

**GRANT
AGREEMENT**

Between

THE CITY AND COUNTY OF SAN FRANCISCO,
PUBLIC UTILITIES COMMISSION

And

181 Fremont Street LLC.

THIS Agreement is made this Third day of July, 2014, by and between 181 Fremont Street LLC., (Grantee) and the City and County of San Francisco, acting by and through the Public Utilities Commission (SFPUC).

WITNESSETH:

WHEREAS, Grantee has submitted to the SFPUC Application Documents seeking a *Grant Assistance for Large Alternate Water Source Projects* for the purpose of partially-funding the purchase and installation of on-site non-potable water systems that will reduce potable water use on the Grantee's property; and

WHEREAS, the SFPUC desires to provide such a grant on the terms and conditions set forth herein:

NOW, THEREFORE, the SFPUC and Grantee agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1. Specific Terms. Unless the context otherwise requires, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

- (a) **"General Manager"** shall mean the General Manager of the San Francisco Public Utilities Commission, or his or her delegate.
- (b) **"Application Documents"** shall mean collectively: (i) the grant application submitted by Grantee, including all exhibits, schedules, appendices and attachments thereto; (ii) all documents, correspondence and other written materials submitted in respect of such grant application; and (iii) all amendments, modifications or supplements to any of the foregoing approved in writing by the SFPUC.
- (c) **"Budget"** shall mean either the budget included in the Application Documents, to the extent expressly approved by the SFPUC, consisting of Grant Funds contributed by the SFPUC and Grantee's contribution of funding, if any.
- (d) **"City"** shall mean the City and County of San Francisco.

- (e) **“Controller”** shall mean the Controller of the SFPUC and City and County of San Francisco.
- (f) **“Eligible Items for Funding”** shall have the meaning set forth in the *Grant Assistance for Large Alternate Water Source Projects*, Grant Guidelines and Terms.
- (g) **“Event of Default”** shall mean the failure of the Grantee to perform any portion of the *Grant Assistance for Large Alternate Water Source Projects*, Grant Guidelines and Terms.
- (h) **“Fiscal Quarter”** shall mean each period of three (3) calendar months commencing on July 1, October 1, January 1 and April 1, respectively.
- (i) **“Fiscal Year”** shall mean each period of twelve (12) calendar months commencing on July 1 and ending on June 30 during all or any portion of which this Agreement is in effect.
- (j) **“Grantee”** shall mean the Property Owner receiving Grant Funds for San Francisco Property; and meeting requirements listed in the *Grant Assistance for Large Alternate Water Source Projects*, Grant Guidelines and Terms.
- (k) **“Grant Funds”** shall mean any and all funds allocated or disbursed to Grantee by the SFPUC under this Agreement.
- (l) **“Project”** shall mean installation of on-site non-potable water system or other activities described in the approved Grant Application documents.
- (m) **“Publication”** shall mean any report, article, educational material, handbook, brochure, pamphlet, press release, public service announcement, web page, audio or visual material or other communication for public dissemination, which relates to all or any portion of the Grant Plan or is paid for in whole or in part using Grant Funds.
- (n) **“Request for Partial Reimbursement”** shall have the meaning set forth in Section 5.3.

ARTICLE 2
APPROPRIATION AND CERTIFICATION OF GRANT FUNDS;
LIMITATIONS ON THE SFPUC'S OBLIGATIONS

2.1. Risk of Non-Appropriation of Grant Funds. This Agreement is subject to the budget and fiscal provisions of the Charter. Grantee acknowledges that the SFPUC budget decisions are subject to the discretion of its Mayor and Board of Supervisors. Grantee assumes all risk of possible non-appropriation or non-certification of funds, and such assumption is part of the consideration for this Agreement.

2.2. Certification of Controller; Guaranteed Maximum Costs. No funds shall be available under this Agreement until prior written authorization certified by the Controller. In

addition, as set forth in Section 21.10-1 of the San Francisco Administrative Code: City's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

2.3. Project Approvals; Grantee understands that any development of the work shall require approvals, authorizations and permits from governmental agencies with jurisdiction over the Project which may include, without limitation, the San Francisco City Planning Commission and Department of Building Inspection. Grantee also understands that no disbursement of funds will be made except for feasibility or planning tasks prior to completion of any environmental review necessary for the Project. Notwithstanding anything to the contrary in the Agreement, no party is in any way limiting its discretion of any department, board, or commission with jurisdiction over the Project, including but not limited to a party hereto, from thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts, including the "No Project" alternative, (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed Project.

ARTICLE 3 TERM

3.1. Effective Date. This Agreement shall become effective when the Controller has certified to the availability of funds as set forth in Section 2.2.

3.2. Termination. This agreement shall terminate after Grantee has submitted 10 annual status reports (1 per year) to SFPUC, documenting that the Project consistently meets the Grant's eligibility requirements for 10 years, unless terminated earlier in accordance with the provisions herein.

ARTICLE 4 IMPLEMENTATION OF APPROVED ON-SITE NON-POTABLE WATER SYSTEM PROJECT

4.1 Implementation of Approved On-site Non-potable Water System (Project); Cooperation with Monitoring. Grantee shall, in good faith and with diligence, implement the Project on the terms and conditions set forth in this Agreement. Grantee shall not materially change the nature or scope of the Project during the term of this Agreement without the prior written consent of the SFPUC. Grantee shall promptly comply with all standards, specifications and formats of the SFPUC related to evaluation, planning and monitoring of the Project and shall cooperate in good faith with the SFPUC in any evaluation, planning or monitoring activities conducted or authorized by the SFPUC.

4.1. Grantee is an Independent Contractor. The Grantee is solely responsible for the work to design and install the Project, including selection of any designer(s), manufacturer(s), contractor(s), or installer(s). The Grantee understands that s/he, and any third parties involved with the work, are independent contractors and are not authorized to make any

representations on behalf of the City and County of San Francisco (CCSF). Should the City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Division, or any court, arbitrator or administrative authority determine that Grantee is an employee for purposes of collection of any employment taxes, or for any other purpose, the amounts payable under this Agreement shall be reduced by any amounts paid by the City as a result of such determination, including if applicable, both the employee and employer portions of any tax due.

4.2. Compliance with Other Laws and Applicable Safety and Performance Standards. The Grantee shall keep itself fully informed of City's Charter, codes, ordinances and regulations and all state, and federal laws, rules and regulations affecting the performance of this Agreement and shall at all times comply with such Charter, codes, ordinances, and regulations, rules and laws. In addition, the work on the Project must meet all applicable safety and performance standards established by local, state, and federal laws.

4.3. Operation and Maintenance of On-site Non-potable Water Systems. The Grantee, by virtue of accepting Grant Funds, agrees to operate and maintain the Project as outlined in the San Francisco Department of Public Health *Director's Rules and Regulations Regarding the Operation of Alternate Water Source Systems* and by the manufacturer and for their intended purpose.

4.4 Agreement runs with the Land; Transfer of Property. The covenants and agreements of the Grantee and the City contained in this agreement shall be covenants running with the land pursuant to California Civil Code Section 1460 et seq., shall bind every person having any interest in the Property and the Project, and shall be binding upon and inure to the benefit and burden of the Grantee and the City and their respective heirs, successors and assigns. Any reference to the Grantee in this Agreement shall include successor owners of all or any part of the Property, and all rights and obligations of the Grantee shall accrue to and be imposed upon any and all successor owners of the Property.

Without limiting the foregoing, the Grantee further agrees whenever the Property is sold, conveyed or otherwise transferred to a person or entity (each, a "Transferee"), it shall notify the Transferee of this Agreement, and provide to the Transferee, not later than ten (10) business days before the date of transfer, a copy of this Agreement and any other material correspondence between the City and the Grantee with respect thereto. This requirement shall be waived in the event this agreement is recorded in the Official Records of the City.

In the event the Grantee wishes to release any portion of the Property from the terms of this Agreement, in connection with a subdivision or otherwise, then Grantee shall notify the SFPUC of the proposed release and related transaction, including such terms as are necessary to ensure that the Grantee's obligations under this Agreement will be satisfied with respect to the entire Property. Any such release will be subject to the review and written approval of the SFPUC General Manager, or his or her designee, and shall be recorded against the portion of the Property that is released.

4.5 Publications and Work Product.

Grantee understands and agrees that the SFPUC has the right to review, approve, disapprove or conditionally approve, in its sole discretion, the work funded in whole or part with the Grant Funds pursuant to grant requirements and the provisions of this agreement. Grantee has the burden of demonstrating to the SFPUC that each element of work funded in whole or part with

the Grant Funds is directly and integrally related to the Project as approved by the SFPUC. The SFPUC shall have the reasonable discretion to determine whether Grantee has met this burden.

The SFPUC has the right to monitor from time to time the administration by Grantee or any of its contractors of any work to ensure that Grantee is performing such elements of the Project, or causing such element of the Project to be performed, consistent with the terms and conditions of this Agreement.

ARTICLE 5 USE AND DISBURSEMENT OF GRANT FUNDS

5.1. Maximum Amount of Grant Funds. In no event shall the amount of the Grant Funds disbursed hereunder exceed **\$250,000**. A Grant awarded under this Agreement is intended to partially defray the costs of undertaking the Project, in the amount awarded in the Grant. The Grant is not intended to reimburse the Grantee for the total cost of the Project, and the Grantee shall be responsible for providing any other necessary funds to complete the Project.

5.2. Use of Grant Funds. Grantee shall use the Grant Funds only for Eligible Expenses as set forth in the Grant Requirements and Terms and for no other purpose. Grantee shall expend the Grant Funds in accordance with the Budget set forth in the Grant Application and shall obtain the prior approval of SFPUC before transferring expenditures from one line item to another within the Budget.

5.3. Request for Partial Reimbursement. Based on the Budget submitted to the SFPUC as outlined in the Grant Application, the Grantee shall submit a **Request for Partial Reimbursement** for Eligible Expenses up to the amount of Grant Funds specified in the Funding Approval Letter. The Disbursement schedule is as follows:

- SFPUC shall disburse 40% of the total grant upon approval of a Non-potable Engineering Report for the Project. Approval letter from SFDPH required.
- SFPUC shall disburse 50% of the total grant upon (a) completion of construction of the system and (b) receipt of a construction certification letter in accordance with Non-potable Water Ordinance.
- SFPUC shall disburse the remaining 10% of the total grant after the Final Permit to Operate has been issued by SFDPH and the project achieves the water savings estimated in the grant application and complies with ordinance requirements.

The Grantee shall provide supporting documentation as outlined in the *Grant Assistance for Large Alternate Water Source Projects Grant Guidelines and Terms*.

5.4. Reimbursement Requests. All payment requests submitted to the SFPUC shall be accompanied by all necessary supporting documentation, in accordance with the Grant Guidelines and Terms. Any reimbursement request that is submitted and not approved shall be returned by the SFPUC to Grantee with a brief reasonably detailed statement of the reason for the SFPUC's rejection of such reimbursement request. If any such rejection relates only to a portion of Eligible Expenses itemized in such reimbursement request, the SFPUC shall have no obligation to disburse any Grant Funds for any other Eligible Expenses itemized in such

reimbursement request unless and until Grantee submits a reimbursement request that is in all respects acceptable to the SFPUC. The Grantee shall maintain records of charges incurred and reconcile those charges with SFPUC funds received. Any overpayment of SFPUC Grant Funds must be reimbursed to the SFPUC within thirty (30) days of the expiration of the term of this Agreement.

5.5. Submitting False Claims; Monetary Penalties. Any Grantee who submits a false claim shall be liable to City for three times the amount of damages which City sustains because of the false claim. A Grantee who submits a false claim shall also be liable to City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to City for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim. A Grantee will be deemed to have submitted a false claim to City if the Grantee (a) knowingly presents or causes to be presented to an officer or employee of City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by City; (c) conspires to defraud City by getting a false claim allowed or paid by City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim.

ARTICLE 6 EVENTS OF DEFAULT AND REMEDIES

6.1. If Grantee fails to perform any portion of the Project in accordance with the terms of this Agreement, SFPUC may do any of the following, individually or in combination:

(a) **Termination.** The SFPUC may terminate this Agreement by giving a written termination notice to Grantee. In that event, this Agreement shall terminate on the date specified in such notice.

(b) **Withholding of Grant Funds.** The SFPUC may withhold all or any portion of Grant Funds not yet disbursed hereunder, regardless of whether Grantee has previously submitted a Request for Reimbursement or whether the SFPUC has approved the disbursement of the Grant Funds requested in any Request for Reimbursement. Any Grant Funds withheld pursuant to this Section and subsequently disbursed to Grantee after cure of Project performance failures shall be disbursed without interest.

(c) **Return of Grant Funds.** The SFPUC may demand the immediate return of any previously disbursed Grant Funds that have been claimed or expended by Grantee in breach of the terms of this Agreement.

6.2. Remedies Nonexclusive. Each of the remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The remedies contained herein are in addition to all

other remedies available to City at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

**ARTICLE 7
NOTICES AND OTHER COMMUNICATIONS**

7.1. Requirements. Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be addressed to the person and address set forth below and shall be either mailed via U.S. mail or emailed. Contact information is provided below.

SFPUC:

To: San Francisco Public Utilities Commission
Attn: Non-Potable Grant Assistance Program
525 Golden Gate Ave., 10th Floor
San Francisco, CA 94102
Email: nonpotable@sfwater.org

GRANTEE:

To: Kelly DeWees, 181 Fremont Street LLC.

Address: Four Embarcadero Center, Suite 3620

San Francisco, CA 94111

Email: Kdewees@jaypaul.com

ARTICLE 8

8.1. Insurance.

1. Without in any way limiting Grantee's liability pursuant to the "Indemnification" section of this Agreement, Grantee, or Grantee's contractor, shall maintain, or cause to be maintained, until the Grantee received a Project Completion Letter from the SFPUC.
 - (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
 - (b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general in the aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
2. The General Liability Insurance policy must be endorsed to provide:

- (a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
 - (b) That such policy is primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
3. All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason.
4. Should any of the required insurance be provided under a claims-made form, Grantee shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
5. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
6. At the time it submits and executed Agreement to the City, Grantee shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are reasonably satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement. Approval of the insurance by City shall not relieve or decrease the Grantee's liability hereunder.

8.2. Indemnification. Grantee shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Grantee or Grantee's Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation. or (v) losses arising from Grantee or Grantee's Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Grantee or Grantee's Contractor's performance of this Agreement, including, but not limited to, Grantee or Grantee's Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Grantee or Grantee's Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation,

reasonable fees of attorneys, consultants and experts and related costs and City's out-of-pocket costs of investigating any claims against the City.

In addition to Grantee's obligation to indemnify City, Grantee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Grantee by City and continues at all times thereafter.

Grantee shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Grantee or Grantee's Contractor's Services.

8.3. Incidental and Consequential Damages. Losses covered under section shall include any and all incidental and consequential damages resulting in whole or in part from Grantee's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that any indemnified party may have under applicable law with respect to such damages.

8.4. Limitation on Liability of City. SFPUC's payment obligations under this Agreement shall be limited to the grant payment. Notwithstanding any other provision of this Agreement, in no event shall CCSF be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or SFPUC's performance or nonperformance of its obligations under this Agreement.

8.5. Prohibition on Political Activity with City Funds. In accordance with S. F. Administrative Code Chapter 12.G, no funds appropriated by the City and County of San Francisco for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure. The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference.

8.6. Successors; No Third-Party Beneficiaries. The terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of section 9.2, any indemnified parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein. The terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of section 9.2, any indemnified parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

8.7. Project Proponent to Pay All Taxes. Grantee shall pay to the appropriate governmental authority, as and when due, any and all taxes, fees, assessments or other

governmental charges, including possessory interest taxes and California sales and use taxes, levied upon or in connection with this Agreement, the work, or any of the activities contemplated by this Agreement. Nothing herein shall be construed to limit the ability of Grantee to appeal any taxes or to pay any taxes under protest.

8.8. Modification. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

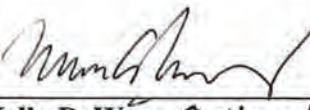
8.9. Entire Agreement. This Agreement and the Application Documents set forth the entire Agreement between the parties, and supersede all other oral or written provisions. If there is any conflict between the terms of this Agreement and the Application Documents, the terms of this Agreement shall govern.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

**SFPUC
SAN FRANCISCO PUBLIC UTILITIES
COMMISSION**

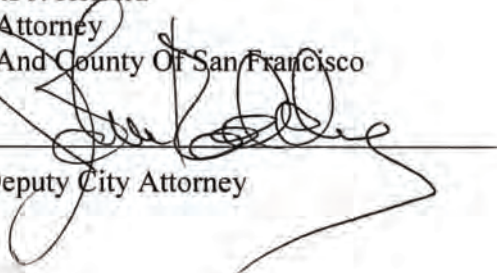
**GRANTEE:
181 FREMONT STREET LLC**

By: 
**HARLAN L. KELLY, JR.
GENERAL MANAGER Or Designee**

By: 
~~Kelly DeWees~~ **Phillip A. Verinsky
Vice President**

APPROVED AS TO FORM:

Dennis J. Herrera
City Attorney
City And County Of San Francisco

By: 
Deputy City Attorney