

FOR STATE USE ONLY
DGS REGISTRATION NO.

LOCAL OVERSIGHT
PROGRAM GRANT
AGREEMENT
BETWEEN THE
STATE WATER RESOURCES CONTROL BOARD, hereinafter called "State" or "State
Water Board"
AND
Orange County, hereinafter called "Grantee"
Local Oversight Program, hereinafter called "Project"
AGREEMENT NO. D15-08-003

Deleted: STATE OF CALIFORNIA¶
STANDARD

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14-404-550¶
REGISTRATION NUMBER

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1. This Agreement is entered into between

WHEREAS:

1. The following provision(s) authorize the State Water Board to enter into this type of Grant

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Agreement: Health and Safety Code, § 25297.1

2. The Grantee has applied for funding from the State Water Board to implement a local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks. The Grantee has been certified by the State Water Board pursuant to section 25297.01 of the Health and Safety Code to implement a local oversight program for the term of the Agreement. The State Water Board has determined that the Grantee is eligible to receive funding, consistent with section 25297.1 of the Health and Safety Code, for the reasonable costs incurred by the Grantee in overseeing any cleanup, abatement, or other action taken by a responsible party to remedy the effects of unauthorized releases from underground storage tanks; and

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

<u>State Water Board</u>		<u>County</u>	
Name:	Lisa Babcock, Grant Manager	Name:	Denise Fennessy, Project Director
Address:	1001 "I" Street, 17th Floor	Address:	1241 E. Dyer Road, Suite 120
City, Zip:	Sacramento, CA 95814	City, Zip:	Santa Ana, CA 92705-4720
Phone:	(916) 341-5797	Phone:	(714) 433-6473
Fax:	(916) 371-5806	Fax:	(714) 754-1768
e-mail:	lisa.babcock@waterboards.ca.gov	e-mail:	dfennessy@ochca.com

B. Direct all inquiries to:

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<u>State Water Board</u>		<u>County</u>	
Section:	Division of Financial Assistance	Section:	Division of Environmental Health
Attention:	Randal Indvik, Program Analyst	Name:	Anthony Martinez, Grant Contact
Address:	1001 "I" Street, 17th Floor	Address:	1241 E. Dyer Road, Suite 120
City, Zip:	Sacramento, CA 95814	City, Zip:	Santa Ana, CA 92705-4720
Phone:	(916) 341-5833	Phone:	(714) 433-6011
Fax:	(916) 341-5296	Fax:	(714) 754-1768
e-mail:	randy.indvik@waterboards.ca.gov	e-mail:	amartinez@ochca.com

C. Either party may make changes to the information above by giving written notice to the other party. Said changes should not require an amendment to this Agreement.

D. The maximum amount payable under this Agreement shall not exceed ONE MILLION

FIFTY SIX THOUSAND NINE HUNDRED FIFTY FIVE DOLLARS (\$1,056,955.00).

E. The term of this Agreement is JULY 1, 2015 through JUNE 30, 2016.

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

Exhibit A SCOPE OF WORK

Exhibit B BUDGET DETAIL AND PAYMENT PROVISIONS

Exhibit B ATTACHMENT I, BUDGET

Exhibit C GENERAL 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 Grantees 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:

Darrin Polhemus, Deputy
Director, State Water
Resources Control Board,
Division of Financial
Assistance

Grantee Typed/Printed Name

Date

are attached and made a part of this Agreement by this reference:

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Exhibit A

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Items shown with an Asterisk (*)

Deleted: hereby incorporated by reference

Deleted: as if attached hereto. These documents can be viewed at .

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EXHIBIT A
SCOPE OF
WORK

1. Project Overview

The Grantee agrees to perform the project as described herein:

The Grantee shall oversee corrective action and perform regulatory and administrative activities to implement the oversight of corrective action of unauthorized releases from Underground Storage Tanks (USTs).

2. Project Location

The project to oversee UST corrective action shall be performed in the Grantee's respective County. The Grantee training classes and/or meetings may be attended within the State.

3. Project Hours

The project shall be implemented during the Grantee's working hours.

4. Definitions

The term "Regional Water Board" is defined to mean the appropriate "California Regional Water Quality Control Board(s)." Under this agreement, the appropriate Regional Water Board is: Santa Ana Regional Water Quality Control Board, which has jurisdiction at a release site.

Unless otherwise specifically provided herein, any reference to an underground storage tank (UST) means a petroleum UST as UST is defined in Health and Safety Code (H&SC) section 25281, subdivision (y), and any reference to an "unauthorized release" or "release" refers to an unauthorized release of petroleum from a UST.

"Closure Criteria" are those contained in State Water Board policies for water quality control: State Water Board Resolution 92-49 (hereafter, Resolution 92-49) or Low-Threat Underground Storage Tank Case Closure Low-Threat Underground Storage Tank Case Closure Policy (hereafter, Closure Policy).

"ECAP" means the Expedited Claim Account Program established by the State Water Board to implement the requirements of H&SC section 25299.50.7.

"Higher Threat Cases" are those defined in Resolution 2012-62 at resolved number 6, paragraph c, subparagraph iii. Higher Threat Cases include cases that have impacted beneficial uses of drinking water wells or caused other significant human health impacts, cases where the sources of free product are still in place, and other cases where timely corrective action is critical to achieve the best use of available funds.

"Responsibility Party" means a responsible party as defined in section 2720 of title 23 of the California Code of Regulations.

"UST Project Meeting" means a meeting among Local Oversight Program (Grantee) staff, State Water Board staff, the responsible party/Fund claimant, and their consultant via a face-to-face meeting, teleconference, Web-Ex, or other agreed-to method to discuss and come to agreement on a UST Project Execution Plan.

"UST Project Execution Plan" means a plan that documents a conceptual site model, Closure Criteria to be met, tasks, schedule, and estimated costs to meet Closure Criteria.

"Fund Case" means any case with funding from a UST Cleanup Fund eligible claim, an Orphan Site Cleanup Fund (OSCF) grant, the Site Cleanup Subaccount (SCAP), or the Emergency Abandoned or Recalcitrant (EAR) Account.

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Orange County (Contractor) agrees to provide to the State Water

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4. PROJECT REPRESENTATIVES
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A. The project representatives

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C. Either party may make changes to the Project Representatives above by giving ten (10) days written notice to the other party. Said changes shall not require an amendment to this Agreement.¶

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BACKGROUND:

H&SC section 25297.01 authorizes the State Water Board to implement the Local Oversight Program (LOP) for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks by certified local agencies. Additionally, H&SC section 25296.35 requires the State Water Board to maintain a system for storing and retrieving data pertaining to the remediation of unauthorized releases from USTs. GeoTracker is a state-wide historical database designed to be accessible to government agencies and the general public to meet data system requirements. This agreement implements the LOP for leaking USTs and ensures that records are maintained in GeoTracker.

In addition, and as part of this effort, the State and Regional Water Boards will provide technical assistance and training as follows:

1) Provide reasonable and appropriate technical assistance to the Grantee to aid in the remediation of sites. This assistance shall include providing available information on:

- Chemical constituents,
- Toxicology
- Environmental fate, and
- Risk appraisal

In addition, guidance documents shall be prepared as needed;

2) Research available information as requested by the Grantee regarding constituents of petroleum products stored in USTs. This information may include chemical/physical properties, environmental fate properties, toxicity, flammability, corrosiveness, and applicable laws, regulations, and regulatory criteria;

3) Use in-house information to assist Grantee to evaluate risk appraisals to be used in making remediation decisions for petroleum unauthorized release cases. The risk appraisal will analyze the behavior of the constituents of petroleum products in the subsurface environment and evaluate the resulting exposure and health risk;

4) Prepare appropriate guidance documents to assist the Grantee performing work covered under this agreement. These documents shall consist of the LOP Guidebook, along with manuals and references to be used in the field, laboratory, and office. Guidance letters will also be prepared in response to the need for interpretation of laws and regulations pertaining to UST remediation; and

5) Provide annual training courses on (1) UST site inspection, monitoring, corrective action, and closure procedures, and (2) health and safety procedures for employees of the Grantee. Additional examples of training courses that will be provided to the Grantee are (1) annual CUPA/UST Conference, (2) ad hoc roundtable meetings, and (3) other classes related to site remediation of UST unauthorized releases.

5. Program Priorities

The State Water Board has identified eight (8) priorities for the period of this agreement, which are listed in the following table. These priorities are consistent with the Legislature's recently enacted changes to the H&SC that affect LOPs, including the requirement to reduce the overall costs for site cleanup and the time to reach closure by increasing coordination among the LOP staff, the responsible party/claimant, the consultant, and State Water Board staff. These priorities also reflect State Water Board policies for water quality control, plans, and resolutions, including Resolution No. 92-49, Resolution No. 2012-0016 (adopting the Closure Policy), and State Water Board Resolution Nos. 2009-0042, 2009-0081, 2012-0062, and 2013-0001.

1)	Proactively and aggressively manage cases to expeditiously achieve closure <ul style="list-style-type: none"> • Review cases against the Closure Policy and document impediments to case closure; update at least annually to reflect a UST Project Execution Plan, if one has been prepared. • Develop and direct a cost-effective Path to Closure Plan to address impediments to closure; the plan shall include milestones and timelines
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	<p>including enforcement; update at least annually to reflect a UST Project Execution Plan, if one has been prepared.</p> <ul style="list-style-type: none"> • For each case, identify the LOP's and Responsible Party's actions to remove impediments to closure. • Direct work to ensure case closure is appropriate. • Minimize the cost of compliance with agency regulatory directives. • Respond to work plans and closure requests within sixty (60) days of submittal. • At a minimum, meet ten (10) percent Closure Rate for this Grant Agreement period. • Timely closure of cases determined eligible for closure.
2)	<p>Require only actions that are necessary to address impediments to case closure</p> <ul style="list-style-type: none"> • Participate in development of consensus conceptual site model (CSM) documented in the UST Project Execution Plan, if one has been prepared. • Issue directives that reflect the UST Project Execution Plan, if one has been prepared. • Prior to issuing new directives, review the Closure Policy criteria, and for Fund cases, the most recent Review Summary Report and Fund site budget.
3)	Expedite corrective action for Higher Threat Cases.
4)	Enforce removal of free product within two (2) years of discovery, sufficient to meet the Closure Criteria.
5)	Maintain adequate technical expertise to review and approve geologic and technical interpretations, oversee or perform corrective action requirements, and optimize remediation systems.
6)	<p>Maintain current and quality data in GeoTracker</p> <ul style="list-style-type: none"> • Receive/deny Electronic Submittal of Information (ESI) documents within sixty (60) days, enforce compliance with GeoTracker Reporting Requirements, and provide quality data input to GeoTracker that reports regulatory activities.
7)	<p>Promote coordination and collaborative problem-solving</p> <ul style="list-style-type: none"> • Notify the State Water Board of cases where the Responsible Party has requested closure in accordance of section III of the Closure Policy Implementation Plan. • Assist Responsible Parties by providing technical assistance when requested, including assistance with identifying cost-effective cleanup methods that may be used to achieve compliance with regulatory cleanup requirements. • Provide documentation to the UST Cleanup Fund as requested. • Not issue new or enforce existing directives where UST Cleanup Fund Manager has issued a Review Summary Report with a determination that case closure is appropriate, except under certain circumstances. • Attend quarterly roundtable meetings and periodic policy and performance sessions and abide by all terms of LOP certification. • Prior to issuance of an oral or written directive or approval of a proposal that affects an initial or a change in Scope of Work for a case with an accepted UST Cleanup Fund claim, Grantee shall update the Path to Closure Plan with bulleted elements that are proposed for the directive or approval, and then contact Fund staff at ustcleanupfund@waterboards.ca.gov to determine if a consultation concerning Reasonable and Necessary Costs is appropriate. (Please indicate LOP in the Subject Heading.) Fund staff will respond by email within three working days of the date the Grantee's email is sent and will state whether the Fund staff requests a consultation. The Fund staff and Grantee consultation should be completed within 10 working days of the response email. • Participate in UST Project Meetings, if held, and development of the UST Project Execution Plan, if prepared.
8)	<p>Cost Efficiency</p> <ul style="list-style-type: none"> • Use existing and new tools developed by or under the direction with the State Water Board Grant Manager • Maintain records only in GeoTracker.

A. WORK TO BE PERFORMED BY GRANTEE

The Grantee's Project Director shall promptly notify the State Water Board's Grant Manager of events or proposed changes that could affect the scope, budget, or schedule of work performed under this agreement.

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The Grantee agrees to provide all labor, materials, and equipment necessary to conduct a UST corrective action program to identify and oversee the investigation and remediation of unauthorized releases from petroleum USTs within its jurisdiction and to maintain records only in GeoTracker in accordance with the terms and conditions contained herein and all exhibits attached hereto.

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Performance pursuant to the requirements of this agreement shall conform to high professional standards, including applicable portions of the State Water Board's Incompatible Activities Statement. http://www.waterboards.ca.gov/laws_regulations/docs/incompatible_activities_statement.doc

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The Grantee shall oversee UST corrective action in a manner that is consistent with LOP certification criteria and procedures required by State Water Board Resolution No. 2013-0001, and with State Water Board precedential decisions, policies, plans, and resolutions, which implement statutes and regulations. The Grantee shall evaluate, direct corrective action, and close cases in accordance with the Closure Policy, Resolution No. 92-49, Resolution No. 2012-0062, which approved the Plan for Implementation of Closure Policy and Additional Program Improvements, and State Water Board precedential decisions, as applicable. The California Leaking Underground Fuel Tank (LUFT) Manual provides information that may be used to help the Grantee conduct adequate corrective action.

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The Grantee shall, at all times, comply with all applicable State laws, rules, regulations, and local ordinances specifically, including but not limited to, environmental, procurement and safety laws, rules, regulations, and ordinances. The Grantee shall obtain the services of a Professional Geologist or Engineer, Civil (PG/PE- Civil) to comply with the applicable requirements of the Business and Professions Code, sections 6700 et seq. and 7800 et seq., implementing regulations for geological or engineering analysis and interpretation for each case in the LOP. All documents prepared for others by the Grantee that reflect or rely upon geological or engineering interpretations by the Grantee shall be signed or stamped by the PG/PE-Civil indicating her/his responsibility for them as required by the Business and Professions Code.

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The Grantee further agrees to perform in accordance with the State Water Board's most recent LOP Guidebook, which is hereby incorporated by reference and which may be subject to changes as necessary.

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1. Remediation Process

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The Grantee shall be responsible for identifying, issuing directives, and providing a completion certification to Responsible Parties for the remediation of an unauthorized release from USTs. This work includes overseeing the planning, (including but not limited to flexible system design, consistent with industry standards that is appropriate for the site conditions and addresses Closure Criteria), scheduling, and performance of all work as set forth herein, including but not limited to, the maintenance of site specific records and the preparation of reports as specified in Item 3 (below). The Grantee shall maintain the official site-specific records pertaining to each of its cases and provide for public access to those records for review and copying in compliance with the California Public Records Act. The Grantee may satisfy this requirement by use of paper records, electronic records, or a combination of both. At a minimum during this Grant period, the Grantee shall upload the following documents to GeoTracker for permanent public access: Directive Letters (i.e., letters issued to Responsible Parties regarding the planning, scheduling, and performance of work including but not limited to system performance measures, pounds of hydrocarbons recovered since last report, or other measurable performance criteria), Case Closure Summaries, Remedial Action Completion Certifications, and other pertinent case correspondence as necessary.

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The Grantee shall require the Responsible Party, or Parties to submit information electronically only to GeoTracker in compliance with chapter 30, division 3, title 23 of the California Code of Regulations (e.g., Site Map and Product Thickness). The Grantee shall receive or deny information submitted by a Responsible Party electronically to GeoTracker.

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In addition to the previously identified foundational requirements for corrective action oversight, the Grantee shall consider methods described in the most recent version of the Leaking Underground Fuel

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Tank (LUFT) Manual or Regional Water Board corrective action guidelines. The Grantee shall direct responsible parties or their consultants to conform to all applicable State laws, rules, regulations, and local ordinances specifically, including but not limited to, environmental, procurement and safety laws, rules, regulations, and ordinances, when performing investigation and remedial work under this agreement.

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Before performing any oversight activities funded through this agreement at military installations, the Grantee shall consult with the appropriate Regional Water Board to determine whether the remediation is funded through the Defense Environmental Restoration Account (DERA) or through the Base Realignment and Closure (BRAC) Program. Any remediation identified as DERA or BRAC funded sites shall be immediately referred to the Regional Water Board for oversight. Any remediation at military installations which is not DERA or BRAC funded, and is otherwise eligible for the LOP, may remain in the LOP.

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FOR EACH SUSPECTED SITE

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1.1 Confirm Unauthorized Release (hereafter, release)

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a) In conjunction with the Unified Program Agencies (UPAs), the Grantee shall oversee confirmation of all suspected UST release sites within its programmatic jurisdiction. Included in this task is the inspection of an excavation pit or borings during removal or in-place closure of a UST associated with a suspected release. Suspected release does not include failure of a precision test unless other evidence exists supporting the conclusion that an unauthorized release may have occurred. The existence of a leak shall be confirmed by testing or inspection of the tank and appurtenant plumbing or sampling adjacent soil or water including any necessary uncovering of the UST and/or associated plumbing. In conjunction with the UPAs, the Grantee shall verify that an Unauthorized Release Form has been filed by the Responsible Party for each new release. The Grantee shall fill out an electronic New Project Form in the format provided in GeoTracker (see Section 5 of the Guidebook) to create a new case in the database by entering and editing data via the Internet. Activities normally associated with the UST permit program such as oversight of routine tank testing or retesting performed as part of a UST monitoring program are not covered under this agreement.

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b) The Grantee shall oversee investigation and remediation on all eligible leaking UST sites under this agreement unless an agreement is reached between the Grantee and appropriate Regional Water Board to transfer lead status of a case to the Regional Water Board. The Grantee shall notify the State Water Board of any transfer agreement. Case transfer can occur during any phase of the remediation project in accordance with State Water Board Resolution 2013-0001, UST LOP Procedures and Criteria for Certification.

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c) State funds may only be used for sites which involve releases from a UST as defined by H&SC section 25281(y). For purposes of this agreement, such UST includes any one or a combination of tanks, including pipes connected thereto, which is or was used for the storage of petroleum and which is substantially beneath the surface of the ground as defined in Section 2611 of Title 23, Division 3, Chapter 16 of the California Code of Regulations. "Substantially beneath the surface of the ground" means that at least ten (10) percent of the UST volume, including connected piping, is below the ground surface.

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Such a UST does not include:

- a tank or combination of manifolded tanks with a combined capacity of one thousand, one hundred (1,100) gallons or less which is located on a farm and which stores motor vehicle fuel used primarily for agricultural purposes and not for resale; nor
a tank that is located on a farm which has a capacity of one thousand, one hundred (1,100) gallons or less and which stores home heating oil for consumptive use on the premises where stored; nor
a tank that is located at the residence of a person which has a capacity of one thousand, one hundred (1,100) gallons or less that stores home heating oil for consumptive use on the premises where stored unless it meets the criteria of small heating oil tank as defined below; nor
any other facilities or structures specifically excluded from the definitions of a UST by

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H&SC section 25281(y) or excluded from regulation under H&SC section 25283.5.

In addition to USTs as defined above which require a permit to own or operate, State funds may be used when non-permitted tanks qualify as a "small home heating oil tank." In order to qualify as a small heating oil tank, the tank:

- must have a capacity of one thousand, one hundred (1,100) gallons or less and have been used exclusively since January 1, 1985 to store home heating oil for consumptive use on the property where the tank is located;
- cannot be located on a farm or property that was used for agricultural purposes since January 1, 1985;
- cannot have been used for agricultural purposes since January 1, 1985; and
- must be located at the residence (owner occupied single family dwelling or duplex) when the release was discovered.

Funds may be used at a private- or locally-owned site that meets H&SC section 25281(y) definition above as well as at state- or federally-owned sites.

d) Cases which involve actual or suspected non-petroleum releases from underground tanks shall not be the subject of any work under this agreement, except for those sites that involve actual or suspected commingling between non-petroleum releases and petroleum releases may be the subject of work under this agreement. The Grantee shall seek prior authority from the State Water Board's Grant Manager for use of Grant funds at commingled release sites. Any and all site costs at sites that are ultimately determined not to involve petroleum releases are ineligible for reimbursement under this agreement. Such cases shall be referred to the Regional Water Board or handled by the local agency at its own expense.

1.2 Identify and Notify Responsible Party(s) and Owners

a) The Grantee shall identify the Responsible Party or Parties and conduct an appropriate investigation to make such identification. This investigation shall, at a minimum, include a review of land title records at the County Recorder's Office, or equivalent (e.g., Dataquik), to identify the last assessee of record. Work shall not take place at any site before a Responsible Party has been identified.

b) Prior to initiating work at a site, the Grantee, using language specified by the State Water Board (see Section 8 of the LOP Guidebook), shall notify each Responsible Party who has been identified of Responsible Party's obligation to investigate and remedy UST releases. Each notice must be sent to the Responsible Party or Parties by way of certified mail; return receipt requested. The Grantee shall notify each Responsible Party of the names and addresses of other Responsible Parties on those sites that have multiple Responsible Parties. If a Responsible Party requests that they be considered secondarily responsible, then the Grantee shall make a determination of secondary responsibility only if requested to do so and both of the following apply:

- (1) The primary Responsible Party is performing corrective action, and
- (2) It is clear that the party seeking secondary status did not, in any way, initiate or contribute to the actual discharge.

If the primary Responsible Party fails to perform corrective action, then the secondary Responsible Party or Parties will be considered a primary Responsible Party. The Grantee shall provide notification to the affected Responsible Party or Parties for primary responsibility. If the Grantee makes a change in the determination as to who is a Responsible Party, the previously notified

Responsible Parties must be notified of the change and the basis for such change, by certified mail; return receipt requested.

H&SC section 25297.15 requires the primary or active Responsible Party to notify all current record owners of fee title for real properties affected before the local agency considers remediation or case closure proposals or issues a "Remedial Action Completion Certification" as identified in Section 6 of the LOP Guidebook. H&SC section 25297.15 also requires the primary or active Responsible Party to provide the local agency with a list of said owners. For purposes of implementing this

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section, the local agency shall determine who will be the primary or active Responsible Party. The Grantee shall inform the primary or active Responsible Party of these requirements with the language provided in Section 8 of the LOP Guidebook. The Grantee shall require the primary or active Responsible Party to comply with H&SC section 25297.15.

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1.3 Oversee Preliminary Site Assessment

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Task 1.3:

a) The Grantee shall oversee performance of a preliminary assessment of UST sites when unauthorized releases have been confirmed and Responsible Party, or Parties identified. Preliminary assessment begins the process of development of a conceptual site model and actions that culminate in case closure. Preliminary assessment includes, at a minimum, initial site investigation, initial abatement actions, and initial site characterization. The purpose of the preliminary assessment is to determine current and potential impacts to human health, safety, and the environment, including the extent of contamination in soil and groundwater. Soil samples shall be obtained to determine the concentration of pollutants in the soil and the vertical and lateral extent of contaminated soil. Oversight of preliminary site assessment also includes oversight of the following work: (1) removal or in-place closure of the UST and inspection of any related excavation pit or borings; (2) excavation and disposal or on-site treatment of contaminated backfill and surrounding native soils; (3) removal of any floating product and/or free product discovered during tank removal and soil excavation; and (4) drilling of groundwater wells as necessary to determine whether groundwater has been impacted. Oversight of preliminary site assessment does not include oversight of long term investigation and remediation.

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b) During preliminary site assessment, the Grantee shall consider methods described in the most recent version of the LUFT Manual or Regional Water Board preliminary site assessment guidelines, and direct responsible parties or their consultants to conform to all applicable State laws, rules, regulations, and local ordinances specifically, including but not limited to, environmental, procurement and safety laws, rules, regulations, and ordinances.

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c) If at any time during the preliminary assessment it becomes evident to the Grantee that work beyond preliminary assessment will be necessary, the Grantee shall proceed to Tasks 1.5 through 1.11 as appropriate.

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1.4 Determine Site Status and Notify State Water Board

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Based on data collected and analyzed during the preliminary site assessment, the Grantee shall make a determination as to whether: (1) the UST site has been adequately remediated by a Responsible Party through initial removal or remedial actions carried out during the preliminary site assessment, or (2) the UST site requires more extensive corrective action. Upon making this determination, the Grantee shall take one of the following actions:

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a) If the site has been satisfactorily remediated, the Grantee shall certify that fact as specified in "Task 1.11: Certification" and provide the Regional Water Board with documentation to that effect. Documentation shall be in a standard format as specified in Sections 6 and 9 of the LOP Guidebook.

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b) If additional corrective action is indicated, the Grantee shall continue with Items 1.5 through 1.11.

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1.5 Identify and Implement Path to Case Closure

- a) The Grantee shall annually review to determine if the case can be closed, and if not, identify impediments to meeting Closure Criteria.
- b) The Grantee shall annually prepare or update a Path to Closure Plan to address impediments to meeting Closure Criteria; the Path to Closure Plan shall be designed to achieve case closure in a timely and efficient manner that minimizes the cost of corrective action: the Path to Closure Plan will reflect the UST Project Execution Plan, if prepared.
- c) Identify regulatory agency actions needed to remove the impediments.
- d) After consulting with the responsible party, provide assistance with identifying cost-effective cleanup methods that the responsible party may use to meet Closure Criteria.
- e) Include specific tasks, milestones, timelines to meet Closure Criteria as part of the Path to Case Closure Plan for all open cases, and reflect the UST Project Execution Plan, if prepared.
- f) Take appropriate actions to ensure milestones and timelines are met including enforcement action.
- g) For Higher Threat Cases, the Grantee shall expeditiously render exposure pathways incomplete that may otherwise cause a significant impact to human health.
- h) For Higher Threat Cases with measurable free product, the Grantee shall enforce removal of free product in monitoring wells, sufficient to meet Closure Criteria, within two (2) years of discovering.
- i) For Higher Threat Cases, the Grantee shall report on the Path to Closure, as requested, in accordance with Item 3.9.

1.6 Oversee Investigation, Feasibility Study, and Corrective Action Plan

- a) If corrective action beyond preliminary assessment is necessary, the Grantee shall oversee an investigation of the site to collect sufficient information to add to and refine the conceptual site model, including the assessment of risk of exposure to humans. The Grantee shall use the conceptual site model to identify impediments to closure and an appropriate path to closure, including remedial action alternatives and remediation, as necessary.

In cases where groundwater is at risk, the investigation shall determine: (1) distance to nearest surface water, (2) depth to the highest groundwater, (3) the structure and composition of subsurface materials for the area affected, and (4) the current and potential beneficial uses of affected areas and contiguous surface and groundwater.

Whenever dissolved product is determined to be present in the ground or surface water or there is a risk that this may occur or for another good cause as determined by the Grantee, a soil and water investigation shall be performed in accordance with Section 2725, Article 11, Title 23, Division 3, Chapter 16 of the California Code of Regulations. This investigation shall, at a minimum, include analysis of the beneficial uses of water at risk (for example, such an investigation might assess the population using the threatened water supply and the proximity of public and private water supply wells or other exposure pathways). The results of the investigation shall be used in evaluating remediation and remedial action alternatives.

- b) The Grantee shall oversee the preparation of a feasibility study report that identifies and evaluates feasible alternatives for remediating the site and remedying current and future threats to public health and safety. The effectiveness of an alternative shall be evaluated using the following primary criteria: (1) human health and safety risk; (2) ground or surface water polluted; (3) beneficial uses affected; (4) carcinogenicity of pollutant; and (5) threat of contamination to ground or surface water. Secondary criteria shall also be evaluated and shall include consideration of: (1) availability of an alternative water supply, and (2) vulnerability of the water supply. Remedial action options may include the following or other actions, in any combination: (1) excavation; (2) leave in place; (3) enhanced bio-degradation; (4) soil venting; (5) free product removal; (6) air stripping; (7) treatment at individual water supply hookup; (8) replacement of water supply; and (9) relocation of residents.

- c) The Grantee shall oversee the preparation of a corrective action plan that identifies the selected remedial action alternative and sets forth the details for implementation of the selected action.

The Grantee shall concur on the corrective action plan only after: (1) taking all reasonable steps necessary to accommodate responsible landowner participation in the remediation or case

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closure process; (2) considering all input and recommendations from any responsible landowner wishing to participate; and (3) concluding that implementation of the plan will adequately protect human health, safety, and the environment.

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d) The Grantee shall oversee the establishment of the schedule, format, and procedures for the corrective action plan. One (1) or more documents may be incorporated to meet all requirements of the corrective action plan.

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1.7 Provide Public Participation Opportunity

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a) The Grantee shall comply with provisions of article 11, section 2728, Public Participation requirements of the Underground Storage Tank Regulations.

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b) The Grantee shall design and implement a UST release case reporting procedure which complies with requirements of H&SC section 25180.7.

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c) The Grantee shall certify, on all UST release reports submitted, that the reporting requirements of H&SC section 25180.7 have been met. Such certification does not mean that the release has been determined to pose a significant threat to human health or safety, only that notification procedures have been followed, if they were required.

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d) The Grantee shall notify the following entities of the proposed case closure and shall provide a sixty (60) day period to comment: the applicable municipal and county water districts; water replenishment districts; special act districts with groundwater management authority; agencies with authority to issue building permits for land affected by the petroleum release; owners and occupants of the property impacted by the petroleum release; and the owners and occupants of all parcels adjacent to the impacted property.

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The Grantee shall consider any comments received when determining if the case should be closed or if site specific conditions warrant otherwise.

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1.8 Reopen Closed Case

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The Grantee may reopen a closed case if the Grantee obtains information that it considers sufficient justification to reopen the case. UST cases may be reopened if information about the release that was provided to the regulatory agency was inaccurate or not representative of site conditions, if site conditions change, or if actual or anticipated uses of groundwater changes. The Grantee shall not reopen a case that meets the Closure Criteria. The justification to reopen a case shall be referenced in a directive letter to the Responsible Party and uploaded to GeoTracker. The Grantee shall not reopen a case that has been closed by the State Water Board, unless the Grantee identifies new information that was not available and previously considered when the State Water Board ordered case closure, and this new information results in the case no longer meeting the Closure Criteria. A violation of this provision constitutes a failure by the Grantee to perform in accordance with this agreement and shall be grounds for the State Water Board to order the Grantee to suspend work under this agreement and may terminate this agreement.

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1.9 Oversee Remedial Action

a) The Grantee shall oversee implementation of the corrective action plan. The Grantee shall establish a schedule and format for the Responsible Party to monitor, evaluate, and report the results of implementing the corrective action plan.

b) Interim remedial action is corrective action that takes place outside of the corrective action plan, either because it was needed as determined by the Grantee earlier in the investigative process or conditions developed to protect public health and safety or the environment that required immediate remediation. Interim remedial action can occur concurrently with any phase of corrective action.

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c) The Grantee shall not approve long-term or multiple interim remedial actions; that practice avoids development and approval of an efficient and cost-effective corrective action plan.

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1.10 ~~Oversee Post Remedial Action Monitoring~~

~~The Grantee shall, when appropriate, oversee periodic groundwater or other monitoring of the site, as necessary, following remedial action. Groundwater monitoring requirements must be semi- annual or less frequent at all sites. If more than semi-annual monitoring is required for a case, the Grantee shall notify the Responsible Party and State Water Board of the rationale and shall post the notice on GeoTracker.~~

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1.11 ~~Issue Certification~~

- a) ~~When the case meets Closure Criteria, the Grantee shall summarize closure data on the Case Closure Summary Form identified in Section 9 of the LOP Guidebook, or a revised form if provided by the Grant Manager during the term of this Agreement. This form must be signed by the Environmental Health Director (or equivalent) and uploaded to GeoTracker, forwarded to all Responsible Parties, and landowners identified pursuant to H&SC sections 25297.1 and 25297.15. Signature authority may be delegated to a qualified individual within the Grantee's organization upon written notification from the Environmental Health Director (or equivalent) to the State Water Board Grant Manager. The Grantee shall submit copies of the draft Case Closure Summary Form to the Regional Water Board thirty (30) days prior to case closure.~~
- b) ~~Prior to preparation of the Case Closure Summary, the case must have been tested for the presence of Methyl Tertiary Butyl Ether (MTBE), except diesel and jet fuel sites where the Grantee is certain that MTBE was never present. The Grantee may require testing for MTBE at a diesel or jet fuel site if there is evidence that MTBE may have been, or is, present at the site.~~
- c) ~~If disputes arise regarding case closures that cannot be resolved between the Grantee and Regional Water Board staff, the Grantee may choose to close the case or transfer the case to the Regional Water Board for further oversight.~~
- d) ~~The Grantee shall oversee the proper destruction of monitoring wells and borings and the removal of all waste material derived from investigation or remediation activities. In addition, for case closures ordered by the State Water Board, the Grantee shall also notify the State Water Board of the completion of well destruction and waste removal tasks within thirty (30) days of receipt of notification from the Responsible Party and input this information into GeoTracker.~~
- e) ~~To close a case, the Grantee shall certify that remedial action is complete by using the "Remedial Action Completion Certification" (uniform closure letter, H&SC section 25296.10) and upload the certification to GeoTracker for public review. The Remedial Action Completion Certification shall be identical to the language specified in Section 6 of the LOP Guidebook. The certification shall be signed by the Environmental Health Director (or equivalent) and mailed to the Responsible Party or Parties for the site. Signature authority on this certification shall not be delegated. The Grantee is required to upload signed copies of the Final Case Closure Summary and Remedial Action Completion Certification (in "pdf" format) to GeoTracker.~~

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2. ~~Exercise Enforcement Action~~

~~All necessary and warranted enforcement actions shall be taken by the Grantee including referral to the appropriate local prosecutorial agency. If local action is not feasible or timely, the Grantee should seek enforcement actions through the Regional Water Board. Any case referred to the Regional Water Board for enforcement shall be removed from the LOP and the Regional Water Board shall become the lead agency, unless both the Grantee and the Regional Water Board agree to keep the case in the LOP. A copy of all enforcement notifications shall be uploaded timely to GeoTracker for review by Regional Water Board and UST Cleanup Fund.~~

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~~The Grantee shall notify the State and Regional Water Board whenever it determines that a release site involves: (1) an insolvent Responsible Party, or (2) a Responsible Party who refuses to take action to remedy the site at the direction of the Grantee. The State Water Board will make a decision, on a case- by-case basis, regarding the disposition of those sites.~~

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After the Grantee receives a signed Review Summary Report with a Fund Manager determination that case closure is appropriate, the Grantee shall not issue new or enforce existing corrective action directives for a UST case accordance with H&SC section 25299.39.2(a)(1)(A), until the State Water Board issues a decision on the closure of the UST case, unless one of the following applies:

- a) The Grantee demonstrates to the satisfaction of the UST Cleanup Fund manager that there is an imminent threat to human health, safety, or the environment;
 - b) The Grantee demonstrates to the satisfaction of the UST Cleanup Fund manager that other site- specific needs warrant additional directives during the period that the board is considering case closure;
 - c) After considering responses to the Review Summary Report and other relevant information, the UST Cleanup Fund manager determines that case closure is not appropriate;
 - d) The Grantee closes the tank case but the directives are necessary to carry out case-closure activities.
3. Submit Reports and Data

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GEOTRACKER 2 SCREEN	GEOTRACKER 2 FIELD NAME
Project Information	Site History
Project Information	Case Number
Project Information	Cleanup Oversight Agency
Project Information	Lead
Project Information	Lead Date
Project Information	Latitude/Longitude
Project Information	Human Health Exposure/Controlled/Date
Project Information	Groundwater migration/Controlled/Date
Risk Information	Release Type
Risk Information	Contaminant(s) of Concern
Risk Information	Redevelopment Planned (Yes/No)
Risk Information	Current Land Use
Risk Information	Beneficial Use
Risk Information	Potential Media of Concern
Risk Information	# Impacted Drinking Water Wells
Risk Information	Report Date
Risk Information	Discharge Cause
Risk Information	Discharge Source
Facility / Site Address	Is this Project a Residence
Facility / Site Address	Project Name
Facility / Site Address	Street #
Facility / Site Address	Street Name / Location
Facility / Site Address	City
Facility / Site Address	Zip
Facility / Site Address	County

Contacts/Search to Add Contact	Oversight Agency/Regional Board/Responsible Party Contact
Contacts/Search to Add Contact	Begin Date (for each contact)
Contacts/Search to Add Contact	End Date (for each contact that is historical)
Activities Report/Regulatory Action	Type (Deed Restriction, CAOs, MRPs, 13267 Letters, etc.)/Date
Activities Report/Compliance Rsp	Type (Workplans, Reports, Other) Issue Date/Received Date
Activities Report/Compliance Rsp	Reviewed (Y/N)
Cleanup Action	Method

- 3.1 The Grantee costs associated with data systems other than GeoTracker, that include information provided by responsible parties that is within the scope of GeoTracker, are not covered by this Agreement.
- 3.2 The Grantee shall submit written reports in accordance to the schedule outlined in Section 10 of the LOP Guidebook unless the Grantee certifies that, for all open cases, all required fields in GeoTracker are current and correct. Site-specific information shall be sent to the Regional Water Board unless the Regional Water Board requests otherwise.
- 3.3 The Grantee shall submit a regular, quarterly written summary to the State Water Board Grant Manager unless the Grantee certifies that all required fields (described in 3.5 below) are current and correct for open cases in GeoTracker. Said report shall be in a standard format as described in Section 5 of the LOP Guidebook.
- 3.4 The Grantee shall maintain the case management data in GeoTracker using the GeoTracker data dictionary, fields, and valid values, by entering and editing data "real-time" via the Internet.
- 3.5 For each open case, payment of the Grantee's invoices for site specific work may be withheld until required current information for that case is in GeoTracker. The Grantee acknowledges that the State Water Board may periodically identify different data fields or additional categories of information required to be maintained in GeoTracker. Required fields as appropriate include, but are not limited to, the following:

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GEOTRACKER 2 SCREEN	GEOTRACKER 2 FIELD NAME
Project Information	Site Type
Project Information	Status
Project Information	Status Date
Project Information	Funding for Remediation
Project Information	File Location
Project Information	RP Identification
GEOTRACKER 2 SCREEN	GEOTRACKER 2 FIELD NAME
Cleanup Action/New Cleanup Action/Insert New	Removal / Remedial Method/Begin Date/End Date
Cleanup Action/New Cleanup Action/Insert New	Est. Completion Date Action End Date
Cleanup Action/New Cleanup Action/Insert New	Treated Phase Est. Completion Date
Cleanup Action/New Cleanup Action/Insert New	Volume Treated Treated Phase

Cleanup Action/ New Cleanup Action/Insert New	Contaminant Mass Removed Volume Treated
Community Involvement	Public Participation Description/Document Type/Date
Project IDs/Names/APNs	Project ID Type
Site Documents	Upload to New Regulatory Action
Site Documents	Upload RP/3rd Party Document

3.6 The Grantee shall implement and maintain record keeping and accounting systems that are appropriate to track activities and costs involved in its performance of the abatement of, or oversight of the abatement of, unauthorized releases of hazardous substances from USTs.

Grantee shall report to the State Water Board Grant Manager and Program Analyst any changes to the LOP's contact information shown on the State Water Board website at: http://www.waterboards.ca.gov/water_issues/programs/ust/contacts/lop.shtml. Such changes shall be reflected concurrently on the Grantee's organization chart.

3.7 The Grantee shall cease acting as the lead agency for the LOP on UST remediation cases that are relinquished to a Regional Water Board and with respect to such will advise the Regional Water Board and the State Water Board of all site addresses, Responsible Parties, and Responsible Party addresses. Grantee shall provide all files for relinquished cases that are maintained by the LOP to the Regional Water Board to the extent the files are not duplicative of Regional Water Board files for the relinquished case.

3.8 Using the form and instructions contained in Section 4 of the LOP Guidebook, the Grantee shall provide an informational report on each of the training courses taken by technical staff as completed per Task 5. The report shall be submitted to the State Water Board Grant Manager with each invoice. Information provided on the form must include course title and course date.

3.9 The Grantee shall and provide information, as requested, regarding the Grantee's progress toward closure of Higher Threat Cases.

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

4. Petition Response

In accordance with procedures established by the State Water Board in Resolution 88-23 (see Section 11 of the LOP Guidebook), any Responsible Party or other aggrieved person may petition the State Water Board for review of any action or inaction by the Grantee under the agreement. Upon request from the

Petitioner, as discussed in Section 11 of the LOP Guidebook, or the State Water Board's Grant Manager, the Grantee shall provide a copy of the complete case file to the State Water Board.

When the Grantee is requested by the State Water Board to provide a response to a petition, the response must be signed by a representative at the Grantee's Environmental Health Director level (or equivalent). Signature authority may be delegated to a qualified individual within the Grantee's organization upon written notification from the Environmental Health Director (or equivalent) to the State Water Board Grant Manager.

The State Water Board retains final authority for disposition of petitions; however, nothing in this agreement prevents the Grantee from establishing an intermediate process for resolving disputes at the local level. Any intermediate appeal process that includes review by a Regional Water Board must be set forth in a written agreement between the Regional Water Board and the Grantee. The agreement must be consistent with the terms of this Agreement and provide a means for ensuring that a copy of any petition is forwarded to the State Water Board within ten (10) days of receipt by

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the Grantee.

When a Responsible Party believes it has satisfactorily implemented the corrective action plan for a site and requests case closure, if the Grantee denies that request, the following paragraph shall be included in the Grantee's letter to the Responsible Party:

"This decision is subject to appeal to the State Water Resources Control Board (State Water Board), pursuant to H&SC section 25296.40(a) (1), (Thompson-Richter Underground Storage Tank Reform Act - Senate Bill 562). Please contact the State Water Board Underground Storage Tank Program at (916) 341-5752 or visit the State Water Board internet website at <http://www.waterboards.ca.gov/ust/cleanup/petitions.shtml> for information regarding the appeals process."

5. Complete UST Technical Training Requirement

All Grantee staff performing case management and oversight activities covered by this Agreement are required to attend a minimum of sixteen (16) hours of UST technical training per year (required sixteen (16) hours can include 8 hours of Health and Safety Training or Refresher course) covering site investigation and remediation. The Grantee shall provide a report which lists, by technical staff person, training courses attended and hours. This report shall be submitted pursuant to Item 3.

The LOP Director, or designee(s), must attend State Water Board quarterly roundtable meetings and periodic policy and performance sessions scheduled during the year and must transmit relevant meeting information to appropriate LOP agency management and staff.

6. Achieve Performance Measures

The Grantee will perform the following during this Grant Agreement period:

6.1 Enforce compliance with Electronic Submission of Information (ESI) for all Grantee-lead cases in GeoTracker.

6.2 Review all Grantee-lead open cases to determine whether Closure Criteria have been met; document on GeoTracker the impediments to closure and the steps to resolve the impediments listed in the Path to Closure Plan.

6.3 Develop and update milestones as necessary for all Grantee-lead open cases, a Path-to-Closure Plan, that addresses the impediments to closure documented in GeoTracker and is designed to achieve case closure in a timely and efficient manner that minimizes the cost of corrective action.

6.4 Respond to all closure requests within sixty (60) days of receipt from the Responsible Party.

6.5 Close a minimum of ten (10) percent of Grantee-lead cases. The number of cases will be calculated based on the number of Grantee-lead cases open on July 1, 2015. The Grantee shall report this number to the Water Board Program Analyst upon Grant award.

6.6 Timely close regulatory cases eligible for closure. The Grantee shall:

a) For those cases determined eligible for closure prior to July 1, 2015, issue the notice for public comment no later than November 1, 2015; and

b) For cases determined eligible for closure on or after July 1, 2015, issue the notice for public comment no later than ninety (90) days after the determination.

6.7 Enforce removal of measurable free product in monitoring wells, sufficient to meet the Closure Criteria, at all Grantee-lead cases within two (2) years from the time of discovery.

6.8 Expedite corrective action at all Grantee-lead cases where drinking water supply wells have petroleum constituent concentrations greater than the maximum contaminant level.

6.9 Respond to all work plans submitted for Grantee-lead cases within sixty (60) days of receipt from the Responsible Party.

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6.10 For all Grantee-lead cases where the State Water Board has issued a closure order, oversee well destruction and waste removal closure activities at the site and notify the State Water Board that closure activities are complete within thirty (30) days of receipt of documentation from the Responsible Party.

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7. Suspend Work

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7.1 For cases reviewed by State Water Board staff under HS&C section 25299.39.2, the Grantee will be provided a Review Summary Report unsigned by the Fund Manager and an opportunity for comment. For those cases for which the Grantee receives a signed Review Summary Report with a Fund Manager determination that case closure is appropriate, the Grantee shall not issue new or enforce existing corrective action directives for the UST case except under certain circumstances described in Item 2.

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7.2 The State Water Board may order the Grantee, in writing, to suspend, delay, or interrupt all or any part of the work under this agreement for such period of time as the State Water Board determines to be appropriate for the convenience of the State Water Board or because of alleged failure of the Grantee to perform in accordance with the provisions of this agreement. The Grantee shall suspend, delay, or interrupt work as directed in such written order and shall resume the suspended work only upon receipt of written notice to proceed from the State Water Board.

7.3 If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted for the convenience of the State Water Board, or by an act of the State Water Board in violation of State Water Board obligations under this agreement, or by failure of the State Water Board to act within the time specified in this agreement, an equitable adjustment shall be made for any increase in the cost of performance of work under this agreement (excluding profit) caused by such unreasonable suspension, delay, or interruption and the agreement shall be modified in writing accordingly. No equitable adjustment shall be made under this "Exhibit" for any suspension, delay, or interruption to the extent that (1) performance would have been so suspended, delayed, or interrupted by any other cause, including fault or negligence on the part of the Grantee, or (2) to the extent that performance is suspended, delayed, or interrupted due to failure or default of the Grantee in fulfillment of any obligation under this agreement, or (3) for which an equitable adjustment is provided for or excluded under any other provision of this agreement.

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7.4 No Grantee claim under "Suspension of Work" for alleged increase in costs due to suspension, delay, or interruption of work shall be allowed (1) for any costs incurred more than ten (10) days prior to written notice from the Grantee stating that the Grantee asserts that an act or failure to act by the State Water Board has or is suspending, delaying, or interrupting work under the agreement (but this requirement shall not apply to a written suspension order issued by the State Water Board), and (2) unless the amount of monetary claim by the Grantee is asserted in writing and provided to the State Water Board as soon as practical after the termination of such suspension, delay, or interruption.

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7.5 No suspension order issued by the State Water Board because of alleged fault or negligence on the part of the Grantee, or because of alleged failure or default of the Grantee in fulfillment of any obligation under this agreement, shall be deemed to preclude the State Water Board from thereafter terminating this agreement for the same fault, negligence, failure, or default which gave rise to the suspension order.

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7.6 If it is ultimately determined that alleged fault or negligence on the part of the Grantee did not occur, and that the Grantee was not guilty of any failure or default in fulfillment of agreement obligations, the suspension order shall be deemed to have been given for the convenience of the State Water Board and the agreement price shall be equitably adjusted as provided in Item 7.3 above.

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EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

A. INVOICING AND PAYMENT

- 1. Upon receipt and approval of the invoices, the State Water Board agrees to compensate Grantee for actual allowable and appropriate expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.
- 2. Personnel hourly rates shall not exceed those indicated in the budget without an approved amendment.
- 3. Invoices shall include the Agreement Number and shall be submitted once each quarter in arrears (October, January, April, and the final by September 30, 2016) to:

Randy Indvik, Program Analyst
 State Water Resources Control Board - Division of Financial Assistance
 1001 I Street, 17th Floor, Sacramento, CA 95814

- 4. One (1) approved copy of the invoice or payment request will be forwarded to the State Water Boards' Accounting Operations Section by the Program Analyst. Invoices shall be paid within forty five (45) calendar days. Payment of any invoice will be made only after receipt of a complete, adequately supported, properly documented and accurately addressed invoice or payment request. Failure to use the address exactly as provided above may result in return of the invoice or payment request to Grantee. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. All invoices must be approved by the Grant Manager.
- 5. Grantee shall use the invoice template provided by the State Water Board. The invoice shall include the following information:
 - a. Printed name of Grantee;
 - b. Business address of Grantee, including P.O. Box, City, State, and Zip Code;
 - c. The number of the Agreement upon which the claim is based;
 - d. An itemized account of the services for which the State Water Board is being billed;
 - e. Grantee Invoice number;
 - f. The time period covered by the Invoice, i.e., the term "from" and "to";
 - g. Grantee's submittal date;
 - h. The method of computing the amount due. On cost reimbursable Agreements, invoices must be itemized based on the categories specified in the Budget. The amount claimed for salaries/wages/consultant fees must also be explained; i.e., hours or days worked times the hourly or daily rate equals (=) the total amount claimed;
 - i. The total amount due; the total amount due shall include all costs incurred by the Grantee under the terms of this Agreement during the time period covered by the invoice;
 - j. Any Purchase Order(s) and Property Inventory In-Put Document(s) related to equipment purchased during the invoice period.
 - k. Original signature and date (in ink) of Grantee or its authorized representative.

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6. LIMITATION OF STATE LIABILITY

- The maximum amount payable under this Agreement shall not exceed ONE MILLION, ~~FIFTY SIX THOUSAND NINE HUNDRED FIFTY FIVE~~ DOLLARS (\$1,056,955.00).
- Reimbursement shall be made for allowable expenses up to the amount encumbered.
- Grantee shall be limited to reimbursement of costs actually incurred in administration of the LOP, provided the total reimbursement shall not exceed two hundred twenty-seven dollars (\$227) per hour multiplied by the total hours of site-specific oversight work performed. The two hundred twenty-seven dollars (\$227) maximum is based on a cumulative average of all current-year invoices submitted to date. (Per 25297.1(i)(4)(C) determined in April 2011 @ Department of Finance [website http://www.dof.ca.gov/HTML/FS_DATA/LatestEconData/documents/BBDEF05.xls](http://www.dof.ca.gov/HTML/FS_DATA/LatestEconData/documents/BBDEF05.xls)).

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- Grantee shall not be reimbursed for any site activities for which local fees have been levied to cover Grantee expenses, e.g., oversight of the removal or in-place closure of the UST.
- Grantee shall not be reimbursed for overtime charges except with the prior written approval of the Grant Manager.

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7. BUDGET CONTINGENCY CLAUSE

It is mutually agreed that 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 further force and effect. In this event, the State Water Board 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.

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

The State Water Board's obligation to make any payments under this Agreement shall be suspended during such time as the Budget Act covering that fiscal year has not been approved by the Legislature and signed into law by the Governor.

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8. REMAINING BALANCE

In the event the Grantee does not submit invoices requesting all of the funds encumbered under this Grant Agreement, any remaining funds revert to the State. The State Water Board will mail a Notice of Project Completion letter to the Grantee stating that the project file is closed, the final invoice is being processed for payment, and any remaining balance will be disencumbered and unavailable for further use under the Grant Agreement.

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9. PROMPT PAYMENT CLAUSE

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

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10. TIMELY SUBMISSION OF FINAL INVOICE

Based on the agreement expiration date, of June 30, 2016, a final undisputed invoice shall be submitted for payment no more than ninety (90) calendar days following the expiration or termination date of this Agreement, unless a later or alternate deadline is agreed to in writing by the Grant Manager. Said invoice should be clearly marked "Final Invoice," thus indicating that all payment obligations of the Water Board under this Agreement have ceased and that no further payments are due or outstanding.

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The State Water Board may, at its discretion, choose not to honor any delinquent final invoice if Grantee fails to obtain prior written State Water Board approval of an alternate final invoice submission deadline.

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Written State Water Board approval shall be sought from the Grant Manager prior to the expiration or termination date of this Agreement.

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Final invoice shall be clearly marked "FINAL INVOICE" and submitted NO LATER THAN SEPTEMBER 30, 2016. The Grantee shall not be reimbursed for invoices submitted after this date.

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11. SUBCONTRACTING

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As a requirement of this Agreement (and any amendments thereto) subcontracting is limited to fifty thousand dollars (\$50,000) or twenty-five (25) percent of the total Agreement, whichever is less. If the total of all subcontracts exceeds the limitation, all subcontracts must be in accordance with the following conditions:

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Subcontract service(s) must be selected by the primary Grantee pursuant to a bidding process requiring at least three (3) bids from responsible bidders. A bidding process is not required when a subcontractor(s) is one of the following entities:

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Entities excluded from bidding:

- 1) Another state entity, including:
 - a. A governmental agency from any state (Public Contract Code § 10340)
 - b. A state college or state university from any state,
- 2) A local governmental entity or agency, including those created as a Joint Powers Authority (JPA)
- 3) An auxiliary organization of the California State University (CSU), or a California community college
- 4) The Federal Government
- 5) A foundation organized to support the Board of Governors of the California Community Colleges, or
- 6) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,

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By signing this Agreement, Grantee is certifying selection of a non-excluded subcontractor(s) was pursuant to a bidding process requiring at least three (3) bids from responsible bidders.

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The State Water Board will only pay overhead charges on the first twenty-five thousand dollars (\$25,000) for each subcontract.

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12. EXPENSE ALLOWABILITY/FISCAL DOCUMENTATION

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Invoices received from a Grantee and accepted and/or submitted for payment by the State Water Board, shall not be deemed evidence of allowable Agreement costs.

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Grantee shall maintain for review and audit and supply to the State Water Board upon request, adequate documentation of all expenses claimed pursuant to this Agreement to permit a determination of expense allowability.

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If the allowability or appropriateness of an expense cannot be determined by the State Water Board because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the State Water Board. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.

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If travel is a reimbursable expense, receipts must be maintained to support the claimed expenditures. Costs and/or expenses deemed unallowable are subject to recovery by the State Water Board. See provision 13 in this exhibit entitled, "Recovery of Overpayments" for more information.

13. RECOVERY OF OVERPAYMENTS

Grantee agrees that claims based upon this Agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by the State Water Board by one of the following options:

- 1) Grantee's remittance to the State Water Board of the full amount of the audit exception within thirty (30) days following the State Water Board's request for repayment;
- 2) A repayment schedule, which is agreeable to both the State Water Board and Grantee.

The State Water Board reserves the right to select which option will be employed and Grantee will be notified by the State Water Board in writing of the claim procedure to be utilized.

Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to Grantee beginning thirty (30) days after Grantee's receipt of the State Water Board's demand for repayment, or commencing on the date that an audit or examination finding is mailed to Grantee if applicable.

If Grantee has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If Grantee loses the final administrative appeal, Grantee shall repay, to the State Water Board, the over, claimed or disallowed expenses, plus accrued interest. Interest accrues from Grantee's first receipt of State Water Board's notice requesting reimbursement of questioned audit costs or disallowed expenses.

14. BUDGET FLEXIBILITY CLAUSE

Subject to the prior review and approval of the Grant Manager, line item shifts of up to a cumulative maximum of twenty-five thousand dollars (\$25,000) or ten (10) percent of the annual Agreement total, whichever is less, may be made over the life of the Agreement.

There must be a substantial business justification for any shifts made. Fund shifts which increase Indirect, Overhead or General Expense line items are prohibited.

Line item shifts may be proposed / requested by either the State Water Board or Grantee in writing, and must not increase or decrease the total Agreement amount allocated. Any line item shifts must be approved by the Assistant Deputy Director of the Division of Financial Assistance, Cleanup Fund Branch, or his/her designee.

If the Agreement is formally amended, any line item shifts agreed to by the parties must be included in the amendment.

15. PAYMENT OF PROJECT COSTS

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

16. AUDIT DISALLOWANCES

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

17. 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

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Deleted: 10. EQUIPMENT PURCHASES PROVISION¶

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A. When purchasing equipment with State funds, each item must be tagged with a State property identification tag. Upon request from Contractor's Administrative Representative, the Property Control Officer will provide the Property Inventory In-Put

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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.)

EXHIBIT B. ATTACHMENT I
BUDGET
FY 15/16 (7/1/15 - 6/30/16)

Personnel Services	Positions	# of Hours	Hourly Rate *	Annual Cost *
Geologist	0.84	1747.2	\$ 65.86	\$ 115,065
Haz Waste Specialists	4.02	8361.6	\$ 62.22	\$ 520,296
Sup Haz Waste Specialist	0.69	1435.2	\$ 68.45	\$ 98,246
Senior Civil Engineer	0.01	20.8	\$ 100.11	\$ 2,082
Admin Manager-LOP	<u>0.34</u>	707.2	\$ 88.00	\$ 62,232
Total Number of Positions	5.9		Total Personnel	\$ 797,922
* Hourly Rate and Annual Cost Include Fringe Benefits.				
Operating Expenses				
Communications				\$ 1,000
Office Expenses (including postage)				\$ 250
CoreLogic (online data subscription)				\$ 500
Professional Licenses				\$ 1,000
Training, including CUPA Conference registration for 6 staff				\$ 6,000
Laboratory				\$ 798
			Total Operating Expenses	\$ 9,548
Equipment				
				\$ -
			Total Equipment	\$ -
Travel / Transportation				
Travel Mileage Vehicle Expense				\$ 2,000
			Total Travel / Transportation	\$ 2,000
Indirect Costs				
Indirect Costs 31% of Personnel				\$ 247,485
			Total Costs	\$ 1,056,955

Deleted: 1001 I Street, 18th Floor
 Sacramento, CA 95814

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 C. Once the Property Control Officer has received the completed Property Inventory In-Put Document, along with the purchase order (PO) for the item, a property identification tag will be assigned to each piece of equipment. The Property Control Officer, in coordination with the Contract Manager and Contractor's Administrative Representative, will provide Contractor with a copy of the Property Inventory In-Put Document and the State Property Identification Tag(s). Per the Property Inventory In-Put Document, each piece of equipment must have the proper identification tag and it must be adhered to the equipment.

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 D. Upon completion of the Contract, the Contract

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EXHIBIT C
THE STATE WATER BOARD GENERAL 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: 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. 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. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Grantee agrees to include a similar right of the State to audit records and interview staff in any contract related to performance of this Agreement.
5. CHILD SUPPORT COMPLIANCE ACT: 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. 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 Grantees and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. This includes, but is not limited to, compliance with any applicable requirements contained in directives or orders issued pursuant to Division 7 of the Water Code.
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. and the Grantee shall attempt to resolve potential disputes. If a dispute persists, Grantee shall submit to the Deputy Director of the DFA a written demand for a final decision. The decision of the Deputy Director, or his or her authorized representative, 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 Deputy Director shall be final and conclusive unless, within thirty (30) calendar days of the date of the Division decision, the State Water Board's Executive Director, receives a written appeal. The Grantee's written appeal shall be fully supported by any factual information Grantee desires to be considered in the decision. The Executive Director's decision 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. 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 in the event of any subsequent legal proceeding before a court of competent jurisdiction.
10. DRUG-FREE WORKPLACE REQUIREMENTS: 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

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SPECIAL TERMS AND CONDITIONS¶

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1. DISPUTE RESOLUTION PROCESS: Any

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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 payments or termination of the grant or both, and Grantee may be ineligible for award of any future state grants if it is determined that any of the following has occurred: the Grantee has made false certification, or violated the certification by failing to carry out the requirements as noted above.

- 11. DROUGHT EMERGENCY WATER CONSERVATION: The Grantee agrees to comply with the State Water Board's Drought Emergency Water Conservation regulations in Article 22.5 of Chapter 2 of Division 3 of Title 23 of the California Code of Regulations. The Grantee agrees to include a discussion of progress and compliance in reports submitted pursuant to this Agreement.
- 12. 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.
- 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 RESPONSIBILITIES FOR WORK: The Grantee shall be responsible for work and for persons or entities engaged in work, including, but not limited to, 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. 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: Throughout the term of this Agreement, the State Water Board shall have the right to inspect the project area to ascertain compliance with this Agreement.

19. NONDISCRIMINATION: During the performance of this Agreement, the Grantee and its Grantees shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, religion, color, national origin, ancestry, religious creed, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40) marital status, or denial of family-care leave. Grantee and its subcontractors, if any, shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Grantee and its subcontractors, if any, shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing commission implementing Government Code Section 12990 (a-f), 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.

Grantee and its subcontractors, if any, shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Grantee shall include the nondiscrimination and compliance provisions of this clause in all contracts to perform work under the Agreement.

20. NO THIRD PARTY RIGHTS: The parties to this grant Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this grant Agreement, or of any duty, covenant, obligation or undertaking established herein.

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, if any, consistent with the purposes for which this Grant was made. The Grantee assumes all operations and maintenance costs of the facilities and structures; the State Water Board shall not be liable for any cost of such maintenance, management or operation.

23. PAYEE DATA RECORD FORM (Std. 204). The Grantee must complete the Payee Data Record Form.

24. PERMITS, CONTRACTING, WAIVER, REMEDIES AND DEBARMENT: The Grantee shall procure all permits and licenses necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Any Grantees, outside associates, or consultants required by the Grantee in connection with the work to be performed 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 Grantees, associates, or consultants, shall be subject to the prior written approval of the State Water Board's Grant Manager. Any waiver of rights with respect to a default or other matter arising under the Agreement at any time by either party shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State provided for in this Agreement are in addition to any other rights and remedies provided by law. The Grantee shall not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order

12549, "Debarment and Suspension". The Grantee shall not contract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35; Gov. Code § 4477.) The Grantee certifies to the

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Deleted: 12549, "Debarment and Suspension". Contractor shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code 4477)

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5. TRAVEL AND PER DIEM: Any reimbursement for necessary travel and per diem shall, unless otherwise specified in this Agreement, be at the rates currently in effect, as established by the California Department of Human Resources (Cal HR). If the Cal HR rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary. Local government agency, education and special districts will pay travel time and per diem according to their respective statutory requirements. No travel outside the state of California shall be reimbursed without prior authorization from the Water Board. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.¶

¶
6. CANCELLATION / TERMINATION WITHOUT CAUSE: In addition to the "Termination for Cause"

best of its knowledge and belief, that it and its principals:

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

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.

Deleted: in Section 7 of Exhibit C of

26. RELATED LITIGATION: Under no circumstances may a Grantee use funds from any disbursement under this Grant Agreement to pay costs associated with any litigation the Grantee pursues against the State Water Board or any Regional Water Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Grantee agrees to complete the Project funded by this Agreement or to repay all of the grant funds plus interest.

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27. RIGHTS IN DATA: The Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement shall be in the public domain. The Grantee may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Agreement, subject to appropriate acknowledgement of credit to the State Water Board for financial support. The Grantee shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so.

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28. 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 § 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.

29. CANCELLATION / TERMINATION: This agreement may be cancelled or terminated by either party by giving thirty (30) days advance written notice to the other party. Such notification shall state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements. Upon receipt of a notice of termination or cancellation from the State Water Board, Grantee shall take immediate steps to stop performance and to cancel or reduce subsequent Project costs. Grantee shall be entitled to payment for all allowable costs authorized under this Agreement, including

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authorized non-cancelable obligations incurred up to the date of termination or cancellation, provided such expenses do not exceed the stated maximum amounts payable.

30. TIMELINESS: Time is of the essence in this Agreement. The Grantee shall proceed with and complete the Project in an expeditious manner.

31. 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 Grant Manager.

32. URBAN WATER MANAGEMENT: The Grantee certifies that this Project complies with the Urban Water Management Planning Act (Water Code, § 10610 et seq.). This shall constitute a condition precedent to this Agreement.

33. 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.

34. WATER RIGHTS: The Grantee certifies that it is in compliance with part 5.1 of division 2 of the Water Code and, if applicable, that it has filed and will continue to file its required Statements of Diversion and Use with the State Water Board in accordance with sections 5101 and 5103 of the Water Code.

35. 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.

Deleted: Termination Process (for both Terminations for Cause and Terminations without Cause):

¶ Any termination shall be effected by written notice to the Contractor, either hand-delivered to the Contractor or sent certified mail, return receipt requested. The notice of termination shall specify the effective date of termination.¶

¶ Upon receipt of notice of termination, and except as otherwise directed in the notice, the Contractor shall:¶

- ¶ a. Stop work on the date specified in the notice;¶
- ¶ b. Place no further orders or enter into any further Subcontracts for materials, services or facilities except as necessary to complete work under the Agreement up to effective date of termination;¶
- ¶ c. Terminate all orders and Subcontracts;¶
- ¶ d. Promptly take all other reasonable and feasible steps to minimize any additional cost, loss, or expenditure associated with work terminated, including, but not limited to reasonable settlement¶ of all outstanding liability and claims arising out of termination of orders and Subcontracts;¶
- ¶ e. Deliver or make available to the Water Board all data, drawings, specifications, reports, estimates, summaries, and such other information and material as may have been accumulated¶ by the Contractor under this Agreement, whether completed, partially completed, or in progress.¶ services rendered, materials supplied, and expenses incurred, if any, pursuant to this Agreement prior to the effective date of termination.¶

¶ **7. FOUR-DIGIT DATE COMPLIANCE:** Contractor warrants that it will provide only Four-Digit Date Compliant deliverables and/or services to the Water Board. "Four-Digit Date Compliant" deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Agreement and does not limit the generality of warranty obligations set forth elsewhere herein.¶

¶ **8. COMPUTER SOFTWARE:** Contractor certifies that it has appropriate systems and controls in place to ensure that Water Board funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.¶

¶ **9. CONTRACT AMENDMENTS:** Should either party, during the term of this Agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the Water Board's official Agreement Amendment process. No amendment will be considered binding on either party until it is formally approved by both parties and the Department of General Services, if such approval is required.¶

¶ **10. POTENTIAL SUBCONTRACTORS:** Nothing ...