

**Memorandum of Understanding
between
Rose Foundation for Communities and the Environment
and
Los Angeles Regional Water Quality Control Board
to Establish, Develop and Administer a
Los Angeles Region Disadvantaged Community SEP Fund**

The Rose Foundation for Communities and the Environment (Rose Foundation) is a grantmaking, public charity based in Oakland, California with extensive experience in managing Supplemental Environmental Project (SEP) funds related to Clean Water Act settlements, SEPs for governmental agency enforcement actions, certain class action settlements and other similar settlement funds related to environmental protection, public health, social justice and consumer protection.

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is an agency of the State of California with the mission of preserving, protecting, enhancing, and restoring water quality within major portions of Los Angeles and Ventura Counties. As defined by Public Resources Code section 71118, subdivision (a)(3), a SEP is “an environmentally beneficial project that a person subject to an enforcement action voluntarily agrees to undertake in settlement of the action and to offset a portion of a civil liability.” Water Code section 13385, subdivision (1)(2) further defines a SEP, in part, as “an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action.” As part of its scope of activities to benefit water quality in this region, the Regional Board may enter into settlements with dischargers that include SEPs. in lieu of remitting payment of administrative civil liability to the California State Water Resources Control Board’s (State Water Board) Water Pollution Cleanup and Abatement Account and/or Waste Discharge Permit Fund. Such SEPs are typically memorialized in Administrative Civil Liability (ACL) orders.

Overall Goals

The Regional Board and the Rose Foundation wish to enter into a partnership to establish a Disadvantaged Community SEP Fund¹ for the Los Angeles Region. The overall goals are:

1. Support community-based projects that meet important water quality objectives and which comply with the State Water Board’s Policy on SEPs; and
2. Ensure that any project funded by a SEP benefits disadvantaged communities and involves disadvantaged communities in its design and implementation.

¹ The Disadvantaged Community SEP Fund is inclusive of Disadvantaged Communities, Environmental Justice Communities and Communities with financial hardships as outlined in the 2018 SEP Policy p. 10.

This Memorandum of Understanding describes the process that the Regional Board and the Rose Foundation shall take to establish such a program, with a target of having a draft Project List in LAWQCB's hands by the close of 2018 (i.e. – an initial list of SEP projects which could then be adopted by the Regional Board in 2019).

Types of Allowable SEPs

The following general types of SEPS may be developed through this program:

A. Public Health

Public health projects are drinking water projects that may help promote the goal of the human right to water in a community. Examples include, but are not limited to: providing replacement drinking water, installation of water tanks, drinking water distribution system infrastructure improvements or consolidation assistance, private well testing, and focused community outreach regarding drinking water safety. Drinking water-related SEPs are acceptable where the primary beneficiary of the project is the population that was harmed or put at risk by the violation(s).

B. Pollution Prevention

Pollution prevention projects prevent pollution at its source, before it is generated. Examples include, but are not limited to: practices that reduce the quantity and/or toxicity of pollutants entering a waste stream prior to treatment or disposal; equipment or technology modifications; process or procedure modifications; improvements in housekeeping, training, inventory control, best management practices, or other maintenance procedures; and projects which protect the water resources of the Regional Board's jurisdiction through conservation or increased efficiency.

C. Pollution Reduction

Pollution reduction projects result in a decrease in the amount and/or toxicity of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the water resources of the Regional Board's jurisdiction by an operating business or facility by a means which does not qualify as "pollution prevention." Examples include, but are not limited to: installation of a more effective end-of-process control or treatment technology; stormwater low impact development installation; improved containment; safer disposal of an existing pollutant source; and regional monitoring programs.

D. Environmental Restoration and Protection

Environmental restoration and protection projects include those that benefit surface or groundwater quality and enhance the condition of the ecosystem or immediate geographic area adversely affected by the violation. Examples include, but are not limited to: water or soil treatment; habitat restoration or enhancement; pollution prevention or reduction; wetland, stream, or other waterbody protection, restoration, or creation; conservation easements; stream flow or water quality augmentation; watershed management facilitation services; and non-point source program implementation.

E. Assessments and Audits

Assessment and audit projects may include pollution prevention assessments, environmental quality assessments, or compliance audits.

- Pollution prevention assessments are systematic, internal reviews of specific processes and operations designed to identify and provide information about opportunities to reduce the use, production, and generation of toxic and hazardous materials and other wastes that may pose threats to water quality, water supply, or human health.
- Environmental quality assessments are investigations of: the condition of the environment at a site not owned or operated by the responsible party; the environment impacted by a site or facility regardless if owned or operated by the responsible party; or threats to human health or the environment relating to a site or facility regardless if owned or operated by the responsible party.
- Environmental compliance audits are independent evaluations of a responsible party's compliance status with environmental requirements at a given point in time. In general, compliance audits are acceptable as SEPs only when the responsible party is a small business, small community (less than 2,500 persons), or a state or local government entity.

These assessments and audits are only acceptable as SEPs when the responsible party agrees to provide the Regional Board with a copy of the report and the results are made available to the public.

F. Environmental Compliance Promotion

An environmental compliance promotion project provides training or technical support to other members of the regulated community in order to: identify, achieve, and maintain compliance with applicable statutory and regulatory requirements; or go beyond compliance by reducing the generation, release, or disposal of pollutants beyond legal requirements. Environmental compliance promotion SEPs are acceptable only where the primary impact of the project is focused on the same regulatory program requirements that were violated and where compliance in the sector would be significantly advanced by the proposed project.

G. Other

Projects that do not fit within one of the six categories above, but have environmental and/or public health benefits and are otherwise fully consistent with all other provisions of the State Water Board's SEP Policy may also be allowable if approved by the Regional Board. Examples may include, but are not limited to: water quality or drinking water-related educational outreach; and collection system capital improvements.

The following project activities which are prohibited and may not be conducted with any SEP funds include but are not limited to:

- No lobbying.
- No litigation.

- No activities that specifically contradict established State of California or specific agency policy, including but not limited to the State Water Board's Policy on SEPs.

Outline of Process to Develop and Administer the Los Angeles Region Disadvantaged Community SEP Fund²

Prepare Initial Programmatic Guidance Documents: In consultation with Regional Board staff, the Rose Foundation shall prepare an overall Programmatic Description and Request for Proposals (RFP). Once approved by the Regional Board, these materials will be posted on the Rose Foundation website and circulated broadly through the Rose Foundation's distribution networks. The Rose Foundation will also post the RFP to environmental justice and community networks in Southern California for circulation amongst their members. The RFP will describe the application process, which will be modeled after the Central Valley Disadvantaged Community Water Quality Fund process available at: <https://rosefdn.org/central-valley-disadvantaged-community-water-quality-grants-program/apply>. It is anticipated that the Rose Foundation would conduct one or more applicant workshops to explain the goals of the fund and how to apply. In general terms, the Fund will use a "two-step" application process. In Step 1, a large number of relatively short inquiries are invited. These inquiries allow the Rose Foundation to work with applicants to help them shape a competitive proposal, or provide a basis to discourage a full application if, after careful review, the Rose Foundation doesn't believe the applicant is qualified or has an eligible project. The goal is to help applicants learn how to improve their project and possibly qualify next time, and/or help them target other funding sources who may be a better fit.

Develop a Community-Based Advisory Panel: This will include an advisory board of community leaders whose expertise keeps the program grounded in community values and local knowledge. The advisory board members will help review proposals for merit and community benefit as the annual Project List is compiled. Criteria for membership include experience in water quality issues, geographic balance that reflects the Regional Board's service area, and strong community knowledge. In addition, members of this advisory panel cannot be closely associated with likely grant applicants. The advisory panel shall be subject to the Rose Foundation's conflict of interest policies, which include procedures if an application is received from an organization connected with an advisory panel member. The advisory panel shall have at least three, but no more than seven persons. However, in the start-up phase of the program, the initial advisory board may have less than three persons.

Work with Applicants to Develop Their Proposals: The Rose Foundation will work with applicants to move them through the inquiry stage to full applications (Step 2). At this stage, there may be considerable one-on-one contact involving interviews and, as needed, site visits. Applicants may be asked for additional information or clarification of answers to specific questions beyond those in the application. In addition to selecting strategically important proposals which meet the water quality and community benefit focus, an additional goal will be to select a range of project sizes from small, volunteer-driven projects to large, multi-phase

² Creation of all SEPs and all processes contemplated under this Memorandum of Understanding shall be subject to Regional Board input and oversight to the extent required by law.

projects. This helps ensure that grassroots communities and small non-profits with vital local projects have entrée into the process as well as larger organizations that are capable of managing large-scale projects.

The Rose Foundation will also be extremely clear with applicants that submitting a project proposal for consideration does not in any way guarantee any level of funding whatsoever. The goal is to develop a list of compelling projects that represents a range of activities, issues and communities. The Rose Foundation shall also make it clear to applicants that all grant proposal and reports must be considered public documents.

Develop Annual Project List: Based on these proposals and the advisory panel's assistance, the goal for the Rose Foundation is to bring a draft Project List to the Regional Board for review by the end of 2018. Each project description will contain: 1) description of proposed project and sponsoring organization; 2) project budget; 3) timeline for project activities, and; 4) identification of major milestones and deliverables to be achieved with grant funds. Once the draft Project List is created, Regional Board staff will be asked to provide an initial level of informal review to ensure that all proposed projects meet agency goals and that no proposed projects contain elements that are contrary to established state policy. After this informal review is completed, the Rose Foundation will then seek formal approval by the Regional Board, and such approval process shall comply with 30 day public notice requirements and other elements of the Regional Board's standard procedures. Again, this approval would not indicate a funding commitment of any kind – but it does mean that the project would then be eligible to be considered for a SEP over the next year.

Award Grants: All grantees must come from the approved Project List. The Regional Board generally commits to promoting the SEP option in settlement discussions, and at its discretion, the Regional Board will show the Project List to dischargers during settlement discussions. Dischargers will then have the opportunity to pick projects from the Project List. In some instances, the Rose Foundation may be asked to suggest 1-2 projects (from the Project List) that seem to be a good fit for the nexus of a particular case. At this point, the Rose Foundation will generally go back to the project proponent and secure a focused workplan and budget update which is within the context of their original project proposal and that ties into the specific settlement. Upon the discharger's acceptance and Regional Board's agreement, the SEP would then be written into the ACL or other settlement agreement. As per that settlement agreement, the funds then come to the Rose Foundation to administer the grant to the project proponent. Generally, the discharger's liability for the SEP may be suspended at this point, but not entirely released.

Administer Grant Awards: All grantees will be bound by written grant contracts which obligate the specified deliverables and create oversight and accountability mechanisms including proscribed reports and the Rose Foundation's right to audit. These accountability mechanisms also include contractual provisions for return of unspent funds and allow the Rose Foundation to demand repayment of awards if, in the Regional Board's and Rose Foundation's judgment, the project fails to diligently attempt to produce its full deliverables. Depending on how long the settlement negotiations have stretched out, at this contract award stage it may be necessary or desirable to make any final needed modifications within the framework of the approved

project (generally related to timing considerations) in order to respond to contingencies that arose after the original project was submitted. The Rose Foundation will structure its grant contracts to specify the exact deliverables that must be produced under the grant, and organize grantee reporting requirements so that grantees may be able to quantify projects as *25% complete, 50% complete, 75% complete, or fully complete*. These reports shall be forwarded to the Regional Board, and can become the basis to incrementally reduce discharger liability – an important consideration in securing the discharger’s cooperation in funding the SEP.

Annual Report: At a time agreeable to the Regional Board, the Rose Foundation shall submit a formal annual report to the Regional Board describing grants awarded and grantee accomplishments. Among other things, the report will reflect the status of funded projects (e.g., 25% complete, fully complete, etc.) allowing the agency to release the violators from liability related to their SEP funding. The Rose Foundation shall also submit brief interim reports during the year. Reporting intervals and format shall be developed in consultation with Regional Board. In addition to these reports, over time the Rose Foundation is interested in collaborating with the Regional Board to create graphically-exciting impact reports that showcase the community benefits achieved by this program.

Review Accomplishments and Fine Tune Program: At the end of 2018, and annually thereafter, the Rose Foundation and Regional Board shall confer to discuss the program, including successes and challenges, and this discussion will educate adjustments to the program as needed.

Annually Solicit New Proposals, Update the Project List, and Continue Grantmaking: The Rose Foundation will annually conduct an open application process that will allow new organizations to submit a qualifying proposal for consideration for the Project List and/or to update past proposals, and shall annually bring this list back to the Regional Board for approval. By this means, the Rose Foundation will ensure a consistent supply of projects and regularly open the application process to the community. The Rose Foundation anticipates that it would present the fresh Project List each year to the Regional Board at the same time the Rose Foundation reports on the status of the past grant awards. Once approved by the Regional Board, this new list would supersede the prior Project List. From there, the Rose Foundation would conduct the annual grant cycle, and report to the Regional Board along the same track as the first year.

Administration of Funds

- All SEP funds shall be kept in a restricted internal bookkeeping account dedicated solely to fulfill the overall goals of this program. SEP funds received and grants awarded shall be accounted for in the Rose Foundation’s annual audit.
- Each grant will be linked to a specific enabling SEP.
- To defray its expenses, the Rose Foundation shall charge the following fees or oversight costs, which are based on the size of the SEP. This fee supports all normal program administration as well as general Rose Foundation overhead including the Rose Foundation’s annual audit. The fees are as follows. In no case, however, shall any

oversight costs or fees exceed ten percent (10%) of the total cost of the SEP:

- o 10% of SEP payments under \$500,000.
- o 8% of SEP payments \$500,000 or greater.
- o 7% of SEP payments \$1.5 million or greater.
- o 6% of SEP payments \$3 million or greater.

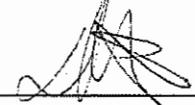
Extraordinary costs, such as extensive audits of individual SEPS or an extensive impact report or video production describing SEP impact, would be worked out supplementary between the Rose Foundation and the Regional Board as needed.

Agreed:



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6/25/18
Date



Deborah J. Smith
Executive Officer
Los Angeles Regional Water Quality Control Board

6-15-18
Date