

ORPHAN SITE CLEANUP FUND (OSCF)
ASSESSMENT/CLEANUP GRANT AGREEMENT (AGREEMENT)
BETWEEN THE
STATE WATER RESOURCES CONTROL BOARD, hereinafter called "State" or "State Water Board"
AND

NAME OF GRANTEE/APPLICANT, hereinafter called "Grantee"

SITE NAME AND ADDRESS, hereinafter called "Project"

AGREEMENT NO. **DXX-09-XXX**

OSCF NO. **[BXXX]**

The State Water Board and Grantee hereby agree as follows:

PROVISION(S). The following provision(s) authorize the State Water Board to enter into this type of Agreement:

Health and Safety Code section 25299.50.2 authorizes the State Water Board to conduct the Underground Storage Tank (UST) Petroleum OSCF grant program to assist eligible applicants with the cost of response actions to remediate harm caused by petroleum contamination from USTs. The State Water Board's regulations concerning the OSCF Program are codified at California Code of Regulations, title 23, division 3, chapter 18, section 2814.20, et seq. (OSCF Regulations). The State Water Board has determined that the Grantee is eligible for an OSCF **assessment/cleanup** grant pursuant to applicable Health and Safety Code section 25299.50.2 and the OSCF Regulations.

PURPOSE. The State Water Board shall provide a grant to and for the benefit of the Grantee for the purpose of reimbursing the Grantee obtaining an **assessment/cleanup** grant for reasonable and necessary costs for response actions incurred on or after January 1, 2005, to **characterize, assess, and investigate / carry out cleanup activities** for an unauthorized release from a petroleum UST at **Site Address, CA**.

GRANT AMOUNT. The maximum amount payable under this Agreement shall not exceed **FIFTY-NINE THOUSAND DOLLARS (\$59,000)**.

TERM OF AGREEMENT. The term of the Agreement shall begin on **Month 1, 201x** and continue through final payment plus three (3) years unless otherwise terminated or amended as provided in the Agreement. **HOWEVER, ALL WORK SHALL BE COMPLETED BY MARCH 15, 20xx.**

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

State Water Board	Grantee: Grantee Name
Name: Tech Reviewer , Grant Manager	Name: Project Director Name , Project Director
Address: 1001 "I" Street, 17 th Floor	Address:
City, Zip: Sacramento, CA 95814	City, Zip:
Phone: 916-341-5684	Phone:
Fax: 916-341-5806	Fax:
e-mail: Tech.Reviewer@waterboards.ca.gov	e-mail:

Direct all inquiries to:

State Water Board	Grantee: Grantee Name
Section: Division of Financial Assistance	Section:
Attention: Analyst Name , Program Analyst	Name: Grant Contact Name , Grant Contact
Address: 1001 "I" Street, 17 th Floor	Address:
City, Zip: Sacramento, CA 95814	City, Zip:
Phone: (916) 341-5407	Phone:
Fax: (916) 341-5806	Fax:
e-mail: Analyst.Name@waterboards.ca.gov	e-mail:

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

In the event the Grantee receives or will receive funds from other sources for work completed under this Grant Agreement, the State Water Board reserves the right to request repayment of funds.

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

- Exhibit A SCOPE OF WORK – WORK TO BE PERFORMED BY THE GRANTEE
- Exhibit B INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS
- Exhibit C GENERAL TERMS AND CONDITIONS
- Exhibit D SPECIAL TERMS AND CONDITIONS

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: _____
 Grantee Signature

By: _____
 Leslie S. Laudon, Deputy Director
 State Water Resources Control Board
 Division of Financial Assistance

 Grantee Typed/Printed Name

 Date

 Title

Reviewed by: _____
 Office of Chief Counsel

 Date

 Date

EXHIBIT A
SCOPE OF WORK – WORK TO BE PERFORMED BY THE GRANTEE

1. BACKGROUND: **[THE LETTERING IN RED BELOW IS ONLY A SAMPLE]**

This facility is an abandoned gasoline station. The facility has not been operated since February 11, 1988, when Merced County, Department of Public Health, shut down the business for failure to comply with UST laws and regulations.

There are three USTs that remain at the site, which have not been upgraded to meet the December 1998 standards. The UST inventory is two (2) ten thousand (10,000) gallon single-walled steel USTs that contained gasoline and one (1) six thousand (6,000) gallon single-walled steel UST that contained diesel. The exact age of these USTs is unknown, but they are at least twenty-five (25) years old. Areas around the submerged turbine pump, UST fill locations, and areas beneath product dispensers have stained, blackened soil, which suggests that there have been continued releases over the life of the of the systems.

The soil is sandy with occasional lenses of hardpan. Groundwater in the area is found at a level of approximately forty (40) to fifty (50) feet. It is unknown if contamination exists beyond that area which is in close proximity to the USTs and system components.

2. WORK TO BE PERFORMED BY THE GRANTEE:

The Grantee shall conduct response actions located at **INSERT LOCATION** California.

The Grantee shall be responsible for the performance of the work as described herein.

- a) The Grantee agrees to expeditiously proceed with and complete the Project in substantial accordance with the Scope of Work.
- b) The Grantee shall immediately notify the State Water Board and propose an amendment agreement in the event that, for reasons beyond the reasonable control of the Grantee or reasons that cannot be anticipated at the execution of the Agreement, the response action exceeds the scope or budget of the Agreement or it becomes apparent that the Grantee will be unable to complete the work. The proposed amendment must include the following:
 - 1) Justification for amendment; and
 - 2) A description of the additional services required to complete the Scope of Work.

3. SCOPE OF WORK - **[THE LETTERING IN RED BELOW IS ONLY A SAMPLE]**

PAST ELIGIBLE ASSESSMENT OR CLEANUP RESPONSE WORK CONDUCTED

1. Well Development

- 1.1 Re-developed four (4) existing wells prior to groundwater monitoring event

2. Groundwater Monitoring

- 2.1 Sampled and analyzed four (4) monitoring wells for gasoline, benzene, toluene, ethylbenzene, and xylenes (BTEX) and oxygenates
- 2.2 Generated a report and uploaded to GeoTracker for the Regional Water Board review

3: Down-Gradient Assessment/Groundwater Monitoring Well Installation

- 3.1 Installed down-gradient monitoring well off site
- 3.2 Submitted soil samples for analyses
- 3.3 Incorporated the well into semi-annual groundwater monitoring program

4. Workplan

- 4.1 Produced and uploaded to GeoTracker a workplan to advance one (1) confirmation boring to the Regional Water Board.

PROPOSED ELIGIBLE ASSESSMENT OR CLEANUP RESPONSE WORK

1. Additional Soil and Groundwater Investigation and Well Installation

- 1.1 Drill seven (7) borings on-site to sixty-five (65) feet below ground surface (ft. bgs.)
1.2 Collect soil samples at five (5)-foot intervals from five (5) to sixty-five (65) ft. bgs.
1.3 Submit soil samples from on-site drilling for laboratory analysis
1.4 Develop and survey newly installed wells
1.5 Prepare report and upload to GeoTracker

2. Additional Groundwater Monitoring Well Monitoring

- 2.1 Conduct additional two (2) events of semi-annual groundwater monitoring and sampling of existing wells
2.2 Submit and upload to GeoTracker the semi-annual groundwater monitoring reports

3. Workplan for Remediation Well Installation and Pilot Testing

Etc.

4. Remedial Action Plan (RAP)

Etc.

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TABLE OF ITEMS FOR REVIEW

ITEM	DESCRIPTION	CRITICAL DUE DATE	DATE SUBMITTED OR ESTIMATED DUE DATE
EXHIBIT A – SCOPE OF WORK			
TASKS			
2.	Additional Groundwater Monitoring Well Installation		
2.2	1 st Semi-annual Groundwater Monitoring Report - 2016		Month/Year
2.2	2 nd Semi-annual Groundwater Monitoring Report - 2016		Month/Year
EXHIBIT B – BUDGET			
A.	INVOICING		Monthly/Quarterly
EXHIBIT D – SPECIAL TERMS AND CONDITIONS			
5.	REPORTS		
	Progress Reports within fifteen (15) days following the end of the calendar month or quarter (March, June, September, and December)	Monthly/Quarterly	

EXHIBIT B
INVOICING, BUDGET DETAIL, AND REPORTING PROVISIONS

A. INVOICING

1. Invoices shall be submitted using a Reimbursement Request (RR) Form 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 Program Analyst on a monthly basis. The invoice packages shall not exceed one invoice package per month and in the minimum amount of \$500 and should include a summary of work completed during the invoice period. The address for submittal is:

Analyst Name, Program Analyst
State Water Resources Control Board
Division of Financial Assistance
P.O. Box 944212
Sacramento, CA 94244-2120

2. Reimbursement of any invoice shall be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed invoice. 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 Program Analyst will notify the Grantee. Reimbursement 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. Reimbursement shall be deemed complete upon deposit of the reimbursement, properly addressed, postage prepaid, in the United States mail. The State Water Board OSCF Program Manager has the responsibility for approving invoices.
3. Supporting documentation (e.g., receipts) must be submitted with each invoice to request reimbursement for grant funds. 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 reimbursement shall be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed invoice.
4. The Grantee shall provide proof of payment to the consultant or contractor for each invoice submitted for reimbursement under this Grant. If the Grantee is not able to demonstrate proof of payment, the State Water Board, at its discretion, may issue two-party checks for the reimbursement of costs identified in Exhibit B. (See Exhibit D.1.) The two-party checks will require the endorsement of both Grantee and the company providing the services.
5. 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 the Program Analyst receives a "Final Project Summary" from the local regulatory agency of the Project. Any retained amounts due to the Grantee will be promptly disbursed to the Grantee, without interest, upon completion of the Project.
6. The invoice shall contain the following information:
 - a. The date of the invoice;
 - b. The word "INVOICE" and a sequential invoice number should appear in a prominent location at the top the of the page(s);
 - c. Printed name of the consultant or contractor;
 - d. Business address of the consultant or contractor, including P.O. Box, city, state, and zip code;
 - e. The number of the Agreement upon which the invoice is based;
 - f. The site address (location) where the work was performed;

- g. All subcontractor invoices must be listed on the invoice; (A copy of each subcontractor invoice must be attached to the consultants/contractors invoice.) and
- h. An itemized account of the work for which the Grantee is seeking reimbursement; including:
 - h.1 A brief description of the work performed, including dates of performance and the name or initials of the person performing the work;
 - h.2. Invoices must be itemized based on the tasks specified in the Budget;
- i. The time period covered by the invoice, i.e., the term "from" and "to";
- j. The total amount due; and
- k. Original signature and date (in ink) of the Grantee or its authorized representative.

7. Final invoice shall be clearly marked "FINAL INVOICE" and submitted NO LATER THAN APRIL 15, xxxx.

B. BUDGET CONTINGENCY CLAUSE

The maximum amount to be encumbered under this Agreement for the 2018-19 fiscal year ending June 30, 2019 shall not exceed FIFTY NINE THOUSAND DOLLARS (\$59,000).

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 reimbursements 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 reimbursement over any other Grantee.

If this Agreement's funding for any fiscal year expires due to reversion or is reduced, substantially delayed, or deleted by the Budget Act, by Executive Order, or by order or action of the Department of Finance, the State Water Board has the option to either cancel this Agreement with no liability accruing to the State Water Board, or offer an amendment to the Grantee to reflect the reduced amount.

C. LINE ITEM BUDGET – BY TASK

TASK #	TASK DESCRIPTION	TASK AMOUNT	TOTALS
PAST COSTS			\$30,908.00
1.	Well Development	\$2,908.00	
2.	Groundwater Monitoring	\$10,000.00	
3.	Down-Gradient Assessment/Groundwater Monitoring Well Installation	\$11,000.00	
4.	Workplan	\$7,000.00	
PROPOSED COSTS			\$28,092.00
1.	Additional Soil and Groundwater Investigation and Well Installation	\$6,904.00	
2.	Additional Groundwater Monitoring Well Installation	\$11,188.00	
3.	Workplan for Remediation Well Installation and Pilot Testing	\$8,000.00	
4.	Remedial Action Plan	\$2,000.00	
TOTAL GRANT AMOUNT:			\$59,000.00

NOTE: The Line Item Budget is based on a detailed cost estimate provided by the Grantee and accepted on XX/XX/XXXX (This is the date of the Budget Review letter that all parties agreed to).

D. BUDGET LINE ITEM FLEXIBILITY

- Line Item Adjustment(s). Subject to the prior review and approval of the Program Analyst, adjustments between existing line item(s) may be used to defray allowable direct costs up to twenty-five percent (25%) of the total grant amount including any amendment(s) thereto. Line item adjustments in excess of twenty-five percent (25%) shall require a formal Agreement amendment. If the Line Item Budget includes an amount for Personnel Services, that amount is based on the hours, classifications, and rates submitted by the Grantee in its application. Any changes to the hours, classifications, and rates must be approved, in advance and in writing, by the Program Analyst.
- 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 also may propose adjustments to the budget.
- Remaining Balance. In the event the Grantee does not submit invoices requesting all of the funds encumbered under this 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 reimbursement, and any remaining balance will be disencumbered and unavailable for further use under the Grant Agreement.

E. REIMBURSEMENT OF PROJECT COSTS

Within thirty (30) days of receipt of reimbursement from the State Water Board, the Grantee must pay all reimbursed costs incurred by the Grantee, but not yet paid. 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.

F. AUDIT DISALLOWANCES

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

G. FRAUD AND MISUSE OF PUBLIC FUNDS

All invoices submitted shall be accurate and signed under penalty of perjury. Any and all costs submitted pursuant to this Agreement shall only be for the tasks set forth herein. The Grantee shall not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any eligible costs for which the Grantee is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is illegal and constitutes fraud. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements of grant funds and/or termination of this Agreement requiring the repayment of all funds disbursed hereunder. Additionally, the Deputy Director of the Division of Financial Assistance may request an audit pursuant to Exhibit C, paragraph 4 and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability. (Civ. Code, §§1572-1573; Pen. Code, §§470, 489-490.)

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EXHIBIT C
GENERAL TERMS AND CONDITIONS

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 written consent of the State Water Board.
4. **AUDIT:** The Grantee agrees that the State Water Board, 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 use of grant funds or performance of this Agreement. The Grantee agrees to maintain such records for possible audit for a minimum of three (3) years after final reimbursement, unless a longer period of records retention is stipulated. The 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, the 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. **CHILD SUPPORT COMPLIANCE ACT:** The Grantee acknowledges that it recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in chapter 8 (commencing with section 5200) of part 5 of division 9 of the Family Code. The Grantee, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
6. **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.
7. **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.
8. **CONFLICT OF INTEREST:** Grantee certifies that it is in compliance with applicable state and/or federal conflict of interest laws.
9. **DISPUTES:** The Grantee shall continue with its 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.

10. **DRUG-FREE WORKPLACE REQUIREMENTS:** The Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (commencing with section 8350 of the Government Code) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) The dangers of drug abuse in the workplace;
 - 2) The organization'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. Every employee who works on the proposed project will:
 - 1) Receive a copy of the organization's drug-free workplace policy statement; and
 - 2) Agree to abide by the terms of the statement as a condition of employment on the project.

Failure to comply with these requirements may result in suspension of reimbursements or termination of the Grant or both, and the Grantee may be ineligible for award of any future state grants if it is determined that the Grantee has made false certification or violated the certification by failing to carry out the requirements as noted above.

11. **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.
12. **FRAUD, WASTE, AND ABUSE:** The Grantee shall prevent fraud, waste, and the abuse of Project Funds, and shall cooperate in any investigation of such activities that are suspected in connection with this Agreement. The Grantee understands that discovery of any evidence of misrepresentation or fraud related to reimbursement requests, invoices, proof of payment of invoices, or other supporting information, including, but not limited to double or multiple billing for time, services, or any other eligible cost, may result in referral to the Attorney General's Office or the applicable District Attorney's Office for appropriate action. The Grantee further understands that any suspected occurrences of false claims, misrepresentation, fraud, forgery, theft, or any other misuse of Project Funds may result in withholding of grant disbursements and/or the termination of this Agreement requiring the immediate repayment of all funds disbursed hereunder.
13. **GOVERNING LAW:** This Grant is governed by and shall be interpreted in accordance with the laws of the State of California.
14. **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.
15. **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.

16. **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.
17. **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.
18. **INSPECTION:** The State Water Board, the Bureau of State Audits, or any authorized representative of the foregoing, shall have suitable access to the Project site at all reasonable times during Project implementation and thereafter for the useful life of the Project to ascertain compliance with this Agreement and its goals. The Grantee acknowledges that the Project records and location are public records.
19. **NONDISCRIMINATION:**
 - a. During the performance of this Agreement, the Grantee and its consultants and contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave.
 - b. The Grantee, its consultants, and contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
 - c. The Grantee, its consultants, and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
 - d. The Grantee, its consultants, and contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement, if any.
 - e. The Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement. Failure by the Grantee to carry out these requirements and applicable requirements of 40 C.F.R. part 33 is a breach of a material provision of this Agreement which may result in its termination.
20. **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.
21. **NOTICE:** 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. 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 the State Water Board's representatives. The Grantee shall promptly notify the State Water Board in writing of completion of work on the Project.
22. **OPERATIONS & MAINTENANCE:** The Grantee shall maintain and operate the facility and structures constructed or improved as part of the Project throughout the useful life of the Project, consistent with the purposes for which this Agreement 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.

23. PAYEE DATA RECORD FORM (Std. 204): The Grantee must complete the Payee Data Record Form.
24. PERMITS, CONTRACTING, 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. Signed copies of any such permits or licenses shall be submitted to the Grant Manager before work begins.

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.

The Grantee shall not contract with any party who is ineligible to participate in the State Water Board program for which this grant funding is authorized because the party 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 U.S. EPA's List of Violating Facilities. (40 CFR § 30.13 or § 31.35; Gov. Code § 4477.)

The Grantee shall not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this grant funding is authorized. The Grantee shall not contract with any individual or organization on the State Water Board's List of Disqualified Businesses and Persons that is identified as debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this grant funding is authorized. The State Water Board's List of Disqualified Businesses and Persons is located at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/fwa/dbp.shtml.

The Grantee certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not ineligible to participate in the State Water Board program for which this grant funding is authorized because they are not presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in federal assistance programs by any federal department and are not listed on U.S. EPA's List of Violating Facilities;
- b. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in any work overseen, directed, funded, or administered by the State Water Board program for which this grant funding is authorized;
- c. Have not within a three (3) 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;
- d. 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 (c) of this certification;
- e. 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;
- f. Have not engaged or permitted the performance of services covered by this Agreement from parties that are ineligible to participate in the State Water Board program for which this grant funding is authorized because they are debarred or suspended or otherwise excluded from or ineligible for participation in

federal assistance programs under Executive Order 12549, "Debarment and Suspension," or because they are listed on U.S. EPA's List of Violating Facilities; and

- g. Have not engaged or permitted the performance of services covered by this Agreement from parties that are debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this grant funding is authorized.
25. **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. Current Division of Industrial Relations (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>.
26. **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.
27. **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; and
 - 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.
28. **RELATED LITIGATION:** Under no circumstances may a Grantee use funds from any disbursement under this 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.
29. **RIGHTS IN DATA:** The Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, audio and video recordings, 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.
30. **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.

31. 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 each party shall bear its own filing costs and attorney fees.
32. TERMINATION, IMMEDIATE REPAYMENT, INTEREST: This 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 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.
33. TIMELINESS: Time is of the essence in this Agreement. The Grantee shall proceed with and complete the Project in an expeditious manner.
34. TRAVEL AND PER DIEM: Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources. These rates may be found at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred by the Grantee. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the OSCF Program Manager.
35. 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.
36. UNION ACTIVITIES: The Grantee hereby acknowledges the applicability of Government Code sections 16645 through 16649 to this grant. The Grantee certifies that none of the grant funds will be used to assist, promote, or deter union organizing. The Grantee shall account for all state funds disbursed by the grant for a specific expenditure, and show those funds were allocated to that expenditure. If the Grantee incurs costs or makes expenditures to assist, promote, or deter union organizing, the Grantee will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs and the Grantee shall provide those records to the Attorney General upon request.
37. 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.

38. **WAIVER AND RIGHTS OF THE STATE WATER BOARD:** 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.
39. **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.
40. **WATER DIVERSION AND USE:** To the extent applicable, the Grantee has complied with, and shall continue to comply with, the requirements of Water Code, division 2, part 5.1, section 5100 et seq. for filing statements of water diversion and use.
41. **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.

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EXHIBIT D
SPECIAL TERMS AND CONDITIONS

1. The State Water Board, at its discretion, may issue two-party checks for the reimbursement of response costs as provided in Exhibit B. The two-party checks will require the endorsement of both the Grantee and the party providing the response action services. Two-party checks will be issued if the Grantee does not submit proof of payment for response cost invoices.
2. The State Water Board's obligation to make a disbursement of the proceeds of this Grant to the Grantee is subject to and conditioned upon the State Water Board's receipt of each of the following:
 - a. Copy of executed grant agreement(s) for response work acceptable to the State Water Board; (Subcontractor(s) must have current and active license issued by the California State Contractors License Board.)
 - b. Copies of permits from regulatory agencies necessary to conduct response actions;
 - c. Copies of invoices as identified in Exhibit B;
 - d. Such other documents, certificates, instruments, opinion, or other writings as the State Water Board may reasonably request; and
 - e. Submittal of original signed Reimbursement Request Form.
3. The response costs submitted must be for response work directed by the regulatory agency. (23 Cal. Code of Regs. ch. 18, art. 7, section 2814.25, subdivision (a)(2).) The State Water Board may pay eligible costs of response actions that are reasonable and necessary. The Grantee may not receive reimbursement from the State Water Board for response actions that have been or will be paid or otherwise compensated from another source. (23 Cal. Code of Regs, ch. 18, art. 7, section 2814.26.)
4. In addition to paragraph 32 of Exhibit C, the State Water Board, at its discretion, may disencumber grant funds or terminate this Agreement if:
 - a. An invoice package seeking reimbursement under this Agreement is not received within six months of the effective date of this Agreement;
 - b. The Grantee does not perform response actions or seek reimbursement under this Agreement with due diligence; or
 - c. The Grantee is not in compliance with any applicable requirements contained in article 7 of chapter 18 or chapter 16 of title 23 of the California Code of Regulations or chapter 6.7 of the Health and Safety Code.
5. During the term of this agreement, the Grantee shall submit written (choose one) monthly/quarterly progress reports to the State Water Board's Program Analyst by the 15th of the month (delete if monthly, leave if quarterly) following the end of the calendar quarter (March, June, September, December), describing the following:
 - a. The progress accomplished during the reporting period on each project activity and task, as identified in the description of work required;
 - b. Any problems encountered during the reporting period;
 - c. The next (choose one) month's/quarter's projected work activities, specifying which project activities and tasks are expected to be completed during the next reporting period; and
 - d. The expenditures for the reporting period for each project task.