. 7401-7671q.), and the Federal Water Pollution Control Act as amended (33 U. S.C. 1251-1387), Debarment and Suspension (Executive Orders 12549 and 12689), Byrd Anti-Lobbying amendment (31 U.S.C. 1352). Updated regulations are available at the U. S. Fish and Wildlife website <http://www.fws.gov/grants/resources.html>. Failure by the GRANTEE to comply with the terms of any State contract, may jeopardize the grantee's ability to be awarded funding in future funding opportunities offered by the Department of Parks and Recreation.

ARTICLE 5 - USER FEES (50 CFR 85.44)

- A. The Grantee may not charge a fee for the use of any floating restroom facilities covered by this Grant.
- B. The Grantee may charge a fee for the use of the pumpout facility constructed, operated, or maintained with the Grant: however; those fees may only be used to defray operation and maintenance costs incurred from the operation of the vessel pumpout facility. The Grantee may not charge a total fee in excess of \$5.00 for the use of the pumpout facility constructed without prior written approval of the Department. The \$5.00 fee may be increased or decreased annually in accordance with percentage changes in the United States Bureau of Labor Statistics Consumer Price Index (CPI) using the CPI index for December 1993 (436.8) as the base for any adjustment. Fees shall be equal for all users. However, members and customers may prepay for pumpouts within a fee structure, so that a separate fee for pumpouts at the time of use would not be needed for those members and customers.

ARTICLE 6 - PROJECT COMPLETION DATE

For all Operation and Maintenance projects, the Grantee shall complete the project as described in the Project Scope, Exhibit B and hereinafter referred to as “Project” no later than **Project Completion Date**.

ARTICLE 7 - DISBURSEMENT OF GRANT

The Department shall provide a Grant to the Grantee up to the maximum amount stated on the face page of the Agreement, however: No funds shall be disbursed for work performed prior to the start of the Grant Performance Period of this Agreement. The Department shall have no obligation to disburse any of the Grant to cover construction costs unless and until the Grantee demonstrates that it has acquired all permits necessary to construct and operate the Project. The Department shall have no obligation to disburse any of the Grant unless and until the Grantee provides the Department with copies of fully executed contracts for which it seeks reimbursement. Grant disbursements to cover Project Costs shall be made in arrears as follows:

- A. Grantee shall request a Grant disbursement in arrears at least quarterly, but not more frequently than monthly, for any and all reimbursable expenses incurred during that period, using the form provided by the Department unless Grantee has a form otherwise approved by the Department in writing. Paid invoices or other evidence of Grantee's payment of Project Costs must accompany Grant disbursement requests. When Grantee's staff completes work for which it wants to be reimbursed, Grantee shall submit clearly identified signed time sheets by both employee and supervisor, noting hours worked, activities conducted towards this project and direct pay rates, including benefits for each employee whose labor is billed to the Grant.
- B. Grant disbursement requests shall be submitted in hardcopy to the Department in a form satisfactory to the Department. In the event no reimbursable expenses were incurred during a quarter, the Grantee shall report to the Department of any progress made on the Project, or explanation of no progress made on the Project, at least monthly.
- C. Grantee shall request final Grant disbursement no later than thirty (30) days following the Date of Acceptance of the Project by the Grantee.
- D. The Department may withhold any Grant disbursement if the Grantee fails to comply with any of the provisions of this Agreement.

The GRANTEE shall use Generally Accepted Accounting Principles.

ARTICLE 8 - SPECIAL PROVISIONS

- A. The pumpout facility constructed under this Grant shall be operated, maintained, and be open and available to the public for the full term of this Agreement.
1. Operation of the pumpout facility shall be during normal business hours each day and availability shall not be hindered by locked enclosures, padlocks, pass keys, electronic keys, token systems, or other means.
 2. The pumpout facility constructed under this Agreement shall be equipped with an hour meter to record its usage.
- B. The floating restroom(s) operated and maintained under this Grant shall be open and available to the public for the full term of this Agreement.
1. The floating restroom(s) shall not be moored, tied to, or located within or immediately adjacent to any marina or attached to any shoreline. The intention of the floating restrooms is to provide sanitary facilities in locations that would not otherwise be available due to remote location, limited or no landside access, or rough topography.
- C. For vessel pumpout facility, the Grant recipient shall install signage that shall:
1. Indicate the presence of a pumpout facility. (State supplied sign),
 2. Acknowledge that the facility was constructed or improved with funds from the Clean Vessel Act. (State supplied sign),
 3. Provide appropriate information at the pumpout facility that indicates fees, restrictions, operation instructions, and a contact name and number if the facility is inoperable, and
 4. Provide notice on the pumpout facility that identifies the local city, county, local public health officer, or boating law enforcement officer responsible for enforcing the pumpout regulations in the local area.
- D. For floating restroom facility, the Grant recipient shall install signage that shall:
1. Acknowledge that the facility was constructed with funds from the Clean Vessel Act. (State supplied sign)
- E. Operation and Maintenance of Project
1. Because the Department has invested public funds in this facility, the Department has a vested interest in its success. The Grantee therefore

shall ensure that the facilities are operated and maintained in a manner that will prevent discharge of any sewage to the waters of the State. The facilities shall be maintained in good working order, and they shall be regularly cleaned for the entire term of this Agreement.

2. Facilities shall be subject to periodic dye testing for the term of the grant agreement. This testing may be performed by representatives of DBW and/or Grantee staff. The purpose of the testing is to identify any previously undetected issues in the pumpout system and related plumbing to shoreline facilities so they can be addressed promptly as to prevent waterbody pollution and possible fines that may be imposed by environmental agencies.
3. The Grantee shall be responsible for all costs of maintenance, management, control, and operation of the Project Area.
4. The Department and its agents may, at any and all reasonable times during the term of this Agreement, enter the Project Area for purposes of inspecting the facilities to determine if the facility is being operated and maintained according to the terms of this Agreement.
5. The Grantee hereby authorizes the Department and its agents to periodically at all reasonable times enter the Project Area to inspect the grant funded improvements and publish the results as a part of its ongoing monitoring of California's sewage disposal network.
6. Failure by Grantee to maintain the facility according to this section is a breach of this Agreement and may subject the Grantee to Termination of this Agreement.
7. The Department and its agents may, at any and all reasonable times during the term of this Agreement, enter the Project Area.
8. The Department and its agents may install upon the facilities equipment a monitoring device to record the operation and reliability of the Project under this Agreement.
9. The Grantee shall at a minimum maintain the facility in accordance with the maintenance guidelines below:

- a) Inspect vessel pumpout facilities daily for cleanliness, suction hose and nozzle conditions, discharge pipe condition, and general pump operating condition. All repairs shall be completed within 72 hours of identifying a need. Perform cleanup and maintenance as required.
 - b) Inspect each floating restroom at least weekly for cleanliness, and general operating condition. All repairs shall be completed within 72 hours of identifying a need. Perform cleanup, maintenance, and restock supplies (i.e., toilet paper, soap) as needed.
 - c) Perform preventative maintenance, as recommended by the equipment manufacturer for all equipment according to the manufacturer's recommended schedule.
10. All Contracts issued by grantee for work related to this award shall comply with Federal requirements 2 CFR identified in section §§200.318 General procurement standards through 200.326 Contract provisions.
- F. Upon expiration of the Agreement, all improvements made by the Grantee shall become property of the Grantee.
- G. Grantee shall each year provide information about the use and reliability of the facilities in the form of a post-implementation evaluation report (PIER) provided by the Department and shall provide the results of the PIER to the Department no later than 30 days after receipt of the PIER.
- H. Notices required between the parties shall be deemed to have been given on the date they are mailed to the respective party's address herein, first-class postage fully prepaid thereon.

ARTICLE 9 - COST SHARING OR MATCHING (2 CFR 200.306)

- A. All shared costs, matching funds, and contributions, including cash and third party in-kind contributions, shall meet all of the following criteria:
1. Shall be clearly and specifically detailed in writing, and verified by Grantee,
 2. Shall not be included as contributions for any other Federal award,
 3. Shall be necessary and reasonable for accomplishment of Project or program objectives,

4. Shall be allowable under Article 9, Item F below,
 5. Shall not be paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for that program may be applied to matching or cost sharing requirements of other Federal programs,
 6. Shall be provided for in the approved budget when required by the Federal awarding agency, and
 7. Shall conform to other provisions of this part, as applicable.
- B. Unrecovered indirect costs, including indirect costs on cost sharing or matching, may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.
- C. When Grantee conducts approved activities with its own staff to meet cost share or match requirements, Grantee shall submit clearly identified signed time sheets signed by both employee and supervisor, noting hours worked, activities conducted toward this project and direct pay rates, including benefits for each employee whose labor is billed to the Grant as cost share or match requirements.
- D. Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved Project or program. Rates for third-party volunteer services must be consistent with those paid for similar work by the non-Federal entity. In those instances, in which the required skills are not found in the non-Federal entity, rates must be consistent with those paid for similar work in the labor market in which the non-Federal entity competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, necessary, allocable, and otherwise allowable may be included in the valuation.

- E. When a third-party organization furnishes the services of an employee, these services must be valued at the employee's regular rate of pay plus an amount of fringe benefits that is reasonable, necessary, allocable and otherwise allowable, and indirect costs at either the third party organization's approved federally negotiated indirect cost rate or, a rate in accordance with §200.414. Indirect (F & A) costs, paragraph (d), provided these services employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.
- F. Donated property from third parties may include such items as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Value assessed to donated property included in the cost sharing or matching share must not exceed the fair market value of the property at the time of the donation.
- G. The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately owned building in the same locality.
- H. The value of loaned equipment must not exceed its fair rental value.
1. For third-party in-kind contributions, the fair market value of goods and services must be documented and to the extent feasible supported by the same methods used internally by the non-Federal entity.
 2. For Institutes of Higher Education, see also OMB memorandum M-01-06, dated January 5, 2001, Clarification of OMB A-21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.

ARTICLE 10 - CONSTRUCTION OF PROJECT

- A. All contracts for the Project shall:
1. Be awarded in accordance with all applicable laws and regulations, including but not limited to competitive bidding,
 2. Contain the following clause: "Representatives of the Department shall be allowed access to all parts of the construction work.",
 3. Contain a clause that the contractor shall comply with all air pollution and environmental control rules, regulations, ordinances and statutes

which apply to the Project and any work performed pursuant to the contract, and

4. Contain a clause that requires the contractors to ensure the structural integrity and safety of the Project.
- B. Inspection reports and related inspection data shall at all reasonable times be accessible to the Department personnel, and all request for copies of such reports and data shall be provided to the Department by the Grantee.

ARTICLE 11 - WAIVER OF RIGHTS

Any waiver by either party hereto of its rights with respect to a default or any other matter arising in connection with the Agreement shall not be deemed to be a continuing waiver with respect to that default, or to any other default or matter.

ARTICLE 12 - PROJECT REPRESENTATIVES

The Grantee and the Department shall each designate, in writing, specific staff representatives for the purposes of communication between parties. Grantee's representative shall be confirmed by delegation of authority, signed by the person designated by Resolution to sign the Agreement or any amendments, and to make decisions concerning the Agreement.

ARTICLE 13 - REMEDIES NOT EXCLUSIVE

The use by either the Department or the Grantee of any remedy specified in this Agreement for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

ARTICLE 14 - OPINIONS AND DETERMINATIONS

Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review, or determination of either the Department or Grantee, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

ARTICLE 15 - ASSIGNMENT, SALE, OR TRANSFER

- A. No assignment, sale, or transfer of this Agreement or any part hereof, rights

hereunder, or interest herein by Grantee shall be valid unless and until it is approved in writing by the Department and made subject to such reasonable terms and conditions as the Department may impose.

- B. Grantee shall require, as a condition of assignment, sale or transfer of the property on which the Project is constructed, that the assignee, purchaser or transferee of the property assume, in writing, in such manner as shall be satisfactory to the Department, the obligations of this Agreement. Failure to comply with this provision shall constitute a default and shall be grounds for Department to terminate this Agreement.

ARTICLE 16 - SUCCESSORS AND ASSIGNS OBLIGATED

This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties to this Agreement.

ARTICLE 17 - TERMINATION

A. TERMINATION FOR CONVENIENCE

1. The Department may terminate this Agreement at any time for the convenience of the State upon thirty (30) days prior written notice, delivered by certified mail or in person to Grantee. Upon notice of such termination, Grantee shall, within thirty (30) days, return by check payable to the Department all unexpended Grant funds not previously approved for expenditure by the Department.
2. Grantee may terminate this Agreement at any time upon thirty (30) days prior written notice, delivered by certified mail or in person to the Department, provided, however, that upon any such termination of the Agreement Grantee shall, within thirty (30) days of such termination, reimburse by check payable to the Department all funds contributed by the Department to the Project on a prorated basis as determined by the Department.

B. TERMINATION FOR DEFAULT

The Department may at any time upon ninety (90) days prior written notice of default, and, when applicable, after having afforded Grantee an opportunity to cure any breach pursuant to Article 13 of this Exhibit, terminate this

Agreement if the Grantee has failed to abide by any applicable provision of this Agreement. In such case, Grantee shall, within ninety (90) days of its receipt of a notice of termination, reimburse by check all funds contributed by the Department to the Project on a prorated basis as determined by the Department.

ARTICLE 18 - LIABILITY

- A. The Grantee waives all claims and recourse against the Department including the right to contribution for any loss or damage arising from, growing out of or in any way connected with or incident to this Agreement.
- B. The Grantee agrees to indemnify, defend and hold harmless, the Department, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm, entity 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, entity or corporation who may be injured or damaged in the performance of this Agreement or by any aspect of the Project during the term of this Agreement.
- C. The Grantee shall indemnify, hold harmless, and defend the Department, its officers, agents, and employees against any and all claims, demands, damages, costs, expenses and liability connected with or arising out of the acquisition, design, construction, operation, maintenance, existence or failure of the Project.
- D. If the Department is named as a co-defendant, the Grantee shall notify the Department and represent it unless the Department elects to represent itself. If the Department undertakes its own defense, it shall bear its own litigation costs, expenses, and attorney's fees.

ARTICLE 19 - WAIVERS

No delay on the part of any party in exercising any right, power or privilege under this Agreement shall operate as a waiver of that right, power, or privilege, nor shall any written waiver on the part of any party of any right, power or privilege under

this Agreement, nor any single or partial exercise of any right, power or privilege under this Agreement, preclude any other or further exercise thereof or the exercise of any other right, power or privilege under this Agreement. A written waiver of any breach of any kind shall not be construed as a waiver of any subsequent breach of the same kind.

ARTICLE 20 - DISPUTE RESOLUTION

Any dispute arising under the terms of this Agreement which is not disposed of within a reasonable period of time by the Grantee and Department representatives normally responsible for the administration of this Agreement shall be brought to the attention of the Deputy Director of the Division of Boating and Waterways or the Deputy Director's designee. At the request of either party, the Department shall provide a forum for the discussion of the disputed matter(s). If agreement cannot be reached, either party may assert its other rights and remedies within this Agreement in a court of competent jurisdiction.

ARTICLE 21 - WAIVER OF THE STATUTE OF LIMITATIONS

Grantee waives the benefit of any statute of limitations affecting its liability under this Agreement or the enforcement of this Agreement to the extent permitted by law.

ARTICLE 22 - NOTICES

Notices required between the parties shall be deemed to have been given when mailed to the respective addresses listed in this Agreement, first class postage fully prepaid thereon, unless otherwise required by law.

ARTICLE 23 - PRIOR TERMINATION

The Agreement shall terminate on the date specified in Article 6 of this Agreement if by such date (1) the Grantee has not met all conditions precedent to disbursement under this Agreement or (2) if the Department has disbursed no part of the Grant funds.

ARTICLE 24 - AUDIT

In addition to the audit requirements specified in other sections of this Agreement, Grantee understands and agrees that, as a recipient of Federal Funds, it must

comply with all applicable audit requirements imposed by federal law, regulations or policy, including but not limited to the Single Audit Act and the reporting requirements set forth in 2CFR200, Subpart F.

ARTICLE 25 - IMPLEMENTATION OF PROJECT

All contracts for the Project shall be awarded in accordance with all applicable laws and regulations.

ARTICLE 26 - COMPLIANCE WITH FEDERAL REQUIREMENTS

Grantee shall comply with all applicable Federal laws, regulations, and policies, including those summarized in Part 523, Chapter 1 of the U.S. Fish and Wildlife Service Handbook. These requirements include provisions for nondiscrimination, environmental standards, historic and cultural preservation, and other administrative guidelines, and are incorporated herein by this reference as if fully set forth.

ARTICLE 27 - OUTSIDE SERVICES (NON-EXCLUSIVITY)

DBW shall, at its sole discretion, have the right to obtain services relating to the subject and objectives of this Agreement outside the terms of this Agreement.

ARTICLE 28 - STATUS REPORTS

- A. Brief, monthly status reports shall be submitted by the Grantee describing work carried out during the previous month and discussing progress toward the objective of the Project. Discussion of any problems, delays or other difficulties encountered in the Project progress shall also be included in the status reports.
- B. Status reports shall be submitted by email or letter as closely as possible to the first working day of each calendar month.

ARTICLE 29 - MEETINGS

Upon the request of DBW, the Grantee shall participate in joint meetings with representatives of DBW to review the Project status. These meetings shall be held at the Grantee's premises or in Sacramento at DBW headquarters at the discretion of the DBW Project Representative.

ARTICLE 30 - REVISION OF BUDGET AND PROGRAM PLANS (2 CFR 200.308)

- A. The approved budget for the Federal award summarizes the financial aspects of the Project or program as approved during the Federal Award process. It may include either the Federal and non-Federal share (see §200.43 Federal share) or only the Federal share, depending upon Federal awarding agency requirements. It must be related to performance for program evaluation purposes whenever appropriate.
- B. Recipients are required to report deviations from budget or Project Scope or objective and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with this section.
- C. Grantees must request prior written approval from DBW for any of the following deviations of the proposed workplan; as described in attached Exhibit B.
1. Change in the scope or the objective of the Project (even if there is no associated budget revision requiring prior written approval).
 2. Change in a key person specified in the application.
 3. The disengagement from the Project for more than three months, or a 25 percent reduction in time devoted to the Project.
 4. The transfer of funds budgeted for tasks defined in the workplan budget.
 5. Changes in the approved cost sharing or matching provided by the Grantee.
 6. Need arises for additional funds to complete the Project.

ARTICLE 31 - TERMS AND CONDITIONS

This Agreement is subject to the terms and conditions in this Agreement and in Exhibits A, B, C, D, and E of this Agreement.

ARTICLE 32 - MANDATORY DISCLOSURES

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in §200.338 remedies for noncompliance, including suspension or debarment. (See also 2 CFR part 180 and 31 U.S.C. 3321).

ARTICLE 33 - GRANTEE IDENTIFICATION NUMBER

Each Grantee who enters into an Agreement with the State of California must provide their Federal Employee Identification Number (FEIN), or Social Security Number (SSN), whichever is applicable.

ARTICLE 34 - REPORTABLE PAYMENT IDENTIFICATION AND CLASSIFICATION

Grantee shall comply with State and Federal Reportable Payment Identification and Classification Requirements by fully completing the "Vendor Data Record" Std. 204. By signing this Agreement, Grantee understands and agrees that if Grantee does not fully complete the "Vendor Data Record" the State shall reduce the total Grant amount by twenty-one percent (21%) for federal backup withholding, and seven percent (7%) for state income tax withholding.

ARTICLE 35 - NATIONAL LABOR RELATIONS BOARD CERTIFICATION

By signing this Agreement, the Grantee affirms under penalty of perjury, that no more than one (1) final, unappealable finding of contempt of court by a federal court has been issued against the Grantee or any of its contractors within the immediately preceding two year period because of Grantee's failure to comply with an order of a federal court which ordered the Grantee to comply with an order of the National Labor Relations Board (California Public Contract Code §10296).

ARTICLE 36 - INCORPORATION OF NONDISCRIMINATION CLAUSE

The Grantee shall include the nondiscrimination clause and its compliance provisions into all contracts and subcontracts to perform work under this Agreement.

ARTICLE 37 - STATEMENT OF COMPLIANCE

By signing this Agreement, the Grantee certifies under penalty of perjury under the laws of the State of California, unless specifically exempted, that it has complied with California Government Code §12990 and the California Code of Regulations, Title 2, Division 4, Chapter 5, in matters relating to the development, implementation, and maintenance of a nondiscrimination program.

ARTICLE 38 - NONDISCRIMINATION CLAUSE

A. During the performance of this Agreement, the Grantee and all of its

contractors and subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religion, national origin, physical handicap, disability (including, but not limited to HIV and AIDS), cancer related medical condition, age, or marital status. Grantee and all of its contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employees and applicants for employment are free from such discrimination and harassment.

- B. Grantee and all of its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (California Government Code §12900, et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code §12990 (a-f) set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated herein by reference, and made a part hereof as if set forth in full. Grantee and all of its contractors and subcontractors shall give written notice of their obligation under this clause to labor organizations with which they have a collective bargaining or other Agreement.

ARTICLE 39 - ENHANCEMENT OF RECIPIENT AND SUBRECIPIENT EMPLOYEE WHISTLEBLOWER PROTECTION

- A. This award, related subawards, and related contracts over the simplified acquisition threshold and all employees working on this award and related subawards and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies established at 41 USC 4712.
- B. Recipients, their subrecipients, and their contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC 4712.

- C. The recipient shall insert this clause, including this paragraph (c), in all subawards and contracts over the simplified acquisition threshold related to this award.

ARTICLE 40 - EQUAL OPPORTUNITY CLAUSE
Federally assisted construction Grants.

The applicant (Grantee) hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a Grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such Grant, contract, loan, insurance, or guarantee, the following equal opportunity clauses:

1. The Grantee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Granting officer setting forth the provisions of this nondiscrimination clause.
2. The Grantee will, in all solicitations or advertisements for employees placed by or on behalf of the Grantee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The Grantee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or

understanding, a notice to be provided by the agency Granting officer, advising the labor union or workers' representative of the Grantee's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Grantee will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Grantee will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Granting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Grantee's non-compliance with the nondiscrimination clauses of this Grant or with any of such rules, regulations, or orders, this Grant may be canceled, terminated or suspended in whole or in part and the Grantee may be declared ineligible for further Government Grants in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Grantee will include the provisions of paragraphs (1) through (7) in every contract, subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each contractor, subcontractor or vendor. The Grantee will take such action with respect to any contract, subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for

noncompliance: *Provided, however,* that in the event the Grantee becomes involved in, or is threatened with, litigation with a contractor, subcontractor or vendor as a result of such direction, the Grantee may request the United States to enter into such litigation to protect the interests of the United States.

- A. The applicant (Grantee) further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* that if the applicant (Grantee) so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Grant.
- B. The applicant (Grantee) agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency (Department) in the discharge of the agency's primary responsibility for securing compliance.
- C. The applicant (Grantee) further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction Grants or contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Grantees and contractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant (Grantee) agrees that if it fails or refuses to comply with these undertakings, the administering agency (Department) may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this Grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the

applicant (Grantee) under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant (Grantee); and refer the case to the Department of Justice for appropriate legal proceedings.

Subcontracts. Each of Grantee's nonexempt prime contractors or subcontractors shall include the equal opportunity clause in each of its nonexempt subcontracts.

- A. *Incorporation by reference.* The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Deputy Assistant Secretary may designate.
- B. *Other incorporation.* The equal opportunity clause shall be considered to be a part of every one of Grantee's contracts and subcontracts and all such contracts and subcontracts shall be deemed to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

ARTICLE 41 - SUPERSEDING GENERAL TERMS AND CONDITIONS

- A. The reference to the Contractor in Exhibit C is the Grantee in this Agreement.
- B. Notwithstanding Paragraph 13 in Exhibit C, payment to Grantee for expenses shall be limited as specified in Article 7 of this Agreement.
- C. Paragraph 5 in Exhibit C is replaced by Article 18 of this Exhibit.