

EXHIBIT B DRAFT TERMS AND CONDITIONS

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- 1. ACKNOWLEDGEMENTS** The Grantee shall acknowledge CalEPA's support each time projects funded, in whole or in part, by this Agreement are publicized in any news media, brochures, or other type of promotional material. The acknowledgement of CalEPA's support must state "California Environmental Protection Agency Environmental Justice Small Grants Program." Initials or abbreviations for CalEPA shall not be used.
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- 2. ADVERTISING/ PUBLIC EDUCATION** The Grantee shall submit copies of all draft public education or advertising materials to the Grant Manager for review and approval prior to the Grantee's use of materials.
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- 3. 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 into this Agreement is binding on any of the parties.
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- 4. AMERICANS WITH DISABILITIES ACT** The Grantee assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. § 12101 et seq.)
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- 5. ASSIGNMENT, SUCCESSORS AND ASSIGNS**
- a. This Agreement may not be assigned by the Grantee, either in whole or in part, without CalEPA's prior written consent.
 - b. The provisions of this Agreement shall be binding upon and inure to the benefit of CalEPA, the Grantee, and their respective successors and assigns.
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- 6. AUDIT/RECORDS ACCESS** The Grantee agrees that CalEPA, the Department of Finance, the Bureau of State Audits, or their designated representative(s) 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 possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated, or until completion of any action and resolution of all issues which may arise as a result of any litigation, dispute, or audit, whichever is later. The Grantee agrees to allow the designated representative(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, the Grantee agrees to include a similar right of the State to audit records and interview staff in any contract or subcontract related to performance of this Agreement.
- [You may find it helpful to share the Terms and Conditions and Procedures and Requirements with your finance department. Examples of audit documentation include, but are not limited to: expenditure ledger, payroll register entries and time sheets, personnel expenditure summary form, travel expense log, paid warrants, contracts, change orders, educational materials, invoices, and/or cancelled checks.]*
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- 7. AUTHORIZED REPRESENTATIVE** The Grantee shall continuously maintain a representative vested with signature authority authorized to work with CalEPA on all grant-related issues. The Grantee shall, at all times, keep the Grant Manager informed as to the identity of the authorized representative.
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- 8. AVAILABILITY OF FUNDS** CalEPA's obligations under this Agreement are contingent upon and subject to the availability of funds appropriated for this grant. In the event funds are not available, the State shall have no liability to pay any funds whatsoever to the Grantee or to furnish any other considerations under this Agreement.
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- 9. COMMUNICATIONS** All communications from the Grantee to CalEPA shall be directed to the CalEPA Grant Manager. All notices, including reports and payment requests, required by this Agreement shall be given in writing by email or letter to the Grant Manager as identified in Exhibit A(9). If an original document is required, prepaid mail or personal delivery to the Grant Manager is required following the email communication.
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- 10. COMPLIANCE** The Grantee shall comply fully, and require any of its contractors and subcontractors to comply fully, with all applicable federal, state, and local laws, ordinances, regulations, and permits. The Grantee shall provide evidence, upon request, that all local, state, and/or federal permits, licenses, registrations, and approvals have been secured for the purposes for which grant funds are to be expended. The Grantee shall maintain compliance with such requirements throughout the grant period. The Grantee shall ensure that the requirements of the California Environmental Quality Act are met for any approvals or other requirements necessary to carry out the terms of this Agreement. Any deviation from the requirements of this section shall result in non-payment of grant funds.
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- 11. 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 the computer software in violation of copyright laws.
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- 12. CONFIDENTIALITY/
PUBLIC RECORDS** The Grantee and CalEPA acknowledge that each party may come into possession of information and/or data that may be deemed confidential or proprietary by the person or organization furnishing the information or data. Such information or data may be subject to disclosure under the California Public Records Act, Government Code ("GC") Section 6250 et seq. CalEPA agrees not to disclose such information or data furnished by the Grantee and to maintain such information or data as confidential when so designated by the Grantee in writing at the time it is furnished to CalEPA, but only to the extent that such information or data is exempt from disclosure under the California Public Records Act.
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The Grantee needs to be aware of the following provisions regarding current or former state employees. If the Grantee has any questions on the status of any person rendering services or involved with this Agreement, CalEPA must be contacted immediately for clarification.

Current State Employees (Public Contracts Code (PCC) § 10410):

- a. No officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity, or enterprise is required as a condition of regular state employment.
- b. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

13. CONFLICT OF INTEREST

Former State Employees (PCC § 10411):

- a. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- b. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve month period prior to his or her leaving state service.

If the Grantee violates any provisions of above paragraphs, such action by the Grantee shall render this Agreement void. (PCC § 10420)

The Grantee will be entitled to make use of its own staff and such contractors and subcontractors as are mutually acceptable to the Grantee and CalEPA. Any change in contractors or subcontractors must be mutually acceptable to the parties. Immediately upon termination of any such contract or subcontract, the Grantee shall notify the Grant Manager.

**14. CONTRACTORS/
SUBCONTRACTORS**

Nothing contained in this Agreement or otherwise, shall create any contractual relation between CalEPA and any contractors or subcontractors of the Grantee, and no agreement with contractors or subcontractors shall relieve the Grantee of its responsibilities and obligations hereunder. The Grantee agrees to be as fully responsible to CalEPA for the acts and omissions of its contractors and subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Grantee. The Grantee's obligation to pay its contractors and subcontractors is an independent obligation from CalEPA's obligation to make payments to the Grantee. As a result, CalEPA shall have no obligation to pay or to enforce the payment of any moneys to any contractor or subcontractor.

15. CONTROLLING LAW

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

16. COPYRIGHTS AND TRADEMARKS

Grantee retains title to any copyrights or copyrightable material produced pursuant to this Agreement. Grantee hereby grants to CalEPA a royalty-free, nonexclusive, transferable, world-wide license to reproduce, translate, and distribute copies of any and all copyrightable materials, including images and text, produced pursuant to this Agreement, for non-profit, non-commercial purposes, and to have or permit others to do so on CalEPA's behalf. Grantee is responsible for obtaining any necessary licenses, permissions, releases, or authorizations to use text, images, or other materials owned, copyrighted, or trademarked by third parties and for extending such licenses, permissions, releases, or authorizations to CalEPA pursuant to this section.

17. DISCHARGE OF GRANT OBLIGATIONS

Grantee's obligations under this Agreement shall be deemed discharged only upon acceptance of the final report by CalEPA.

18. DISCLAIMER OF WARRANTY

CalEPA makes no warranties, express or implied, including without limitation, the implied warranties of merchantability and fitness for a particular purpose, regarding the materials, equipment, services, or products purchased, used, obtained, and/or produced with funds awarded under this Agreement, whether such materials, equipment, services, or products are purchased, used, obtained, and/or produced alone or in combination with other materials, equipment, services or products. No CalEPA employees or agents have any right or authority to make any other representation, warranty, or promise with respect to any materials, equipment, services, or products purchased, used, obtained, or produced with grant funds. In no event shall CalEPA be liable for special, incidental, or consequential damages arising from the use, sale, or distribution of any materials, equipment, services, or products purchased or produced with grant funds awarded under this Agreement.

19. DISCRETIONARY TERMINATION

The Secretary shall have the right to terminate this Agreement at his or her sole discretion at any time upon thirty (30) days written notice to the Grantee. Within forty-five (45) days of receipt of written notice, Grantee is required to:

- a. Submit a final written report describing all work performed by the Grantee;
 - b. Submit an accounting of all grant funds expended up to and including the date of termination; and,
 - c. Reimburse CalEPA for any unspent funds.
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20. DISPUTES

Unless otherwise instructed by the Grant Manager, the Grantee shall continue with its responsibilities under this Agreement during any dispute.

The person signing this Agreement on behalf of the Grantee certifies under penalty of perjury under the laws of California, the Grantee agrees that the Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (GC § 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

**21. DRUG-FREE
WORKPLACE
CERTIFICATION**

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions that will be taken against employees for violations.
- b. Establish a drug-free awareness program to inform employees about all of the following: (1) the dangers of drug abuse in the workplace, (2) the Grantee's policy of maintaining a drug-free workplace, (3) any available counseling, rehabilitation, and employee assistance programs, and (4) penalties that may be imposed upon employees for drug abuse violations.
- c. Require that each employee who works on the grant: (1) receive a copy of the drug-free policy statement of the Grantee, and (2) agrees to abide by the terms of such statement as a condition of employment on the grant.

**22. EFFECTIVENESS OF
AGREEMENT**

This Agreement is of no force or effect until signed by both parties.

23. ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, oral or written, made with respect to the subject hereof and, together with all attachments hereto, contains the entire agreement of the parties.

**24. ENVIRONMENTAL
JUSTICE**

In the performance of this Agreement, the Grantee shall conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the State.

**25. 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.

[You may find it helpful to share the Terms and Conditions and Procedures and Requirements with your finance department. Examples of audit documentation include, but are not limited to: expenditure ledger, payroll register entries and time sheets, personnel expenditure summary form, travel expense log, paid warrants, contracts, change orders, invoices, and/or cancelled checks.]

26. FORCE MAJEURE

Neither CalEPA nor the Grantee, its contractors, vendors, or subcontractors, if any, shall be responsible hereunder for any delay, default, or nonperformance of this Agreement, to the extent that such delay, default, or nonperformance is caused by an act of God, weather, accident, labor strike, fire, explosion, riot, war, rebellion, sabotage, flood, or other contingencies unforeseen by CalEPA or the Grantee, its contractors, vendors, or subcontractors, and beyond the reasonable control of such party.

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27. **FORFEIT OF GRANT FUNDS/REPAYMENT OF FUNDS IMPROPERLY EXPENDED**
- If grant funds are not expended, or have not been expended, in accordance with this Agreement, or if real or personal property acquired with grant funds is not being used, or has not been used, for grant purposes in accordance with this Agreement, the Secretary, at his or her sole discretion, may take appropriate action under this Agreement, at law or in equity, including requiring the Grantee to forfeit the unexpended portion of the grant funds and/or to repay to CalEPA any funds improperly expended.
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28. **GENERALLY ACCEPTED ACCOUNTING PRINCIPLES**
- The Grantee is required to use Generally Acceptable Accounting Principles in documenting all grant expenditures.
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29. **GRANTEE ACCOUNTABILITY**
- The Grantee is ultimately responsible and accountable for the manner in which the grant funds are utilized and accounted for and the way the grant is administered, even if the Grantee has contracted with another organization, public or private, to administer or operate part or its entire program. The Grantee shall be responsible for any and all disputes arising out of its contracts for work on the project funded by the grant. CalEPA will not mediate disputes between the Grantee and any other entity concerning responsibility for performance of work. In the event an audit should determine that grant funds are owed to CalEPA, the Grantee is responsible for repayment of the funds to CalEPA.
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30. **GRANTEE'S NAME CHANGE**
- A written amendment is required to change the Grantee's name as listed on this Agreement. Upon receipt of legal documentation of the name change, CalEPA will process the amendment. Grant Payment Requests presented with a new name cannot be paid prior to approval of the amendment.
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31. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION**
- The person signing this Agreement on behalf of the Grantee certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Grantee within the immediately preceding two-year period because of the Grantee's failure to comply with an order of a federal court which orders the Grantee to comply with an order of the National Labor Relations Board.
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32. **NO AGENCY RELATIONSHIP CREATED/ INDEPENDENT CAPACITY**
- The Grantee and the agents and employees of Grantee, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of CalEPA.
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33. **NON-DISCRIMINATION CLAUSE**
- a. During the performance of this Agreement, Grantee and its contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment on the bases enumerated in GC §§ 12900 et seq.
 - b. The person signing this Agreement on behalf of the Grantee certifies under penalty of perjury under the laws of California that the Grantee has, unless exempted, complied with the nondiscrimination program requirements (GC § 12990 (a-f)) and California Code of Regulations, Title 2, Section 8103).
 - c. Grantee shall include the above nondiscrimination and compliance provisions of this section in all contracts to perform work under this Agreement.
 - d. The Grantee, its consultants, and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
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34. NO THIRD PARTY RIGHTS The parties to this Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation or undertaking established herein.

35. OWNERSHIP OF WORK PRODUCT Grantee hereby grants CalEPA a royalty-free, non-exclusive, transferable license to reproduce, translate, and distribute copies of any and all materials produced pursuant to this Agreement. Grantee shall deliver copies of any work product developed under this Agreement to CalEPA upon request.

36. PATENTS The Grantee assigns to the State all rights, title, and interest in and to each invention or discovery that may be capable of being patented, that is conceived of or first actually reduced to practice in the course of or under this Agreement, or with the use of any grant funds. Upon written request by the Grantee, CalEPA may give, at the Secretary's sole discretion, written consent to the Grantee to retain all or any part of the ownership of these rights.

37. PAYMENT

- a. The Grantee Application, within Exhibit C, attached to and incorporated herein by reference to this Agreement, states the maximum amount of allowable costs for each of the tasks identified in the Budget. CalEPA shall reimburse the Grantee for only the work and tasks specified in the Work Plan at only those costs specified in the Budget and incurred in the term of the Agreement.
- b. The Grantee shall carry out the work described in the Work Plan in accordance with the Budget, and shall obtain the Grant Manager's written approval of any changes or modifications to the Work Plan or the Budget prior to performing the changed work or incurring the changed cost. If the Grantee fails to obtain such prior written approval, the Secretary, or his or her designated representative, may refuse to provide funds to pay for such work or costs.
- c. The Grantee shall request reimbursement in accordance with the procedures described in the Procedures and Requirements.
- d. Lodgings and Incidentals: Unless otherwise provided for in this Agreement, Grantee's Per Diem eligible costs are limited to the amounts set by the California Department of Human Resources. These rates may be found at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. Payment will be made only to the Grantee.
- e. Reimbursable expenses shall not be incurred unless and until the Grantee receives a Notice to Proceed as described in Exhibit A — Procedures and Requirements.

38. PERSONALLY IDENTIFIABLE INFORMATION Information or data that personally identifies an individual or individuals is confidential in accordance with California Civil Code sections 1798, et seq. and other relevant State or Federal statutes and regulations. The Grantee shall safeguard all such information or data which comes into their possession under this Agreement in perpetuity, and shall not release or publish any such information or data.

39. PREVAILING WAGES AND LABOR COMPLIANCE If applicable, the Grantee agrees to be bound by all the provisions of State Labor Code Section 1771 regarding prevailing wages. If applicable, the Grantee shall monitor all agreements subject to reimbursement from this Agreement to ensure that the prevailing wage provisions of State Labor Code Section 1771 are met.

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- 40. PROFESSIONALS** For projects involving installation or construction services, the Grantee agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for and licensed professionals are required for those services under State law.
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- 41. REAL AND PERSONAL PROPERTY ACQUIRED WITH GRANT FUNDS**
- a. All real and personal property, including equipment and supplies, acquired with grant funds shall be used by the Grantee only for the purposes for which CalEPA approved their acquisition for so long as such property is needed for such purposes, regardless of whether the Grantee continues to receive grant funds from CalEPA for such purposes.
 - b. Subject to the obligations and conditions set forth in this section, title to all real and personal property acquired with grant funds, including all equipment and supplies, shall vest upon acquisition in the Grantee.
 - c. The grantee may not transfer title to any real or personal property, including equipment and supplies, acquired with grant funds to any other entity without the express authorization of CalEPA.
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- 42. SEVERABILITY** If any provisions of this Agreement are found to be unlawful or unenforceable, such provisions will be voided and severed from this Agreement without affecting any other provision of this Agreement. To the full extent, however, that the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement be deemed to be a valid and binding agreement enforceable in accordance with its terms.
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- 43. SITE ACCESS** The Grantee shall allow the State to inspect sites at which grant funds are expended and related work being performed at any time during the performance of the work and for thirty (30) days after completion of the work.
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- 44. TERMINATION FOR CAUSE** CalEPA may terminate this Agreement and be relieved of any payments should the Grantee fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the Grantee may proceed with the work in any manner deemed proper by the CalEPA. All costs to CalEPA shall be deducted from any sum due the Grantee under this Agreement.
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- 45. TIME IS OF THE ESSENCE** Time is of the essence of this Agreement. The Grantee shall proceed with projects funded, in whole or in part, by this Agreement, and complete the Project in an expeditious manner.
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- 46. UNION ORGANIZING** By signing this Agreement, the Grantee hereby acknowledges the applicability of GC §§ 16645, 16645.2, 16645.8, 16646, 16647, and 16648 to this Agreement and hereby certifies that:
- a. No grant funds disbursed by this grant will be used to assist, promote, or deter union organizing by employees performing work under this Agreement.
 - b. If the Grantee makes expenditures to assist, promote, or deter union organizing, the Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.
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- 47. VENUE** All proceedings concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be held in Sacramento County, California. The parties hereby waive any right to any other venue.
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- 48. WAIVER OF RIGHTS** Any waiver of rights with respect to a default or other matters 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.
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- 49. WAIVER OF CLAIMS AND RECOURSE AGAINST THE STATE** The Grantee agrees to waive all claims and recourse against the State, its officials, officers, agents, employees, and servants, including, but not limited to, the right to contribution for loss or damage to persons or property arising out of, resulting from, or in any way connected with or incident to this Agreement. This waiver extends to any loss incurred attributable to any activity undertaken or omitted pursuant to this Agreement or any product, structure, or condition created pursuant to, or as a result of, this Agreement.
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- 50. WORK PRODUCTS** The Grantee must provide CalEPA with copies of all final products identified in the Work Plan.
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- 51. WORKERS' COMPENSATION LABOR CODE** The Grantee is aware of Labor Code section 3700, which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the Labor Code, and the Grantee affirms to comply with such provisions before commencing the performance of the work of this Agreement.
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