

COPY

CLEANUP AND ABATEMENT ACCOUNT
GRANT AGREEMENT
BETWEEN THE
STATE WATER RESOURCES CONTROL BOARD, hereinafter called "State" or "State Water Board"
AND

COUNTY OF SANTA BARBARA, hereinafter called "Grantee"

TORO CREEK CANYON OIL/WATER SEPARATOR FACILITY EMERGENCY REPAIR AND
ONGOING OPERATION AND MAINTENANCE PROJECT, hereinafter called "Project"

AGREEMENT NO. SWRCB0000000000D1811409 [C/A 409]
Amendment ~~1~~**2**

This Grant Agreement executed on June 13, 2019, is ~~hereby amended~~ **and subsequently amended on September 3, 2020, as of April 3, 2020 is hereby amended as of February 5, 2021,** to revise the work completion date and term end dates and Exhibits A and B (deletions show as stricken and revisions bold and underlined). Except as noted herein all other terms and conditions shall remain the same.

WHEREAS:

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

Water Code, § 13440 et seq.

2. The Grantee has applied for funding from the State Water Pollution Cleanup and Abatement Account (CAA) and has been determined by the State Water Board to be eligible for funding pursuant to California Water Code, Division 7, Chapter 6, Article 3, Section 13440 et seq. This funding shall be used to clean up a waste, abate the effects of a waste on waters of the state, or address an urgent drinking water need. The Grantee may obtain funding for reasonable and necessary Project costs incurred on or after JUNE 28, 2018, with all work to be completed by ~~DECEMBER 31, 2020~~ **FEBRUARY 28, 2023.**

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

State Water Board, Division of Financial Assistance	Grantee: County of Santa Barbara
Name: Mark Fong <u>Alexandra Nicolopoulos,</u> Grant Manager	Name: Scott McGolpin
Address: 1001 I Street, 47th Floor <u>16th Floor</u>	Address: 130 E. Victoria Street, Suite 200
City, Zip: Sacramento, CA 95814	City, Zip: Santa Barbara, CA 93101
Phone: (916) 341-5827 <u>449-5987</u>	Phone: (805) 568-3010
Fax: (916) 341-5296	Fax: (805) 568-3019
e-mail: Mark.Fong@waterboards.ca.gov <u>Alexandra.Nicolopoulos@waterboards.ca.gov</u>	e-mail: mcgolpin@cosbpw.net

B. Direct all inquiries to:

State Water Board, Division of Financial Assistance	Grantee: County of Santa Barbara
Attention: Fatemah Martinez Amy Sunahara , Program Analyst	Name: Cathleen Garnand, Grant Contact
Address: 1001 I Street, 17th Floor	Address 130 E. Victoria Street, Suite 200
City, Zip: Sacramento, CA 95814	City, Santa Barbara CA 93101 Zip:
Phone: (916) 341-5979 319-9216	Phone: (805) 568-3561
Fax: (916) 341-5296	Fax: (805) 568-3434
e-mail fatemah.bradleymartinez@waterboards.ca.gov Amy.Sunahara@waterboards.ca.gov	Email: cgarman@cosbpw.net

Central Coast Regional Water Quality Control Board	
Attention: Greg Bishop, Technical Contact	
Address: 895 Aerovista Place, Suite 101	
City, Zip: San Luis Obispo, CA 93401	
Phone: (805) 549-3132	
Fax: (805) 788-3596	
e-mail: Greg.Bishop@waterboards.ca.gov	

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 Grant Agreement.

- C. The maximum amount payable under this Grant Agreement shall not exceed ~~FIFTY-SIX THOUSAND DOLLARS (\$56,000)~~ **ONE HUNDRED NINETY-FIVE THOUSAND AND SIX HUNDRED SEVENTY-FOUR DOLLARS (\$195,674)**.
- D. In the event the Grantee receives or will receive funds from other sources for work completed under this Grant Agreement, the State Water Board reserves the right to request repayment of funds.

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

- Exhibit A SCOPE OF WORK
- Exhibit B INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS
- 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 contractors and subcontractors to comply with all applicable laws, policies and regulations.

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

By: _____
Grantee Signature

Scott D. McGolpin

Grantee Typed/Printed Name

Public Works Director

Title

Date

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

Date

EXHIBIT A
SCOPE OF WORK

PURPOSE:

This grant is for the benefit of the Grantee. This grant is for the purpose of repairing the ~~Grantee's~~ **Toro Creek Canyon Oil/Water Separator** facility (Facility) to correct ~~damaged~~ **damages** caused by the Thomas Fire, **cleaning up the oil leak caused by the damages, developing a planning study to bring the Underground Storage Tank up to safety code, performing urgent creek protection measures,** and performing two (2) additional years of operation and maintenance to prevent oil waste discharge into the Toro Creek Canyon in Santa Barbara County. The Facility consists of an upper compound containing two (2) oil/water separators, a lower compound containing an underground storage tank, and a pipeline that connects the two (2) compounds. The Grantee previously received CAA funding for operation and maintenance of the Facility that ended January 2019.

A. WORK TO BE PERFORMED BY GRANTEE

1. Project Management

- 1.1 Provide all technical and administrative services as needed for Project completion; monitor, supervise, and review all work performed; and coordinate budgeting and scheduling to ensure the Project is completed within budget, on schedule, and in accordance with approved procedures, applicable laws, and regulations.
- 1.2 Conduct pre-, during, and post construction photo documentation and submit to the Grant Manager and Technical Contact.

2. Permitting

- 2.1 Obtain all public agency approvals, entitlements, or permits required for Project implementation before field work begins. Submit a list and signed copies of such approvals, entitlements or permits to the Grant Manager and Technical Contact.

3. Construction

- 3.1 Perform various repairs of the upper and **pipeline**, as necessary, including replacing damaged conduits, connector pipelines, and debris removal

3.1.1 Submit bid documentation for the repair work outlined in Item 3.1 to the Grant Manager in accordance with Exhibit D.

3.2 Remediate soil at the lower compound of the Facility.

3.2.1 Submit bid documentation for the remediation work outlined in Item 3.2 to the Grant Manager in accordance with Exhibit D.

3.3 Perform urgent creek protection measures to prevent oil from entering Toro Creek.

4. Operation and Maintenance

- 4.1 Perform operation and maintenance on the Facility which includes:
 - 4.1.1 Maintaining access roads
 - 4.1.2 Servicing padlocks on security fencing
 - 4.1.3 Replacing old signage

- 4.1.4 Clearing vegetation
- 4.1.5 Measuring monthly oil production
- 4.1.6 Measuring quarterly water production
- 4.1.7 Transporting collected oil from the Facility to an approved oil receiver and maintaining records of the dates, amounts, and name of approved oil recycler
 - 4.1.7.1 Submit oil and water production measurements and collection and transport records to the Grant Manager in the associated quarterly progress reports.

5. Planning, Design, and Engineering.

5.1 Develop a planning study that addresses the deficiencies in the Underground Storage Tank system identified by the Santa Barbara County Certified Unified Program Agency (CUPA) and outlines what is necessary to bring the facility up to current safety code requirements, as determined by CUPA.

5.1.1 Submit bid documentation for completion of the planning study outlined in Item 5.1 to the Grant Manager in accordance with Exhibit D.

5.1.2 Submit the planning study to the Grant Manager for approval.

56. Reporting

56.1 Prepare annual report and include a summary of the Grantee's efforts to identify the funding source(s) that will be used to operate and maintain the Facility after December_2020. Submit the annual report to the Grant Manager and Technical Contact.

TABLE OF ITEMS FOR REVIEW

ITEM	DESCRIPTION	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A – SCOPE OF WORK			
A.	WORK TO BE PERFORMED BY GRANTEE		
1.	Project Management		
1.2	Pre-, During, and Post Construction Photo Documentation		Ongoing
2.	Permitting		
2.1	List and Signed Copies of Approvals, Entitlements or Permits	Completed	
3.	Construction		
3.1.1	<u>Bid Documentation</u>		<u>As Needed</u>
3.2.1	<u>Bid Documentation</u>		<u>As Needed</u>
4.	Operation and Maintenance		
5.	<u>Planning, Design, and Engineering</u>		
5.1.1	<u>Bid Documentation</u>		<u>As Needed</u>
5.1.2	<u>Final Design Plans</u>	<u>January 31, 2023</u>	
6	Reporting		
6.1	Summarized Report to Identify Other Funding Sources		Annually by July 30
EXHIBIT B – INVOICING, BUDGET DETAIL, AND REPORTING PROVISIONS			
A.	INVOICE PACKAGES		
1.	Invoices		Quarterly
E.	REPORTS		
1.	Progress Reports by the twentieth (20 th) of the month following the end of the calendar quarter (March, June, September, and December).		Quarterly
2.	As Needed Information or Reports		As Needed
3.	Draft Final Project Report	October 31, 2020 <u>December 31, 2022</u>	
4.	Final Project Report	November 30, 2020 <u>January 31, 2023</u>	

EXHIBIT B
INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS

A. INVOICE PACKAGES

1. No disbursement under this Grant Agreement will be made except upon receipt of an acceptable Invoice form and Reimbursement Request form duly executed by or on behalf of the Grantee. The Grantee's duly authorized representative, who has been approved by the State Water Board, must execute all Invoice and Reimbursement Request forms and submit both forms with all invoice packages. The original invoice packages shall be submitted to the State Water Board's Grant Manager on a quarterly basis consistent with the reporting schedule in Section E.1 of this exhibit. The address for submittal is:

~~Mark Fong~~ **Alexandra Nicolopoulos**, Grant Manager
State Water Resources Control Board
Division of Financial Assistance
1001 I Street, 17th Floor
Sacramento, CA 95814

2. Payment of any invoice shall be made only after receipt of a complete, adequately supported, properly documented and accurately addressed invoice. Invoices received by the State Water Board that are not consistent with the approved format will be cause for an invoice to be disputed. In the event of an invoice dispute, the State Water Board's Grant Manager will notify the Grantee by initiating an "Invoice Dispute". Payment will not be made until the dispute is resolved and a corrected invoice submitted. Failure to use the address exactly as provided above may result in return of the invoice to the Grantee. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. All invoices must be approved by the State Water Board's Grant Manager.
3. Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, rules, or regulations, or which may require any rebates to the Federal Government, or any loss of tax-exempt status of state bonds, pursuant to any Federal statute or regulation.
4. At the request of the Grant Manager, the Grantee shall provide proof of payment to the consultant or contractor for each invoice submitted for payment under this Grant. If the grantee is not able to demonstrate proof of payment, the State Water Board, at its discretion, may issue two-party checks for the payment of costs identified in Exhibit B, Budget. The two-party checks will require the endorsement of both Grantee and the company providing the services.
5. Notwithstanding any other provision of this Agreement, the Grantee agrees that the State Water Board may retain ten percent (10%) of the grant amount specified in this Agreement until completion of the Project to the reasonable satisfaction of the State Water Board. Any retained amounts due to the Grantee will be promptly disbursed to the Grantee, without interest, upon completion of the Project.
6. The invoice shall contain the following information:
 - a. The word "INVOICE" and a sequential invoice number should appear in a prominent location at the top of the page(s);
 - b. The date of the invoice and the time period covered by the invoice, i.e., the term "from" and "to";
 - c. Printed name of the consultant or contractor;

- d. Business address of the consultant or contractor, including P.O. Box, City, State, and Zip Code;
- e. Printed name of the Grantee;
- f. The number of the Agreement upon which the invoice is based;
- g. The site address (location) where the work was performed;
- h. All subcontractor(s) invoices must be listed on the invoice; a copy of the subcontractor invoice should be attached to the consultant/contractors invoice. All subcontractor(s) must have current and active professional license(s), as applicable;
- i. Original signature and date (in ink) of Grantee or its authorized representative;
- j. An itemized account of the work for which the Grantee is seeking payment:
 - A brief description of the work performed, including dates of performance and the name or initials of the person performing the work;
 - The method of computing the amount due. On cost reimbursable agreements, invoices must be itemized based on the tasks specified in the Budget; and
 - The total amount due; this should be in a prominent location in the lower right-hand portion of the last page and clearly distinguished from other figures or computations appearing on the invoice; the total amount due shall include all costs incurred by the Grantee under the terms of this Agreement.

7. Final invoice shall be clearly marked "FINAL INVOICE" and submitted NO LATER THAN ~~JANUARY 31, 2021~~ **MARCH 31, 2023**.

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.

B. BUDGET CONTINGENCY CLAUSE

The maximum amount to be encumbered under this Agreement for the 2018-19 fiscal year ending June 30, 2019 shall not exceed ~~FIFTY SIX THOUSAND DOLLARS (\$56,000)~~ **ONE HUNDRED NINETY-FIVE THOUSAND AND SIX HUNDRED SEVENTY-FOUR DOLLARS (\$195,674)**.

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

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

C. LINE ITEM BUDGET

Line Item	Grant Allotment
Administration: Includes Labor costs associated with the preparation/submittal of invoices and reports.	\$0
Facility Repairs and Abatement	\$33,900 \$128,574
Operation and Maintenance	\$22,100
Professional and Consulting Services	\$45,000
Total	\$56,000 \$195,674

D. BUDGET LINE ITEM FLEXIBILITY

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

E. REPORTS

1. Progress Reports. Grantee shall submit quarterly progress reports to the State Water Board's Grant Manager by the twentieth (20th) of the month following the end of the calendar quarter (March, June, September, and December).
 - a. The progress reports shall provide a brief description of the work performed, accomplishments during the quarter, milestones achieved, monitoring results (if applicable), and any problems encountered in the performance of the work under this Agreement. Grantee shall document all contractor activities and expenditures in progress reports.
 - b. The invoice should accompany the progress report. The invoice should reflect charges for the work completed during the reporting period covered by progress report. The invoice cannot be paid prior to submission of a progress report covering the invoice reporting period.
2. As Needed Information or Reports. The Grantee agrees to provide expeditiously, during the term of this Agreement, such reports, data, and information as may be reasonably required by the Division including,

but not limited to material necessary or appropriate for evaluation of the funding program or to fulfill any reporting requirements of the state or federal government.

3. Draft Final Project Report. Prepare and submit to the Grant Manager a draft Final Project Report for review and comment.
4. Final Project Report. Prepare a Final Project Report that addresses, to the extent feasible, comments made by the Grant Manager on the draft Final Project Report. Submit one (1) reproducible master, and an electronic copy of the Final.

F. 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.

G. AUDIT DISALLOWANCES

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

H. FRAUD AND MISUSE OF PUBLIC FUNDS

All invoices submitted shall be accurate and signed under penalty of perjury. Any and all costs submitted pursuant to this Agreement shall only be for the tasks set forth herein. The Grantee shall not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any eligible costs for which the Grantee is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is illegal and constitutes fraud. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements of grant funds and/or termination of this Agreement requiring the repayment of all funds disbursed hereunder. Additionally, the Deputy Director of the Division of Financial Assistance may request an audit pursuant to Exhibit C, section 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 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 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 seven (7) years after final payment, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Grantee agrees to include a similar right of the State to audit records and interview staff in any contract related to performance of this Agreement.
5. **BONDING:** Where contractors are used, the Grantee shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Grantee in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00.
6. **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.
7. **COMPETITIVE BIDDING:** Grantee shall adhere to any applicable federal, state or local requirements for competitive bidding and applicable labor laws. If Grantee is a private entity, any construction contracts related in any way to the Project shall be let by competitive bid procedures that ensure award of such contracts to the lowest responsible bidders. Grantee must provide a full explanation if Grantee is proposing to award a construction contract to anyone other than the lowest responsible bidder.
8. **COMPLIANCE WITH LAW, REGULATIONS, ETC.:** The Grantee agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. 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.
9. **COMPUTER SOFTWARE:** The Grantee certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
10. **CONFLICT OF INTEREST:** Grantee certifies that it is in compliance with applicable state and/or federal conflict of interest laws.
11. **CONTINUOUS USE OF PROJECT; LEASE OR DISPOSAL OF PROJECT:** The Grantee agrees that, except as provided in the Agreement, it will not abandon, substantially discontinue use of, lease, sell, transfer, or dispose of all or a significant portion of the Project during the useful life of the Project without prior written approval of the Deputy Director of the Division of Financial Assistance. Such approval may be conditioned as

determined to be appropriate by the Deputy Director of the Division of Financial Assistance, including a condition requiring repayment of all grant funds or any portion of all remaining grant funds covered by this Agreement together with accrued interest and any penalty assessments which may be due. The provisions of this section shall survive the term of this Agreement.

12. **DISPUTES:** The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Grantee shall submit to the Deputy Director of the Division of Financial Assistance a written demand for a final decision. The decision of the Division, 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 Division 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 section 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. This section relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.
13. **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 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.

14. **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.
15. **GOVERNING LAW:** This grant is governed by and shall be interpreted in accordance with the laws of the State of California.
16. **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.

17. **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.
18. **INCOME RESTRICTIONS:** The Grantee agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Grantee under this Agreement shall be paid by the Grantee to the State, to the extent that they are properly allocable to costs for which the Grantee has been reimbursed by the State under this Agreement.
19. **INDEPENDENT ACTOR:** The Grantee, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of the State Water Board.
20. **INSPECTION:** The State Water Board, the Bureau of State Audits, or any authorized representative of the foregoing shall have the right to inspect the Project area at all reasonable times during Project implementation and thereafter for the useful life of the Project to ascertain compliance with this Agreement and its goals. The provisions of this section shall survive the term of this Agreement.
21. **INSURANCE:** Throughout the useful life of the Project, the Grantee shall provide and maintain insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Agreement, if any. This insurance shall be issued by a company or companies admitted to transact business in the State of California. The insurance policy shall contain an endorsement specifying that the policy will not be cancelled or reduced in coverage without thirty (30) days' prior written notice to the State Water Board. In the case of Grantee's utilization of contractors or subcontractors to complete the scope of work, Grantee shall include all contractors and subcontractors as insured under Grantee's insurance or shall certify that the contractors and subcontractors shall provide and maintain insurance equal to policies, coverages, and limits required of the Grantee. In the event of any damage to or destruction of the Project or any larger system of which it is a part, the net proceeds of insurance shall be applied to the reconstruction, repair or replacement of the damaged or destroyed parts of the Project or its larger system. The Grantee shall begin such reconstruction, repair, or replacement as expeditiously as possible and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the larger system shall be free of all claims and liens. The provisions of this section shall survive the term of this Agreement.
22. **NONDISCRIMINATION:**
 - (a) The Grantee shall comply with Government Code section 11135 and the implementing regulations (Cal. Code Regs, tit. 2, § 11140 et seq.), including, but not limited to, ensuring that no person is unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination in the operation of, the Project, or any larger system of which it is a part, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation as such terms are defined under California law, for as long as the Recipient retains ownership or possession of the Project.
 - (b) If Project funds are used to acquire or improve real property, the Grantee shall include a covenant of nondiscrimination running with the land in the instrument effecting or recording the transfer of such real property.

- (c) The Grantee shall comply with the federal American with Disabilities Act of 1990 and implementing regulations as required by Government Code section 11135(b).
 - (d) During the performance of this Agreement, the Grantee and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status.
 - (e) The Grantee, its contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
 - (f) The Grantee, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subds. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
 - (g) The Grantee, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 - (h) The Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.
 - (i) The Grantee's obligations under this section shall survive the term of this Agreement.
23. NO THIRD PARTY RIGHTS: The parties to this grant Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this grant Agreement, or of any duty, covenant, obligation or undertaking established herein.
24. NOTICE: 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.
25. OPERATIONS & MAINTENANCE: The Grantee shall operate and maintain the facility and structures constructed or improved as part of the project throughout the useful life of the Project, consistent with the purposes for which this Grant was made, and in accordance with all applicable state and federal laws, rules, and regulations. The Grantee may be excused from operations and maintenance only upon the written approval of the Deputy Director of the Division of Financial Assistance. The Grantee assumes all operations and maintenance costs of the facilities and structures. Except as expressly provided in this Agreement, the State Water Board shall not be liable for any cost of such operation or maintenance. The provisions of this section shall survive the term of this Agreement.
26. PAYEE DATA RECORD FORM (Std. 204): The Grantee must complete the Payee Data Record Form.
27. PERMITS, CONTRACTING, WAIVER, REMEDIES AND DEBARMENT: The Grantee shall procure all permits and licenses necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Any contractors, outside associates, or consultants required by the Grantee in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified and agreed to during negotiations for this Agreement, or as are specifically authorized by the State Water Board's Grant Manager during the performance of this Agreement. Any substitutions in, or additions to, such

contractors, associates, or consultants, shall be subject to the prior written approval of the State Water Board's Grant Manager. Any waiver of rights with respect to a default or other matter arising under the Agreement at any time by either party shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State provided for in this Agreement are in addition to any other rights and remedies provided by law.

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

The Grantee shall not contract or subcontract 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 or subcontract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35; Gov. Code § 4477.) The Grantee shall obtain certification from its contractors as to themselves and their principals as to the following, and certifies to the best of its knowledge and belief that it and its principals:

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

28. **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.
29. **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 to the State Water Board.
30. **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.

31. **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 Project; 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.
32. **TERMINATION, IMMEDIATE REPAYMENT, INTEREST:** This Grant Agreement may be terminated by written notice at any time, at the option of the State Water Board, upon violation by the Grantee of any material provision after such violation has been called to the attention of the Grantee and after failure of the Grantee to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the State Water Board. In the event of such termination, the Grantee agrees, upon demand, to immediately repay to the State Water Board an amount equal to the amount of grant funds disbursed to the Grantee prior to such termination. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Grantee to the date all moneys due have been received by the State Water Board.
33. **TIMELINESS:** Time is of the essence in this Agreement. The Grantee shall proceed with and complete the Project in an expeditious manner.
34. **TRAVEL AND PER DIEM:** Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources. These rates may be found at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred by the Grantee. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the Grant Manager.
35. **UNENFORCEABLE PROVISION:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
36. **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.
37. **USEFUL LIFE OF PROJECT:** For the purpose of this Agreement, the useful life of any constructed portions of this Project begins upon completion of construction and continues until fifty (50) years thereafter for pipelines and structures and twenty (20) years for all else.

38. VENUE: The State Water Board and the Grantee hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California.
39. WAIVER AND RIGHTS OF THE STATE WATER BOARD: Any waiver of rights by the State Water Board with respect to a default or other matter arising under this Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.
40. 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.
41. 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.
42. WEB CONTENT ACCESSIBILITY. The Grantee shall ensure that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work submitted to the State Water Board or uploaded directly to any State internet website or database in the performance of this Agreement comply with the accessible content requirements set forth in Government Code sections 7405 and 11135; section 508 of the federal Rehabilitation Act (29 USC 794d) and the regulations promulgated thereunder (36 CFR part 1194); and the most current Web Content Accessibility Guidelines published by the Web Accessibility Initiative of the World Wide Web Consortium at a minimum Level AA success criteria.
- If the Grantee provides any electronic or information technology, or related services, under this Agreement, the Recipient must respond to and resolve any complaint brought to the attention of the Recipient regarding the accessibility of its products or services.
43. WITHHOLDING OF GRANT DISBURSEMENTS: The State Water Board may withhold all or any portion of the grant funds provided for by this Agreement in the event that the Grantee has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or the Grantee fails to maintain reasonable progress toward completion of the Project.

EXHIBIT D
SPECIAL CONDITIONS

- 1. The Grantee is required to submit bid documents for the facility repairs, remediation work and planning study to upgrade the Underground Storage Tank to confirm the funding amount before work begins. The Grant Manger must give approval before work begins.**
- 2. The Grantee commits to completing routine operation and maintenance activities for the useful life of the system.**