

Attachment 1

**Settlement Agreement and Stipulation for Entry of Order In the matter of:
County of San Diego, Department of General Services; Porous
Pavement & Model Municipal Operations Center – Phase II
Agreement Nos. 03-264-559-2 and 06-135-559-0**

ATTACHMENT A: Agreement No. 06-135-559-0

ATTACHMENT B: Replacement Projects Scope of Work/Time Schedule

ATTACHMENT C: Conditions Applicable to Replacement Projects

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the matter of:)
)
) **Settlement Agreement and**
County of San Diego, Department of) **Stipulation for Entry of Order**
General Services; Porous Pavement)
& Model Municipal Operations)
Center – Phase II)
)
Agreement Nos. 03-264-559-2 and)
06-135-559-0)

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Order (“Order”) is entered into by and between the State Water Resources Control Board, Division of Financial Assistance staff (“SWRCB Staff”), and the County of San Diego (“County”) (collectively the “Parties”). The Order is presented to the State Water Resources Control Board (“SWRCB”), or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60, in reference to the breach of Agreement Nos. 03-264-559-2 and 06-135-559-0, awarding grant funds from the SWRCB.

Section II: Recitals

1. San Diego County has received approximately \$8 million from various grant funding sources for projects to treat suspended solids, oil/grease, metals, organic compounds, and nitrogen. The San Diego River watershed is approximately 440 square miles with a population of ~475,000 and 58% of the watershed currently undeveloped. The San Diego River is 303(d) listed water for fecal coliform, low dissolved oxygen, phosphorous, and total dissolved solids. The projects described herein will address the constituents of concern and improve water quality in the San Diego River watershed. The County was an applicant for Proposition 40 funds for Nonpoint Source Pollution Control for the 2005-2006 fiscal year. A copy of Agreement No. 06-135-559-0 is attached hereto as Attachment A for reference; Agreement No. 03-264-559-2 is substantially similar.

2. In 2006 and 2007, the SWRCB awarded the County \$2.9 million in grant funds to construct structural best management practices (BMPs) in the San Diego River watershed. Specifically, the grant funds were intended to be used to install porous

pavement and centralized treatment train components of a model operations center demonstration. The proposed project contemplated test areas that included asphalt reinforced with polymer and a deeper reservoir to contain roof runoff as well as parking lot drainage.

3. On May 10, 2013, during a routine construction site inspection of the expansion of the County's Operations Center in Kearny Mesa, the San Diego Regional Water Quality Control Board staff learned that 118,000 square feet of porous pavement that had been installed pursuant to the Agreements had been or was about to be demolished, in violation of the Agreements. Both Agreement Nos. 03-264-559-2 and 06-135-559-0 state that the improvements must remain in place through project completion plus 20 years, and if removed, full payment can be demanded. Therefore, the County was in breach of Agreement provisions, including but not limited to:

- a. 11. CONTINUOUS USE OF PROJECT; LEASE OR DISPOSAL OF PROJECT: The Grantee agrees that, except as provided in the Agreement, it will not abandon, substantially discontinue use of, lease, or dispose of the Project or any significant part or portion thereof during the useful life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all or any portion of all remaining grant Project funds covered by this Agreement together with accrued interest and any penalty assessment which may be due.
- b. 24. NOTICE: ...(b) The Grantee shall promptly notify the State Water Board of events or proposed changes that could affect the scope, budget, or work performed under this Agreement. The Grantee agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to the State Water Board, and the State Water Board has given written approval for such change.
- c. 25. OPERATIONS AND MAINTENANCE: The Grantee shall maintain and operate the facility and structures constructed or improved as part of the Project throughout the life of the Project, consistent with the purposes for which this Grant was made. The Grantee assumes all operations and maintenance costs of the facilities and structures; the State Water Board shall not be liable for any cost of such maintenance, management or operation. The Grantee may be excused from operations and maintenance only upon the written approval of the Grant Manager. ...

d. 40. USEFUL LIFE OF THE PROJECT: For the purpose of this Agreement, the useful life of any constructed portions of this Project begins upon completion of construction and continues until fifty (50) years thereafter for pipelines and structures and twenty (20) years for all else.

4. The treatment train portion of the project remains in place and fully functional. Credit was given to the County of approximately \$900,000 for its installation of the treatment train under Agreement Nos. 03-264-559-2 and 06-135-559-0. Since Agreement Nos. 03-264-559-2 and 06-135-559-0 remain in effect except for the breaches resolved by this Order, \$900,000 will be used as the offset value.

5. Throughout 2013 and 2014, staff for the San Diego Regional Water Quality Control Board, the SWRCB and the County discussed informal resolutions for the breach of Agreement Nos. 03-264-559-2 and 06-135-559-0. These eventually focused on three replacement projects (Replacement Projects) that would suitably protect water quality, rather than repayment of grant funds, minus any value of installed BMPs which had not been removed in breach of the Agreements. The Replacement Projects are providing greater or equivalent water quality benefits than the projects in Agreement Nos. 03-264-559-2 and 06-135-559-0.

6. The purpose of this Stipulated Order is to reflect the agreement between the SWRCB Staff on the one hand, and the County on the other, in the development of Replacement Projects, and formalize the acceptance of the Replacement Projects by the SWRCB.

7. In determining the appropriateness of Replacement Projects, SWRCB staff considered factors including but not limited to, cost, ease of implementation, water quality benefits, acreage, etc. The Replacement Projects will be implemented at Lindo Lake County Park, Cactus County Park, and Edgemoor Skilled Nursing Facility. A description of the Replacement Projects' costs, schedule, and anticipated water quality benefit is summarized in Attachment B.

8. To resolve by consent and without further administrative proceedings all damages for breaches of Agreement Nos. 03-264-559-2 and 06-135-559-0, the Parties have agreed to (a) the substitution of the three Replacement Projects as described in Attachment B, and (b) \$25,000 payable as staff costs in resolving the alleged breaches described herein. The County shall issue a warrant for \$25,000 to the State Water Board Cleanup and Abatement Account ("Cleanup and Abatement Account") no later

than 30 days following the SWRCB's adoption of this Order, and complete the three Replacement Projects contemplated in Attachment B. Failure to complete the projects listed in Attachment B will result in liquidated damages as described in Paragraph 10.

9. SWRCB Staff avers that the resolution of the alleged breach is fair, reasonable, and is protective of water quality and state resources, including staff time and grant funding. SWRCB Staff further states that by the County completing the Replacement Projects, that no further action is warranted concerning the breaches of the Agreements except as provided in this Order, and that this Order is in the best interest of the public.

Section III: Stipulations

The Parties stipulate to the following:

10. **Administrative Civil Liability:** The County hereby agrees to complete the Replacement Projects described herein and in Attachment B. In addition, within thirty (30) days of the effective date of this Order, County agrees to remit, by warrant, TWENTY FIVE THOUSAND DOLLARS (\$25,000), payable to the *State Water Pollution Cleanup and Abatement Account*, and shall indicate on the warrant the number of this Order. The County shall send the original signed warrant referencing this Order number to the Division of Administrative Services ATTN: Accounting, State Water Resources Control Board, 1001 I Street 18th Floor, Sacramento, California 95814 and shall send a copy to the SWRCB legal contact at the address listed below.

The Parties further agree that for each Replacement Project that is completed to the satisfaction of the State Water Board, \$700,000 will be suspended. If all three Replacement Projects are satisfactorily completed by the County, the breaches under Agreement Nos. 03-264-559-2 and 06-135-559-0 will be considered resolved, so long as the additional terms in Agreement Nos. 03-264-559-2 and 06-135-559-0 and herein are also complied with. If the Replacement Projects are not fully implemented within the Project Guidelines set forth in Attachment B, the Bond Section Manager shall issue a Notice of Violation. As a consequence, the County shall be liable to pay \$700,000 for each Replacement Project not completed. Payment of \$700,000, or \$1,400,000, or \$2,100,000, for not completing one (1), two (2), or three (3), Replacement Projects will be viewed as the proper amount of liquidated damages under this Agreement. Unless otherwise ordered, the County shall not be entitled to any credit, offset, or reimbursement from the State Water Board for expenditures made on the Replacement Project not completed prior to the date of receipt of the Notice of Violation. Upon a determination by the State Water Resources Control Board, or its delegee, the amount shall be paid to the State Water Board Cleanup and Abatement Account within thirty

(30) days after the service of the State Water Resources Control Board's determination. In addition, the County shall be liable for the State Water Resource Control Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the liquated damages will satisfy the County's obligations to construct the Replacement Projects.

11. **Replacement Project Description – Attachment B** The Replacement Projects consist of the construction and installation of the stormwater improvements as more fully described in Attachment B, and which will be made at the following County locations:

- a. Lindo Lake County Park;
- b. Cactus County Park; and
- c. Edgemoor Skilled Nursing Facility.

12. **Prior Agreements.** The terms of Agreements Nos. 03-264-559-2 and 06-135-559-0 are in full force and effect except for the breaches resolved by this Order, and as described in Attachment C.

13. **Water Quality Benefits of the Replacement Projects:** These projects drain to the San Diego River. The San Diego Regional Water Quality Control Board's Water Quality Control Plan for the San Diego Basin ("Basin Plan") designates the beneficial uses of San Diego River. These include Contact and Non-Contact Recreation ("REC-1" and "REC-2", respectively), Municipal and Domestic Supply ("MUN"), Agricultural Supply ("AGR"), Industrial Service Supply ("IND"), Industrial Process Supply ("PROC"), Warm Freshwater Habitat ("WARM"), Cold Freshwater Habitat ("COLD"), and Wildlife Habitat ("WILD").

14. **Schedule of Replacement Projects:** The Replacement Projects shall be completed in their entirety no later than June 30, 2018, unless extended by the Parties in writing. If approvals required by SWRCB are not given within 30 days of the submittal date by County, SWRCB agrees to extend this schedule a reasonable amount of time commensurate with such delay, if requested by the County. An extension will not be given if the County submission is not complete, and the County is so notified within 30 days.

15. **Agreement for the County to Fund, Report and Guarantee Implementation of the Replacement Projects:** The County represents that: (1) the Replacement Projects are not otherwise required by law; (2) It will fund the Replacement Projects in the amount as described in this Order and Attachment B; (3) It will provide certifications and written quarterly reports to the SWRCB consistent with the terms of this Order

detailing the implementation of the Replacement Projects; and (4) It will guarantee implementation of the Replacement Projects identified in Attachment B by remaining liable for liquidated damages until the Replacement Projects are completed and accepted by the SWRCB in accordance with the terms of this Order. The County agrees that the State Water Board has the right to require an audit of the funds expended to implement the Replacement Projects.

16. **Replacement Project Oversight:** The County agrees to oversee implementation of the Replacement Projects. Additional oversight of the Replacement Projects will be provided by the SWRCB Staff. The County agrees to pay \$20,000 for SWRCB staff oversight costs for the first year period, commencing at the beginning of construction of the Replacement Projects. If the Replacement Projects completion extends to a second year, the County agrees to pay an additional \$10,000 for SWRCB staff oversight costs. The Replacement Projects oversight costs are in addition to the County's obligation to complete the Replacement Projects and pay \$25,000 for staff costs incurred to date. Reasonable oversight tasks to be performed by the SWRCB Staff include but are not limited to, updating CIWQS and SMARTS, reviewing and evaluating progress, conducting annual site inspections, reviewing the final completion report, and verifying completion as described in Paragraph 19.

17. **Submission of Replacement Project Progress Reports:** The County agrees to submit quarterly progress reports to the SWRCB Staff throughout the construction of the Replacement Projects. Quarterly progress reports will be due on the 15th day of April, July, October, and February and will include information relating to Replacement Projects implementation progress.

18. **Certification of Completion of Replacement Projects and Final Report:** On or before June 30, 2018, the County shall submit a certified statement of completion for the Replacement Projects ("Certification of Completion"). The Certification of Completion shall be submitted under penalty of perjury, to the SWRCB Staff Contact, by a responsible corporate official representing the County. The Certification of Completion shall include the following:

- a. Certification that the Replacement Projects have been completed in accordance with the terms of this Stipulated Order. Such documentation should include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the SWRCB Staff to evaluate the completion of the Replacement Projects.

- b. Certification, under penalty of perjury, that the County followed all applicable environmental laws and regulations in the implementation of the Replacement Projects including but not limited to the California Environmental Quality Act (“CEQA”), the federal Clean Water Act, and the Porter-Cologne Act. To ensure compliance with CEQA where necessary the County shall provide the SWRCB Staff with the following documents from the lead agency *prior to commencing Replacement Projects implementation* if applicable:
 - i. Categorical or statutory exemptions relied upon by the Implementing Party;
 - ii. Negative Declaration if there are no potentially “significant” impacts;
 - iii. Mitigated Negative Declaration if there are potentially “significant” impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or
 - iv. Environmental Impact Report (“EIR”).

19. **State Water Board Acceptance of Completed Replacement Projects:** Upon the County’s satisfaction of its obligations to complete the Replacement Projects under this Order or any related audit requested by the SWRCB Staff, SWRCB Staff shall send the County a letter recognizing satisfactory completion of its obligations under the Replacement Projects and this Order. This letter shall terminate any further Replacement Projects obligations of the County.

20. **Third Party Financial Audit of Replacement Projects:** Following internal coordination efforts between the Parties to resolve perceived inadequacies of the Replacement Projects and at the written request of the SWRCB Staff, the County, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the SWRCB Staff providing such party’s(ies’) professional opinion that the County has expended money in the amounts claimed by the County on the Replacement Projects. The written request shall specify the reasons why the audit is being requested. The audit report shall be received by the SWRCB Staff within ninety (90) days of notice from the Deputy Director of the Division of Financial Assistance or his appointed designee to the County of the need for an independent third party audit. The audit need not address any costs incurred by the SWRCB Staff for oversight.

21. **Force Majeure:** In the event that the Replacement Projects are not performed in accordance with the time schedule set forth in Attachment B due to circumstances beyond the reasonable control of the County and that could not have been reasonably foreseen and prevented by the exercise of due diligence, the County will provide written notice to the State Board within five dates of the date County first knew of the event or

circumstance that caused the deviation from the Replacement Project terms and conditions. The final determination as to whether the circumstances were beyond the reasonable control of the County will be made by the Bond Section Manager of the State Water Board. In this event, the Parties agree to meet and confer regarding an extension of time to complete any particular Replacement Project.

For purposes of this Agreement, a “force majeure” is defined as an event which could not have been anticipated by the County, is beyond the control of the County, as is of such great import and character, including but not limited to an act of God; earthquake, flood and any other natural disaster, civil disturbance and strike, fire and explosion; declared war in the United States; acts of the Federal or State governments; severe weather; or embargo. To trigger the force majeure protection under the Agreement, the County must demonstrate that timely compliance with the Replacement Project schedule in Attachment B will be actually and necessarily delayed, that it has taken measures to avoid and/or mitigate the delay by the exercise of all reasonable precautions and efforts, whether before or after the occurrence of the cause of the delay, and County provides written notice as described above. Delays caused by actions under the control of the County will not constitute a force majeure.

For purposes of this Agreement, a “force majeure” does not include delays caused by funding, easements, contractor performance, equipment delivery and quality, normal weather conditions, permitting, and other related issues. In addition, this Agreement is not subject to modification based on force majeure due to construction delays, CEQA challenges, initiative litigation, adverse legislation, or other matters of a legal nature.

Section IV: Orders

22. **Incorporation of Terms:** The Parties incorporate Paragraphs 1 through 21 by this reference as if set forth fully herein, stipulate to the entry of this Order as set forth below, and recommend that the State Water Resources Control Board issue this Order to effectuate the settlement.

23. **Party Contacts for Communications related to Stipulated Order:**

For the State Water Resources Control Board Staff:

Julie Macedo, Senior Staff Counsel (Legal)
State Water Resources Control Board, Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95812

Julie.macedo@waterboards.ca.gov

Kelley List (Technical)
State Water Resources Control Board, Division of Financial Assistance
1001 I Street, 16th Floor
Sacramento, CA 95812
Kelley.list@waterboards.ca.gov

For the County:

Thomas Fincher
Chief – Project Management
Department of General Services
5560 Overland, Suite 410
San Diego, CA 92123
thomas.fincher@sdcounty.ca.gov

24. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

25. **Matters Addressed by Order:** Upon the State Water Resources Control Board's adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of the alleged breaches of Agreement Nos. 03-264-559-2 and 06-135-559-0. The provisions of this Paragraph are expressly conditioned on the payment of the administrative civil liability, and completion of the Replacement Projects in accordance with this agreement.

26. **No Waiver of Right to Enforce:** The failure of the SWRCB Staff to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the SWRCB Staff to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.

27. **Procedural Objections:** The Parties agree that the procedure contemplated for adopting the Order by the State Water Resources Control Board and review of this Order by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer

concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable.

28. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

29. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the State Water Resources Control Board.

30. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the State Water Resources Control Board or is vacated in whole or in part by a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the State Water Resources Control Board, on a future date after reasonable notice and opportunity for preparation, to determine whether to assess administrative or civil liabilities for the underlying breaches of Agreement Nos. 03-264-559-2 and 06-135-559-0, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all other objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the State Water Resources Control Board members or their advisors and any other objections that are premised in whole or in part on the fact that the State Water Resources Control Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Settlement Agreement and Stipulation for Entry of Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on this matter; or,
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

31. **Waiver of Right to Petition:** Because the Parties are jointly presenting this settlement agreement to the State Water Resources Control Board for execution as a Stipulated Order, the County hereby waives its right to petition the State Water

Resources Control Board's adoption of the Order, and both Parties waive their rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

32. **Covenant Not to Sue:** The Parties covenant not to sue or pursue any administrative civil claim(s) against each other and their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter resolved by this Settlement Agreement, or matter disputed under Agreement Nos. 03-264-559-2 and 06-135-559-0.

33. **State Water Resources Control Board is Not Liable:** Neither the State Water Resources Control Board members nor the State Water Resources Control Board Staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the County, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

34. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

35. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

36. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the State Water Resources Control Board enters the Order.

37. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

38. **Severability:** The provisions of this Stipulated Order are severable; should any provision be found invalid, the remainder shall remain in full force and effect.

IT IS SO STIPULATED.

State Water Resources Control Board, Division of Financial Assistance

By: _____
Darrin Polhemus, Deputy Director of the Division of Financial Assistance

Date: _____

County of San Diego

By: _____
April Heinze, Director Department of General Services

Date: _____

- ATTACHMENT A: Agreement No. 06-135-559-0
- ATTACHMENT B: Replacement Projects Scope of Work/Time Schedule
- ATTACHMENT C: Conditions Applicable to Replacement Projects

Approved as to Form:

County Counsel

By: _____
Judith A. McDonough, Senior Deputy



2005-2006 CONSOLIDATED GRANTS- PROPOSITION 40
 NONPOINT SOURCE POLLUTION CONTROL (NPSPC)
 GRANT AGREEMENT
 BETWEEN THE
 STATE WATER RESOURCES CONTROL BOARD, hereinafter called "State" or "State Water
 Board" AND

County of San Diego, Department of General Services, hereinafter called "Grantee"
 Porous Pavement & Model Municipal Operations Center-Phase II, hereinafter called "Project"

AGREEMENT NO. 06-135-559-0

State and Grantee hereby agree as follows:

PROVISION(S). The following provision(s) authorize the State Water Board to enter into this type of Grant Agreement: PRC §§ 5096.650, 30935(a) (Pr 40 Nonpoint Source Pollution Control)

PURPOSE. State shall provide a grant to and for the benefit of Grantee for the purpose of continuing to install porous pavement and centralized treatment train components of a model operations center demonstration. This Project will add test areas that include asphalt reinforced with polymer and a deeper reservoir to contain roof runoff as well as parking lot drainage and continue monitoring Phase II improvements.

GRANT AMOUNT. The maximum amount payable under this Agreement shall not exceed \$1,500,000. Global Positioning System (GPS) locations for any monitoring must be identified for this Project prior to any disbursements.

TERM OF AGREEMENT. The term of the Agreement shall begin on November 1, 2006 and continue through Project completion plus twenty-three (23) years unless otherwise terminated or amended as provided in the Agreement. HOWEVER, ALL WORK SHALL BE COMPLETED BY September 1, 2008. ABSOLUTELY NO FUNDS MAY BE REQUESTED AFTER October 1, 2008.

PROJECT REPRESENTATIVES. The Project Representatives during the term of this Agreement will be:

State Water Board	Grantee: County of San Diego
Name: Benjamin Neill, Grant Manager	Name: Dennis Verrilli, Project Director
Address: 9174 Sky Park Court, Suite 100	Address: 5555 Overland Ave., Bldg. 2 Rm. 220
City, Zip: San Diego, CA 92123	City, Zip: San Diego, CA 92123
Phone: (858) 467-2983	Phone: (858) 694-2059
Fax: (858) 571-6972	Fax: (858) 694-3151
e-mail: bneill@waterboards.ca.gov	e-mail: Dennis.verrilli@sdcounty.ca.gov

Direct all inquiries to:

State Water Board	Grantee: County of San Diego
Section: Division of Financial Assistance	Section: Project Management Division
Attention: Sally Meza, Program Analyst	Name: Jayme Gravett-Miller, Grant Contact
Address: 1001 "I" Street, 16th Floor	Address: 5555 Overland Ave., Bldg. 2 Rm 220
City, Zip: Sacramento, CA 95814	City, Zip: San Diego, CA 92123
Phone: (916) 341-5465	Phone: (858) 694-3717
Fax: (916) 341-5296	Fax: (858) 694-3151
e-mail: smeza@waterboards.ca.gov	e-mail: Jayme.gravett@sdcounty.ca.gov

Either party may change its Project Representative upon written notice to the other party.

STANDARD PROVISIONS. The following exhibits are attached and made a part of this Agreement by this reference:

- Exhibit A SCOPE OF WORK
- Exhibit B INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS
- Exhibit C GENERAL CONDITIONS-2005-06 CONSOLIDATED GRANTS
- Exhibit D SPECIAL CONDITIONS-2005-06 CONSOLIDATED GRANTS
- Exhibit E TRAVEL AND PER DIEM EXPENSES

GRANTEE REPRESENTATIONS. The Grantee accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by the Grantee in its application, accompanying documents, and communications filed in support of its request for grant funding. Grantee shall comply with and require its contractors and subcontractors to comply with all applicable laws, policies and regulations.

IN WITNESS THEREOF, the parties have executed this Agreement on the dates set forth below.

By: [Signature]
Grantee Signature

[Signature]
By: Esteban Almanza, Deputy Director
State Water Resources Control
Board, Division of Administrative
Services

[Signature]
Grantee Typed/Printed Name

Date

Asst Dir DGS 12/18/06
Title and Date

Reviewed
Office of Chief Counsel
Date:

EXHIBIT A SCOPE
OF WORK

1. PLANS AND COMPLIANCE REQUIREMENTS

- 1.1 In order for the State and Regional Water Quality Control Board (Regional Water Board) staff to verify work was adequately performed or conducted, GPS information for project site and monitoring locations must be identified for this Project prior to any disbursements. Submittal requirements for GPS data are available at <http://www.waterboards.ca.gov/funding/grantinfo.html>.
- 1.2 The Grantee shall prepare and implement a Project Assessment and Evaluation Plan (PAEP) to detail the methods of measuring Project benefits and reporting them in accordance with a PAEP. Many projects include multiple activities that will require measurement of several parameters to evaluate Project performance. All implementation projects that propose pollution load and/or concentration reductions must report such reductions annually. Use the 319(h) Non Point Source Pollution Reduction Project Follow-up Survey Form found at http://www.waterboards.ca.gov/funding/docs/grantinfo/319h_pollution_survey.xls or a similar format to report annual load reductions. Projects protecting, restoring or creating streams, shorelines, or wetlands, must report an annual accounting of the acres of wetlands restored and created, feet of stream bank and shoreline protected and feet of stream channel stabilized. Grantee shall not implement monitoring and performance assessment and/or evaluation actions prior to PAEP approval by the Grant Manager. Guidance for preparing the PAEP is available at <http://www.waterboards.ca.gov/funding/paep.html>.
- 1.3 If environmental water quality monitoring (chemical, physical, or biological) is undertaken, the Grantee shall prepare, maintain, and implement a Monitoring Plan (MP). The MP shall include, but is not limited to, a description of the monitoring objectives, types of constituents to be monitored, and the sampling location frequency/schedule for the monitoring activities. The MP will include the schedule for submittal of monitoring reports. The Grantee shall be prohibited from implementing any sampling or monitoring activities prior to approval of the MP by the Grant Manager. No monitoring may occur prior to MP approval. Any changes to the MP must be submitted to the Grant Manager for review and a decision regarding approval prior to implementation.
- 1.4 If an MP is prepared, the Grantee shall also prepare, maintain, and implement a Quality Assurance Project Plan (QAPP) in accordance with the State Water Board's Surface Water Ambient Monitoring Program's (SWAMP) QAPP and data reporting requirements, and the USEPA QAPP, EPA AQ/R5, 3/01. Water quality monitoring data includes physical, chemical, and biological monitoring of any surface water. Electronic submittal of data collected in accordance with SWAMP shall be required. The QAPP shall be submitted to the State or Regional Water Board's Quality Assurance (QA) Officer for review and a decision regarding approval prior to the Grantee implementing any sampling or monitoring activities. No monitoring may occur prior to QAPP approval. Any costs related to monitoring data collected prior to and not supported by the approved QAPP will not be reimbursed. Guidance for preparing the QAPP is available at <http://www.waterboards.ca.gov/swamp/gapp.html>.
- 1.5 All projects are required to comply with the California Environmental Quality Act (CEQA). Work on the Project cannot begin until the State Water Board has reviewed the CEQA documentation submitted by the Grantee and given environmental clearance. If the work is conducted on federal land, the Grantee must also comply with the National Environmental Policy Act (NEPA).
- 1.6 If landowner agreements are required, signed copies must be submitted to the Grant Manager before works begins.
- 1.7 If permits are required, the permits must be obtained and signed copies submitted to the Grant Manager before work begins.
- 1.8 State Disclosure Requirements-Include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

"Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use." (Gov. Code 7550, 40 CFR 31.20)

Signage shall be posted in a prominent location at Project site (if applicable) and shall include the State Water Board logo (available from the Program Analyst) and the following disclosure statement:

"Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board.

- 1.9 The Grantee shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this work item. (Gov. Code 7550)

2. WORK TO BE PERFORMED BY GRANTEE

2.1 Stakeholder Advisory Group (SAG)

- 2.1.1 Form a SAG that includes representation from Project stakeholders, including Grantee, County of San Diego Department of Public Works, Stormwater Co-permittees, Building Industry Association, Industrial Environmental Association, San Diego River Park Foundation, San Diego CoastKeeper, and others as agreed upon by the Grantee and the Grant Manager.
- 2.1.2 Define the roles and responsibilities of the SAG members.
- 2.1.3 Conduct two (2) meetings throughout the duration of the Project.
- 2.1.4 Submit to Grant Manager list of SAG members, roles and responsibilities, meeting agendas, minutes and handouts.

2.2 Design of Treatment Control Best Management Practices (BMPs)

- 2.2.1 Select site(s) at which three (3) treatment control BMPs will be installed at the County Operations Center.
- 2.2.2 Prepare a plan for design and installation of the treatment control BMPs, taking into consideration proper unit location, underground utilities, and geotechnical/soils information. Ensure that the three (3) media filtration system units will allow for accurate flow and water quality monitoring.
- 2.2.3 Submit final plans for design and installation of treatment control BMPs to Grant Manager for review.
- 2.2.4 Obtain a Notice to Proceed from Grant Manager prior to construction.

2.3 Design of Porous Paving

- 2.3.1 Select site(s) at which three (3) porous pavement plots will be installed at the County Operations Center.
- 2.3.2 Prepare a plan for design and installation of porous pavement, such that the three (3) paved plots demonstrate alternative combinations of porous asphalt mixes and stone reservoirs. A total of approximately fifty-four thousand (54,000) square feet of porous pavement is expected to be installed.
- 2.3.3 Provide a reference area for estimating flow and pollutant discharge reduction for the porous pavement plots and provide a means for measuring discharges from the reservoirs under each porous pavement plot.
- 2.3.4 Submit final plans for design and installation of porous pavement to Grant Manager for review.
- 2.3.5 Obtain a Notice to Proceed from Grant Manager prior to construction.

2.4 Installation of Treatment Control BMPs

- 2.4.1 Install three (3) media filtration system units at the selected site(s).
- 2.4.2 Prepare "As-Built" Drawings and submit to Grant Manager for review.
- 2.4.3 Conduct pre- and post-installation photo monitoring in accordance with SWRCB guidelines and submit to Grant Manager for review.

2.5 Installation of Porous Paving

- 2.5.1 Install porous pavement at the selected site(s).
- 2.5.2 Prepare "As-Built" Drawings and submit to Grant Manager for review.
- 2.5.3 Conduct pre- and post-installation photo monitoring in accordance with SWRCB guidelines and submit to Grant Manager for review.

2.6 Monitoring and Assessment

- 2.6.1 Conduct monitoring of constituent removal of treatment BMPs in accordance with the MP. Grantee may continue to monitor previously installed (Phase I) treatment BMPs pursuant to previously approved PAEP, MP, and QAPP.
- 2.6.2 Conduct monitoring of discharge flow for reference area and estimate flow reduction for sample porous pavement plots in accordance with the MP. Grantee may continue to monitor previously installed (Phase I) porous pavement plots pursuant to previously approved PAEP, MP, and QAPP.
- 2.6.3 Submit treatment BMP monitoring results and porous paving monitoring results to Grant Manager for review/approval.

2.7 Outreach and Technology Transfer

- 2.7.1 Develop a slide presentation that provides an overview of the Project to be used for outreach/technology transfer to municipal managers, environmental and community groups.. private developers, construction professionals, elected officials, and others. Update presentation with final results for presentation to major stakeholders. Submit copy of initial and updated presentation to Grant Manager.
- 2.7.2 Conduct outreach/technology transfer activities, including tours of the Project, presentations at meetings, and provision of materials. Provide an account of these activities in the quarterly progress report.
- 2.7.3 Meet with the San Diego Stormwater Co-permittees: to present an overview of the program, and present final results and recommendations. Submit meeting materials to Grant Manager (agenda, sign-in sheet, minutes and handouts, if any).
- 2.7.4 Meet with the San Diego River Coalition to present an overview of the program, and present final results and recommendations. Submit meeting materials to Grant Manager (agenda, sign-in sheet, minutes, and handouts, if any).
- 2.7.5 Conduct a workshop for architects and engineers, both County of San Diego staff and those on contract, to familiarize them with the program and to encourage them to consider including porous paving and treatment control BMPs in their projects. Submit workshop materials to Grant Manager (agenda, sign-in sheet, minutes, and handouts, if any).

TABLE OF ITEMS FOR REVIEW

Item	DESCRIPTION	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A - SCOPE OF WORK			
1.	PLANS AND COMPLIANCE REQUIREMENTS		
1.1	GPS information for Project site and monitoring locations	Day 90	
1.2	Project Assessment Evaluation Plan (PAEP)	Day 30	
1.2	Non Point Source Pollution Reduction Project Follow-up Survey Form		December 2007 and August 2008
1.3	Monitoring Plan (MP)	Day 90	
1.3	Monitoring Reports		Quarterly
1.4	Quality Assurance Project Plan (QAPP)	January 2007	
1.5	Copy of final CEQA/NEPA Documentation	January 5, 2007	
1.6	Land Owner Agreement(s)	N/A	
1.7	Applicable Permits	N/A	
2.	WORK TO BE PERFORMED BY GRANTEE		
2.1.4	List of SAG members, roles and responsibilities, meeting agendas, minutes and handouts.		January 2007 and as completed
2.2.3	Plan for Design and Installation of Treatment Control BMPs		March 2007
2.2.4	Notice to Proceed		April 2007
2.3.4	Plan for Design and Installation of Porous Pavement		April 2007
2.3.5	Notice to Proceed		May 2007
2.4.2	"As-Built" drawings for Treatment Control BMPs		July 2007
2.4.3	Photo documentation for Treatment Control BMPs		August 2007
2.5.2	"As-Built" Drawings for Porous Pavement		August 2007
2.5.3	Photo documentation for Porous Pavement		September 2007
2.6.3	Treatment BMP Monitoring Results & Porous Paving Monitoring Results		July 2008
2.7.1	Slide Presentation and Update		June 2007 and June 2008
2.7.3	San Diego Stormwater Co-permittees Meeting Materials		June 2008
2.7.4	San Diego River Coalition Meeting Materials		June 2008
2.7.5	Workshop Materials		June 2008
EXHIBIT B - INVOICING, BUDGET DETAIL, AND REPORTING PROVISIONS			
1.	INVOICING	Quarterly	04/20/2007 and quarterly thereafter

Item	DESCRIPTION	CRITICAL DUE DATE	ESTIMATED DUE DATE
5.	REPORTS		04/2007 and quarterly thereafter
5.1	Grant Summary Form		Day 90
5.2	Progress Reports by the twentieth (20 th) of the month following the end of the calendar quarter (March, June, September, and December)		04/2007 and quarterly thereafter
5.3	Natural Resource Projects Inventory (NRPI) Project Survey Form	Before final invoice	
5.4	Draft Project Report	7/1/2008	
5.5	Final Project Report	8/1/2008	

EXHIBIT B
INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS

1. INVOICING

1.1 Invoices shall be submitted using the invoice template provided by the State Water Board. The invoice must be itemized based on the line items specified in the Budget. The original invoice shall be submitted to the State Water Board's Grant Manager on a quarterly basis consistent with the reporting schedule in Section 5.2 of this exhibit. The address for submittal is:

Benjamin Neill, Grant Manager
Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123

1.2 Invoices submitted in any other format than the one provided by the State Water Board will cause an invoice to be disputed. In the event of an invoice dispute, the State Water Board's Grant Manager will notify the Grantee by initiating an "Invoice Dispute Notification" form. Payment will not be made until the dispute is resolved and a corrected invoice submitted. Failure to use the address exactly as provided above may result in return of the invoice to the Grantee. Payment shall be deemed complete upon deposit of title payment, properly addressed, postage prepaid, in the United States mail. The State Water Board Grant Manager has the responsibility for approving invoices.

1.3 Supporting documentation (e.g., receipts) must be submitted with each invoice to request reimbursement for grant funds as well as to support matching funds invoiced. The amount claimed for the Personnel Services line item and Professional and Consultant Services line item must include a calculation formula (i.e. hours or days worked times the hourly or daily rate = total amount claimed). Invoice payment shall be made only after receipt of a complete, adequately supported, properly documented and accurately addressed invoice.

1.4 The Grantee shall not request disbursement for any cost until such cost has been incurred and has been paid by or is due and payable by the Grantee. Although it is agreed that actual payment of such cost by the Grantee is not required as a condition of the grant disbursement, all grant disbursements received by the Grantee shall be paid to contractors and vendors within thirty (30) days from receipt of the funds. In the event that the Grantee fails to disburse grant funds to contractors or vendors within thirty (30) days from receipt of the funds, the Grantee shall immediately return such funds to the State Water Board. Interest shall accrue on such funds from the date of disbursement through the date of mailing of funds to the State Water Board. If the Grantee held such funds in interest-bearing accounts, any interest earned on the funds shall also be due to the State Water Board.

1.5 Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the Federal Government, or any loss of tax-free status on state bonds, pursuant to any Federal statute or regulation.

1.6 Notwithstanding any other provision of this Agreement, the Grantee agrees that the State Water Board may retain an amount equal to ten percent (10%) of the grant amount specified in this Agreement until completion of the Project to the reasonable satisfaction of the State Water Board. Any retained amounts due to the Grantee will be promptly disbursed to the Grantee, without interest, upon completion of the Project.

1.7 The invoice shall contain the following information:

- a. The date of the invoice;
- b. The time period covered by the invoice, *i.e.*, the term "from" and "to";
- c. The total amount due; and

- d. Original signature and date (in ink) of Grantee or its authorized representative.
- e. Final invoice shall be clearly marked "FINAL INVOICE" and submitted NO LATER THAN OCTOBER 1, 2008.

2. BUDGET CONTINGENCY CLAUSE

The maximum amount to be encumbered under this Agreement for the 2006-07 fiscal year ending June 30, 2007 shall not exceed ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000).

If the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any payments under this Agreement. In this event, the State shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Agreement and Grantee shall not be obligated to perform any provisions of this Agreement. Nothing in this Agreement shall be construed to provide the Grantee with a right of priority for payment over any other Grantee.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to Grantee to reflect the reduced amount.

3. LINE ITEM BUDGET

		PROP.40	MATCH	TOTAL
Personnel Services		\$	\$104,596	\$104,596
Classification	Hours			
Project Manager	892			
	Wage/Hour			
				\$117.26
Operating Expenses (Prorated for Project)		\$72,506	\$24,169	\$96,675
Includes: Supplies (less than \$5,000 per item)				
Porous Pavement Field Supplies and Activities				
Treatment BMP Field Supplies and Activities				
Monitoring Leasing – CDS/MFS Units				
Monitoring Leasing – Porous Pavement				
Professional and Consultant Services		\$317,596	\$195,274	\$512,870
Design Treatment Train Expansion				
Design Porous Pavement				
Technical Coordination				
Monitoring & Design Implementation				
Project Engineering				
Laboratory Testing				
Stakeholders Coordination Support				
Construction (Contracted Services)		\$11109,898	\$175,961	\$1,285,859
Excavation				
Site Preparation				
Installation of Treatment Train				
Installation of Porous Pavement				
Installation of Monitoring Equipment				
Construction Administration				
TOTAL		\$1,500,000	\$500,000	\$2,000,000

4. BUDGET LINE ITEM FLEXIBILITY

- 4.1 Line Item Adjustment(s). Subject to the prior review and approval of the State Water Board's Grant Manager, adjustments between existing line item(s) may be used to defray allowable direct costs up to fifteen percent (15%) of the total grant amount including any amendment(s) thereto. Line item adjustments in excess of fifteen percent (15%) shall require a formal Agreement amendment.
- 4.2 Procedure to Request an Adjustment. Grantee may submit a request for an adjustment in writing to the State Water Board. Such adjustment may not increase or decrease the total grant amount allocated per fiscal year. The Grantee shall submit a copy of the original Agreement Budget sheet reflecting the requested changes. Changes shall be noted by striking the original amount(s) followed with revised change(s) in bold and underlined. Budget adjustments deleting a budget line item or adding a new budget line item requires a formal amendment and are not permissible under this provision. The State Water Board may also propose adjustments to the budget.
- 4.3 Remaining Balance. In the event the Grantee does not submit invoices requesting all of the funds encumbered under this Grant Agreement, any remaining funds revert to the State. The State Water Board will mail a Notice of Project Completion letter to the Grantee stating that the project file is closed, the final invoice is being processed for payment, and any remaining balance will be disencumbered and unavailable for further use under the Grant Agreement.

5. REPORTS

- 5.1 GRANT SUMMARY FORM. Grantee shall complete a one (1) page Grant Summary Form <http://www.waterboards.ca.gov/funding/docs/grantinfo/grantsum.doc> within three (3) months of the Agreement execution. A hard copy shall be submitted to the Grant Manager and an electronic copy to the Program Analyst for State Water Board website posting.
- 5.2 PROGRESS REPORT. Grantee shall submit quarterly progress reports to the State Water Board's Grant Manager by the twentieth (20th) of the month following the end of the calendar quarter (March, June, September, and December).
- a. The progress reports shall provide a brief description of the work performed, accomplishments during the quarter, milestones achieved, monitoring results (if applicable), and any problems encountered in the performance of the work under this Agreement. Grantee shall document all contractor activities and expenditures in progress reports.
 - b. The invoice should accompany the progress report. The invoice should reflect charges for the work completed during the reporting period covered by progress report. The invoice cannot be paid prior to submission of a progress report covering the invoice reporting period.
- 5.3 NRPI SURVEY FORM. At the completion of this Project, the Grantee shall complete and submit electronically a Natural Resource Project Inventory (NRPI) Project Survey Form found at <http://www.ice.ucdavis.edu/nrpi>. A hard copy shall be submitted to the Program Analyst prior to final payment.
- 5.4 DRAFT PROJECT REPORT. Prepare and submit to the Grant Manager a draft Project Report for review and comment that includes and addresses the following narrative sections and items. Additional requirements are listed in Exhibit D.
- a. A summary of the Project, describing Project purpose, scope and goals, activities completed, techniques used and partners involved.
 - b. A report of all monitoring and management practices or management measures implemented, together with their corresponding locations. The report shall be in a format that enables the Grant

Manager to find the physical location of each implemented practice or measure and/or monitoring event in a quick and efficient manner. Acceptable formats include, but are not limited to:

- Map of locations -The map of practices or measures implemented shall consist of dots placed on a USGS 7.5-minute quadrangle map at the implementation location. Lead lines shall be connected to a text box description of the practice or measure. The dots shall have a small enough diameter to enable the Grant Manager to locate the measure or practice within a 50-foot radius.
 - Project coding system -The project coding system shall explain the coding used to describe each implemented practice or measure and include a reference to the corresponding GPS location(s).
- c. Describe Project performance, including benefits, successes and shortcomings, consistent with the PAEP. Enumerate specific quantifiable environmental changes and results of the Project. As appropriate, include 1) behavioral results such as the amount of management practices or measures implemented, 2) estimates or measurements of the amount of pollutants prevented from reaching surface or ground water, 3) documented changes in water quality based on monitoring, and 4) improved or protected beneficial uses.
 - d. Identify lessons learned in carrying out the Project. Describe what worked and what did not work, and how similar efforts could be utilized within the Project area, as well as in other watersheds.
 - e. Describe the extent of outreach that has been conducted and if there are plans to further promote the results of the Project to achieve additional implementation.
 - f. Describe the Project's funding. Include the projected cost and actual cost of the Project, how much of the grant funds were spent, and how much funding was put into the Project from other sources. Identify funding sources that have been "leveraged" by the Project and plans for funding future activities.
 - g. Identify planned or potential follow-up activities, such as any additional steps necessary to achieve the water quality objectives, Total Maximum Daily Loads (TMDL) or local watershed plans.
 - h. Include appropriate photos and graphics.
 - i. A list of items submitted as outlined in the Table of Items for Review.
 - j. Any additional information that is deemed appropriate by the Project Director or Grant Manager.

5.5 FINAL PROJECT REPORT. Prepare a final Project Report that addresses, to the extent feasible, comments made by the Grant Manager on the draft final Project Report. Submit one (1) reproducible master, two (2) copies, and an electronic copy of the final.

5.6 The Grantee agrees to expeditiously provide, during work on the Project and throughout the term of this Agreement, such reports, data, information, and certifications that may be reasonably required by the State Water Board.

6. PAYMENT OF PROJECT COSTS

The Grantee agrees that it will provide for payment of its full share of Project costs and that all costs connected with the Project will be paid by the Grantee on a timely basis.

7. AUDIT DISALLOWANCES

The Grantee agrees it shall return any audit disallowances to the State Water Board.

EXHIBIT C
GENERAL CONDITIONS- 2005-06 CONSOLIDATED GRANTS

1. **AMENDMENT:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Agreement is binding on any of the parties.
2. **APPROVAL:** The Grantee will not proceed with any work on the Project until authorized in writing by the State Water Board.
3. **ASSIGNMENT:** This grant is not assignable by the Grantee, either in whole or in part, without the consent of the State Water Board.
4. **AUDIT:** Grantee agrees that the awarding department, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Grantee agrees to maintain such records for a possible audit for a minimum of twenty-three (23) years after final payment, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Grantee agrees to include a similar right of the State to audit records and interview staff in any contract related to performance of this Agreement.
5. **BONDING:** Where contractors are used, Grantee shall not authorize construction to begin until each such contractor has furnished a performance bond in favor of the Grantee in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$20,000.00.
6. **CALFED PROGRAM CONSISTENCY.** If this Project assists in meeting any of the CALFED Bay-Delta Program Goals, this Project shall be consistent with the CALFED Programmatic Record of Decision and must be implemented, to the maximum extent possible, through local and regional programs.
7. **CEQA/NEPA:**
 - a. No work that is subject to the California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA) may proceed under this Agreement until documents that satisfy the CEQA/NEPA process are received by the Grant Manager and the State Water Board has given environmental clearance. No work that is subject to an Environmental Impact Report or a Mitigated Negative Declaration may proceed until and unless approved by the Deputy Director of the State Water Board's Division of Financial Assistance (Division). Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required.
 - b. If this Project includes modification of a river or stream channel, it must fully mitigate environmental impacts resulting from the modification. The Grantee must provide documentation that the environmental impacts resulting from such modification will be fully mitigated considering all of the impacts of the modification and any mitigation, environmental enhancement, and environmental benefit resulting from the Project, and whether, on balance, any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the Project.
8. **COMPLIANCE WITH LAW, REGULATIONS, ETC.:** The Grantee agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, the Grantee agrees that, to the extent applicable, the Grantee will comply with the provisions of the adopted environmental mitigation plan for the term of this Agreement, or the useful life of the Project, whichever is longer.
9. **COMPUTER SOFTWARE:** The Grantee certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

10. CONFLICT OF INTEREST. Grantee certifies that it is in compliance with applicable state and/or federal conflict of interest laws.
11. CONTINUOUS USE OF PROJECT; LEASE OR DISPOSAL OF PROJECT: The Grantee agrees that, except as provided in the Agreement, it will not abandon, substantially discontinue use of, lease, or dispose of the Project or any significant part or portion thereof during the useful life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all or any portion of all remaining grant Project funds covered by this Agreement together with accrued interest and any penalty assessments which may be due.
12. DAMAGES FOR BREACH AFFECTING TAX EXEMPT STATUS: In the event that any breach of any of the provisions of this Agreement by the Grantee shall result in the loss of tax exempt status for any state bonds, or if such breach shall result in an obligation on the part of the State to reimburse the federal government by reason of any arbitrage profits, the Grantee shall immediately reimburse the state in an amount equal to any damages paid by or loss incurred by the state due to such breach.
13. DATA MANAGEMENT. This Project includes appropriate data management activities so that Project data can be incorporated into appropriate statewide data systems.
14. DISPUTES: Grantee shall continue with the responsibilities under this Agreement during any dispute. Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Deputy Director of the Division, or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Grantee and to the State Water Board's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Grantee, the Grantee mails or otherwise furnishes a written appeal of the decision to the State Water Board's Executive Director. The decision of the State Water Board's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Grantee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Grantee shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement. This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
15. FISCAL MANAGEMENT SYSTEMS AND ACCOUNTING STANDARDS: The Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of state law or this Agreement. The Grantee further agrees that it will maintain separate Project accounts in accordance with generally accepted accounting principles.
16. GOVERNING LAW: This grant is governed by and shall be interpreted in accordance with the laws of the State of California.
17. GRANT MODIFICATIONS: The State Water Board may, at any time, without notice to any sureties, by written order designated or indicated to be a "grant modification", make any change in Exhibit A, for the work to be performed under this Agreement so long as the modified work is within the general scope of work called for by this Agreement, including but not limited to changes in the specifications or in the method, manner, or time of performance of work. If the Grantee intends to dispute the change, the Grantee must, within ten (10) days after receipt of a written "grant modification", submit to the State Water Board a written statement setting forth the disagreement with the change.
18. INCOME RESTRICTIONS: The Grantee agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Grantee under this Agreement shall be paid by the Grantee to the State, to the extent that they are properly allocable to costs for which the Grantee has been reimbursed by the State under this Agreement.

19. **INDEPENDENT ACTOR:** The Grantee, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of the State Water Board.
20. **INSPECTION:** Throughout the life of the Project, the State Water Board shall have the right to inspect the Project area to ascertain compliance with this Agreement. Grantee acknowledges that the Project records and location are public records.
21. **INSURANCE:** Throughout the life of the Project, the Grantee shall provide and maintain insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Agreement, if any. This insurance shall be issued by a company or companies admitted to transact business in the State of California. The insurance policy shall contain an endorsement specifying that the policy will not be cancelled or reduced in coverage without thirty days' prior written notice to the State Water Board. In the event of any damage to or destruction of the Project or any larger system of which it is a part, the net proceeds of insurance shall be applied to the reconstruction, repair or replacement of the damaged or destroyed parts of the Project or its larger system. The Grantee shall begin such reconstruction, repair, or replacement as expeditiously as possible and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the larger system shall be free of all claims and liens.
22. **NONDISCRIMINATION:** During the performance of this Agreement, the Grantee and its contractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, religion, color, national origin, ancestry, disability, sexual orientation, medical condition, marital status, age (over 40) or denial of family-care leave, medical-care leave, or pregnancy-disability leave. The Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment.
23. **NO THIRD PARTY RIGHTS:** The parties to this grant Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this grant Agreement, or of any duty, covenant, obligation or undertaking established herein.
24. **NOTICE:**
 - a. The Grantee shall notify the State Water Board prior to conducting construction, monitoring, demonstration, or other implementation activities such that State Water Board and/or Regional Water Board staff may observe and document such activities.
 - b. The Grantee shall promptly notify the State Water Board of events or proposed changes that could affect the scope, budget, or work performed under this Agreement. The Grantee agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to the State Water Board, and the State Water Board has given written approval for such change.
 - c. The Grantee shall notify the State Water Board at least ten (10) working days prior to any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by State Water Board's representatives.
 - d. The Grantee shall promptly notify the State Water Board in writing of completion of work on the Project.
 - e. The Grantee shall promptly notify the State Water Board in writing of any cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more and of any circumstance, combination of circumstances, or condition, which is expected to or does delay completion of construction for a period of ninety (90) days or more beyond the estimated date of completion of construction previously provided.
25. **OPERATIONS & MAINTENANCE:** The Grantee shall maintain and operate the facility and structures constructed or improved as part of the Project throughout the life of the Project, consistent with the purposes for which this Grant was made. The Grantee assumes all operations and maintenance costs of the facilities

and structures; the State Water Board shall not be liable for any cost of such maintenance, management or operation. The Grantee may be excused from operations and maintenance only upon the written approval of the Grant Manager. 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.

26. PERMITS, CONTRACTING, WAIVER, REMEDIES AND DEBARMENT: The Grantee shall procure all permits and licenses necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Any contractors, outside associates, or consultants required by the Grantee in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified and agreed to during negotiations for this Agreement, or as are specifically authorized by the State Water Board's Grant Manager during the performance of this Agreement. Any substitutions in, or additions to, such contractors, associates, or consultants, shall be subject to the prior written approval of the State Water Board's Grant Manager. Any waiver of rights with respect to a default or other matter arising under the Agreement at any time by either party shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State provided for in this Agreement are in addition to any other rights and remedies provided by law. The Grantee shall not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension". The Grantee shall not contract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code 4477) www.epls.gov. The Grantee certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or Grantee;
- b. Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d. Have not within a three (3)-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

27. PREVAILING WAGES AND LABOR COMPLIANCE: If applicable, the Grantee agrees to be bound by all the provisions of State Labor Code regarding prevailing wages. If applicable, the Grantee shall monitor all agreements subject to reimbursement from this Agreement to assure that the prevailing wage provisions of State Labor Code are being met. The Grantee certifies that it has a labor compliance program in place pursuant to section 1771.8 of the Labor Code, where applicable.

28. PROFESSIONALS: The Grantee agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for.

29. RECORDS: Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles, the Grantee agrees to:

- a. Establish an official file for the Project which shall adequately document all significant actions relative to the Project;
- b. Establish separate accounts which will adequately and accurately depict all amounts received and expended on this Project, including all grant funds received under this Agreement;

- c. Establish separate accounts which will adequately depict all income received which is attributable to the Project, especially including any income attributable to grant funds disbursed under this Agreement;
 - d. Establish an accounting system which will adequately depict final total costs of the Project, including both direct and indirect costs;
 - e. Establish such accounts and maintain such records as may be necessary for the state to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
 - f. If Force Account is used by the Grantee for any phase of the Project, establish an account that documents all employee hours, and associated tasks charged to the Project per employee.
30. RELATED LITIGATION: Under no circumstances may a Grantee use funds from any disbursement under this Grant Agreement to pay costs associated with any litigation the Grantee pursues against the State Water Board or any Regional Water Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Grantee agrees to complete the Project funded by this Agreement or to repay all of the grant funds plus interest.
31. RIGHTS IN DATA: The Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement shall be in the public domain. The Grantee may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Agreement, subject to appropriate acknowledgement of credit to the State Water Board for financial support. The Grantee shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so.
32. STATE REVIEWS AND INDEMNIFICATION: The parties agree that review or approval of Project applications, documents, permits, plans and specifications or other Project information by the State Water Board is for administrative purposes only and does not relieve the Grantee of its responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out the Project. To the extent permitted by law, the Grantee agrees to indemnify, defend and hold harmless the State Water Board and the State against any loss or liability arising out of any claim or action brought against the State Water Board and/or the State from and against any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from, or in any way connected with (1) the Project or the conditions, occupancy, use, possession, conduct or management of, work done in or about, or the planning, design, acquisition, installation or construction, of the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the California Hazardous Waste Control Law and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Grantee for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement. To the fullest extent permitted by law, the Grantee agrees to pay and discharge any judgment or award entered or made against the State Water Board and/or the State with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of this Agreement.
33. SUPPLEMENTAL ENVIRONMENTAL PROJECTS: Grant Funds shall not be used for supplemental environmental projects required by Regional Boards.
34. STATE WATER BOARD ACTION, COSTS, AND ATTORNEY FEES: The Grantee agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State Water Board as a result of breach of this Agreement by the Grantee, whether such

breach occurs before or after completion of the project, and exercise of any remedy provided by this Agreement by the State Water Board shall not preclude the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that the State Water Board shall be entitled to such reasonable costs and/or attorney fees as may be ordered by the court entertaining such litigation.

35. **TERMINATION, IMMEDIATE REPAYMENT, INTEREST:** This Grant Agreement may be terminated by written notice at any time prior to completion of the Project, at the option of the State Water Board, upon violation by the Grantee of any material provision after such violation has been called to the attention of the Grantee and after failure of the Grantee to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the State Water Board. In the event of such termination, the Grantee agrees, upon demand, to immediately repay to the State Water Board an amount equal to the amount of grant funds disbursed to the Grantee prior to such termination. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Grantee to the date of full repayment by the Grantee.
36. **TIMELINESS:** Time is of the essence in this Agreement. The Grantee shall proceed with and complete the Project in an expeditious manner.
37. **TRAVEL AND PER DIEM:** Any reimbursement for necessary travel and per diem shall be at rates not to exceed those amounts set forth in Exhibit E. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State Water Board.
38. **UNENFORCEABLE PROVISION:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement shall continue to have full force and effect and shall not be affected thereby.
39. **URBAN WATER MANAGEMENT PLAN.** The Grantee certifies that this Project complies with the Urban Water Management Planning Act (Water Code § 10610 et seq.). This shall constitute a condition precedent to this grant agreement.
40. **USEFUL LIFE OF PROJECT:** For the purpose of this Agreement, the useful life of any constructed portions of this Project begins upon completion of construction and continues until fifty (50) years thereafter for pipelines and structures and twenty (20) years for all else.
41. **VENUE:** The State Water Board and the Grantee hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. The Grantee hereby waives any existing sovereign immunity for the purposes of this Agreement.
42. **WATERSHED MANAGEMENT PLAN CONSISTENCY.** Grantee certifies that any watershed protection activity undertaken as part of this Project will be consistent with the applicable, adopted, local watershed management plans and the applicable Water Quality Control Plan (Basin Plan) adopted by a Regional Water Board, where such plans exist. Any such activity occurring in the San Gabriel and Los Angeles watersheds shall be consistent with the San Gabriel and Los Angeles River Watershed and Open Space Plan as adopted by the San Gabriel and Lower Los Angeles Rivers and Mountain Conservancy and the Santa Monica Mountains Conservancy.
43. **WITHHOLDING OF GRANT DISBURSEMENTS:** The State Water Board may withhold all or any portion of the grant funds provided for by this Agreement in the event that the Grantee has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or the Grantee fails to maintain reasonable progress toward completion of the Project.

EXHIBIT D
SPECIAL CONDITIONS- 2005-06 CONSOLIDATED GRANTS

Proposition 40 Nonpoint Source Pollution Control Program [PRC §§ 5096.650, 30935(a)]

1. The Grantee certifies that it is one of the following: a city, county, city and county, district, or a 501(c)(3) nonprofit organization.
2. The Grantee hereby warrants that this Project is intended to protect the beneficial uses of water throughout the state through the control of nonpoint source pollution.
3. The Grantee hereby warrants and represents that this Project is capable of sustaining water quality benefits for a period of twenty (20) years.
4. This Project has a defined water quality or beneficial use goal of demonstrating the effectiveness of porous pavement and treatment control BMPs and encouraging their broader implementation, thereby increasing infiltration and reducing polluted urban runoff in the future.
5. Notwithstanding Exhibit A, the Grantee agrees to submit a monitoring and reporting plan that will do all of the following:
 - a. Identify one or more nonpoint sources of pollution
 - b. Describe the baseline water quality of the water body impacted
 - c. Describe the manner in which the proposed practices or measures are implemented
 - d. Determine the effectiveness of the proposed practices or measures in preventing or reducing pollution.
6. Notwithstanding Exhibit A, the Grantee agrees to submit a report to the State Water Board at the completion of the Project that summarizes completed activities and indicates whether the purposes of the Project have been met. The report shall include information collected by the Grantee in accordance with the Project monitoring and reporting plan, including but not limited to, a determination of the effectiveness of the best management practices or management measures implemented as part of the Project in preventing or reducing nonpoint source pollution.
7. The Grantee certifies that this Project addresses at least one of the State Water Board or Regional Water Boards' priorities as identified in Appendix G to the 2005-06 Consolidated Grants Program Guidelines.
8. The Grantee certifies that it is providing a match in the amount of at least 25% of the total amount to be spent on this Project.
9. The Grantee certifies that in no event will it complete this Project later than September of 2008. It acknowledges that this condition is a material condition of this grant agreement.

EXHIBIT E
 TRAVEL AND PER DIEM
 EXPENSES

I. SHORT-TERM PER DIEM EXPENSES

A In computing reimbursement for continuous short-term travel of more than 24 hours and less than 31 consecutive days, that is at least 50 miles from the main office, headquarters or primary residence, the employee will be reimbursed for actual costs up to the maximum allowed for each meal, incidental, and lodging expense for each complete 24 hours of travel, beginning with the traveler's times of departure and return, as follows:

1. On the first day of travel on a trip of 24 hours or more:

Trip begins at or before 6 a.m.	Breakfast may be claimed on the first day.
Trip begins at or before 11 a.m.	Lunch may be claimed on the first day.
Trip begins at or before 5 p.m.	Dinner may be claimed on the first day.

2. On the fractional day of travel at the end of a trip of more than 24 hours:

Trip ends at or after 8 a.m.	Breakfast may be claimed.
Trip ends at or after 2 p.m.	Lunch may be claimed.
Trip ends at or after 7 p.m.	Dinner may be claimed.

If the fractional day includes an overnight stay, receipted lodging may also be claimed. No meal or lodging expense may be claimed or reimbursed more than once on any given date or during any 24- hour period.

3. Reimbursement shall be for actual expenses, subject to the following maximum rates:

Meals:

Breakfast	\$6.00	Receipts are not required for regular short-term travel meals
Lunch	\$10.00	
Dinner	\$18.00	
Incidentals	\$6.00	

Lodging:

 ! Statewide **Actual up to \$84.00 plus tax**

When required to conduct State business and obtain lodging in the counties of Los Angeles and San Diego, reimbursement will be for actual receipted lodging to a maximum of \$110 plus tax.

When required to conduct State business and obtain lodging in the counties of Alameda, San Francisco, San Mateo, and Santa Clara, reimbursement will be for actual receipted lodging to a maximum of \$140 plus tax.

If lodging receipts are not submitted, reimbursement will be for meals only at the rates and time frames set forth in 8.1 below.

In circumstances where the contractor cannot obtain the state per diem lodging rate, verification from the hotel that such a rate was not available to the contractor may be submitted to substantiate lodging costs above the per diem rate.

No meal or lodging expenses Will be reimbursed for any period of travel' that occurs within normal working hours, unless expenses are incurred at least 50 miles from the main office, headquarters or primary residence.

- B. In computing reimbursement for continuous travel of less than 24 hours, actual expenses, up to the maximums in A.3 above, will be reimbursed for breakfast and/or dinner and/or lodging in accordance with the following time frames:
 - 1. Travel begins at or before 6 a.m. and ends at or after 9 a.m.: Breakfast may be claimed. Travel begins at or before 4 p.m. and ends at or after 7 p.m.: Dinner may be claimed. If the trip of less than 24 hours includes an overnight stay, receipted lodging may be claimed. No lunch or incidentals may be reimbursed on travel of less than 24 hours.
 - 2. Employees on short-term travel who stay in commercial lodging establishments or commercial campgrounds will be reimbursed for actual lodging expenses substantiated by a receipt. Employees who stay with friends or relatives, or who do not produce a lodging receipt, will be eligible to claim meals only.

II. LONG-TERM TRAVEL AND PER DIEM EXPENSES

- A. Employee maintains a separate residence in the headquarters area:

Long-term travelers who maintain a permanent residence at their primary headquarters may claim daily long-term lodging up to \$24.00 with a receipt, and long-term meals of \$24.00 for each period of travel from 12 to 24 hours at the long-term location. For travel of less than 12 hours, the traveler may claim either \$24.00 in receipted lodging or \$24.00 in long-term meals.

- B. Employee does not maintain a separate residence in headquarters area:

Long-term travelers who do not maintain a permanent residence at their headquarters may claim daily receipted lodging up to \$12.00, and long-term meals of \$12.00 for each period of travel from 12 to 24 hours at the long-term locations. For travel of less than 12 hours, the travelers may claim either \$12.00 in receipted lodging or \$12.00 in long-term meals.

III. MILEAGE REIMBURSEMENT

Reimbursement for personal vehicle mileage is 44.5 cents per mile.

IV. VEHICLE RENTAL

Reimbursement for vehicle rental shall be for actual and necessary costs of such rental and airplane usage shall be allowed at the lowest fare available. Claims for reimbursements shall be allowed upon submittal of the appropriate receipt. Refer to California Code of Regulations, Title 2, Sections 599.627 and 599.628.

ATTACHMENT B: Replacement Projects Scope of Work/Time Schedule

Settlement Agreement
County of San Diego Porous Pavement Replacement Project

Scope of Work

1. Pre-Construction

- 1.1 Complete all geotechnical investigations and surveying for each site. Submit copies of the report(s) to SWRCB Staff in an electronic format.
- 1.2 Complete all required California Environmental Quality Act (CEQA) documentation for each site. Submit the appropriate CEQA document(s) to SWRCB Staff for their concurrence. Work on the Project cannot begin until SWRCB Staff has reviewed the CEQA documentation and given environmental clearance.
- 1.3 Complete the preliminary (50%) design plans and specifications for each site and submit to the Grant Manager, in an electronic format, for review and approval.
 - 1.3.1 Edgemoor Skilled Nursing Facility - Construct and install a minimum of three thousand three hundred ten (3,310) square feet of porous pavers and ten (10) catch basin inserts. The proposed project will treat runoff from approximately two (2) acres. The project will treat approximately four thousand one hundred and forty (4140) cubic feet [approximately thirty thousand nine hundred sixty (30,960) gallons] of runoff per event as calculated using the 85th percentile Isopluvial 24-hour rainfall map.
 - 1.3.2 Lindo Lake County Park - Construct and install a minimum of one (1) modular wetland, one (1) nutrient separating baffle box, and two-thousand six hundred (2,600) square feet of bioswales. The proposed system will treat runoff from approximately eleven (11) acres and treat approximately twenty-one thousand six hundred and thirty-seven (21, 637) cubic feet [approximately one hundred sixty-one thousand eight hundred and fifty-six (161,856) gallons] of runoff per event as calculated using the 85th percentile Isopluvial 24-hour rainfall map.
 - 1.3.3 Cactus County Park – Construct and install a minimum of three thousand six hundred (3,600) square feet of porous pavers and eleven thousand six hundred and seventy (11,670) square feet of bioswales. The proposed system will treat runoff from approximately four (4) acres. The project will treat approximately eighteen thousand seven hundred and two (18,702) cubic feet [approximately one hundred thirty-nine thousand nine hundred (139,900) gallons] of runoff per event as calculated using the 85th percentile Isopluvial 24-hour rainfall map.
- 1.4 Complete all required permits for the Project and submit copies of the permits to SWRCB Staff in an electronic format.

- 1.5 Complete the final (100%) design plans and specifications for the site and prepare a summary report identifying any changes from the preliminary plans in Item 1.3. Submit the final design plans and specifications and summary of changes for the sites to the Grant Manager, in an electronic format, for review and approval.
 - 1.6 Complete a monitoring and reporting plan (MRP) that: 1) identifies the nonpoint source(s) of pollution to be prevented or reduced by the Project; 2) describes the baseline water quality or quality of the environment to be addressed; 3) describes the manner in which the Project will be effective in preventing or reducing pollution and in demonstrating the desired environmental results; and 4) describes the monitoring program, including, but not limited to, the methodology, frequency, and duration of monitoring. Submit the MRP to SWRCB Staff, in an electronic format, for their review and approval.
 - 1.7 Complete the bid documents in accordance with the plans approved by SWRCB Staff and advertise for bid. Submit the bid documents and awarded contract(s) to SWRCB Staff in an electronic format.
 - 1.8 Submit the Notice to Proceed(s) for the sites to the Grant Manager in an electronic format.
2. Construction
 - 2.1 Construct the Edgemoor project in accordance with the approved design plans and specifications. Notify and obtain SWRCB Staff approval prior to making changes during construction that will affect project performance.
 - 2.2 Construct the Lindo Lakes project in accordance with the approved design plans and specifications. Notify and obtain SWRCB Staff approval prior to making changes during construction that will affect project performance.
 - 2.3 Construct the Cactus Park project in accordance with the approved design plans and specifications. Notify and obtain SWRCB Staff approval prior to making changes during construction that will affect project performance.
3. Reporting
 - 3.1 Submit as-built drawings for the Projects to SWRCB Staff in an electronic format. Provide a summary of changes from the approved design plans and specifications that occurred during construction to SWRCB Staff.
 - 3.2 Prepare and submit all final reporting requirements as outlined below:
 - 3.2.1 Complete and submit an Operations and Maintenance (O&M) Plan for the Projects to SWRCB Staff, in an electronic format, for review and approval.
 - 3.2.2 Submit a certification letter from a licensed engineer indicating that the projects were completed per the Plans and Specifications and are performing as designed.
 - 3.2.3 Submit a Final Project Summary highlighting the Project using the approved template to SWRCB Staff for review and approval.
 - 3.2.4 Submit a Final Project Report summarizing the projects using the approved template to SWRCB Staff for review and approval.

Time Schedule

Task Name	Duration (Days) Post Execution of Order
1.0 Pre-Construction	275
1.1 Geotechnical Investigations and Surveying	20
1.2 CEQA	25
1.3 Preliminary Design	145
1.4 Permitting	200
1.5 Final Design Plans and Specifications	225
1.6 Monitoring and Reporting Program (MRP)	230
1.7 Awarded Bid Documents/Contract	270
1.8 Notice to Proceed	275
2.0 Construction	435
2.1 Edgemoor	310
2.2 Lindo Lakes	365
2.3 Cactus	435
3.0 Reporting	600
3.1 As-builts	550
3.2 Final Reporting Requirements	600
3.2.1 O&M Plan	550
3.2.2 Final Project Inspection & Certification	575
3.2.3 Final Project Summary	580
3.2.4 Final Project Report	600

ATTACHMENT C: Conditions Applicable to Replacement Projects

Settlement Agreement
County of San Diego Porous Pavement Replacement Project

The following provisions are still operable or provisions still in effect:

1. Approval (Paragraph 2)
2. Audit (Paragraph 4)
3. CEQA/NEPA (Paragraph 7)*
4. Compliance with law, regulations, etc.: (Paragraph 8)
5. Conflict of interest (Paragraph 10)
6. Disputes (Paragraph 14)
7. Governing Law (Paragraph 16)
8. Inspection (Paragraph 20)
9. Nondiscrimination (Paragraph 22)
10. Notice (Paragraph 24)
11. Operations and Maintenance (Paragraph 25)
12. Permits, Contracting, Waiver, Remedies and Debarment (Paragraph 26)
13. Prevailing Wages and Labor Compliance (Paragraph 27)*
14. Professionals (Paragraph 28)*
15. Rights in Data (Paragraph 31)
16. State Reviews and Indemnification (Paragraph 32)
17. State Water Board Action, Costs, and Attorney Fees (Paragraph 34)
18. Timeliness (Paragraph 36)
19. Unenforceable Provision (Paragraph 38)
20. Urban Water Management Plan (Paragraph 39)
21. Useful Life of Project (Paragraph 40)
22. Watershed Management Plan Consistency (Paragraph 42)

*The following provisions have been modified, and the modified grant provisions will be utilized:

ENVIRONMENTAL CLEARANCE (CEQA/NEPA/STREAMBED ALTERATION):

- a. No work that is subject to the California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA) may proceed under this Agreement until documents that satisfy the CEQA/NEPA process are received by the Grant Manager and the State Water Board has given environmental clearance. No work that is subject to an Environmental Impact Report or a Mitigated Negative Declaration may proceed until and unless approved by the Deputy Director of the Division. Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. Proceeding with work subject to CEQA and/or NEPA without environmental clearance by the State Water Board shall constitute a breach of a material provision of this Agreement.
- b. If this Project includes modification of a river or stream channel, it must fully mitigate environmental impacts resulting from the modification. The Grantee must provide documentation that the environmental impacts resulting from such modification will be fully mitigated considering all of the impacts of the modification and any mitigation, environmental enhancement, and environmental benefit resulting from the Project, and whether, on balance, any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the Project.

PREVAILING WAGES AND LABOR COMPLIANCE: If applicable, the Grantee agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's *Public Works Manual* at: <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>.

PROFESSIONALS: The Grantee agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for. All technical reports required pursuant to this Agreement that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to Business and Professions Code, sections 6735, 7835, and 7835.1. To demonstrate compliance with California Code of Regulations, title 16, sections 415 and 3065, all technical reports must contain a statement of the qualifications of the responsible registered professional(s). As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.

New provisions that will be applicable to the Replacement Project(s):

1. **GRANTEE'S RESPONSIBILITY FOR WORK:** The Grantee shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Grantee shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to payment disputes with contractors and subcontractors. The State will not mediate disputes between the Grantee and any other entity concerning responsibility for performance of work.
2. **URBAN WATER SUPPLIER:** If the Grantee is an "urban water supplier" as defined by Water Code section 10617, Grantee must charge each customer for actual water volume measured by water meter according to the requirements of Water Code sections 526 and 527. Section 527 further requires that such suppliers not subject to section 526 install water meters on all municipal and industrial service connections within their service area by 2025.
3. **WATER CONSERVATION AND EFFICIENCY PROGRAMS:** The Grantee acknowledges that it has appropriate water conservation and efficiency programs in place, and that this provision constitutes a condition of the grant award. A web link with examples of water conservation and efficiency programs is available at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/conservation_shtml. The Grantee also agrees to comply with the State Water Board's Drought Emergency Water Conservation regulations in sections 863-865 of title 23 of the California Code of Regulations. If applicable, the Grantee agrees to include a discussion of progress and compliance in its reports submitted pursuant to Exhibit B of this Agreement.
4. **WATERSHED MANAGEMENT PLAN CONSISTENCY:** The Grantee certifies that any watershed protection activity undertaken as part of this Project will be consistent with the applicable, adopted, local watershed management plans and the applicable Water

Quality Control Plan (Basin Plan and/or Statewide) adopted by a Regional Water Board or the State Water Board, where such plans exist. Any such activity occurring in the San Gabriel and Los Angeles watersheds shall be consistent with the San Gabriel and Los Angeles River Watershed and Open Space Plan as adopted by the San Gabriel and Lower Los Angeles Rivers and Mountain Conservancy and the Santa Monica Mountains Conservancy.