

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

COPY

ASSISTANCE AGREEMENT

1. AGREEMENT NUMBER <b>R09AP20053</b>		2. TYPE OF AGREEMENT [ x ] GRANT [ ] COOPERATIVE AGREEMENT		3. CLASS OF RECIPIENT <b>County Government</b>													
4. ISSUING OFFICE (NAME, ADDRESS) U.S. Department of the Interior Bureau of Reclamation Mid-Pacific Region 2800 Cottage Way, Room E-1815 Sacramento, California 95825-1898 DUNS: 098-86-5801 EIN: 84-1024566			5. RECIPIENT (NAME, ADDRESS, TELEPHONE) Santa Barbara County Water Agency 123 East Anapamu St., Suite 240 Santa Barbara, California 93101 Phone: (805) 568-3545 DUNS: 120-55-7967 EIN: 95-6002833														
6. ADMINISTRATIVE POINT OF CONTACT (NAME, ADDRESS, TELEPHONE, E-MAIL) Maria E. Castaneda Phone: (916) 978-5148 Bureau of Reclamation, Mid-Pacific Region Fax: (916) 978-5175 Acquisition Services 2800 Cottage Way, Room E-1815 Sacramento, California 95825-1898 Email: <a href="mailto:mcastaneda@usbr.gov">mcastaneda@usbr.gov</a>			7. RECIPIENT PROJECT MANAGER (NAME, ADDRESS, TELEPHONE, E-MAIL) Mr. Leonard Fleckenstein Santa Barbara County Water Agency 123 East Anapamu St., Suite 240 Santa Barbara, California 93101 Phone: (805) 568-3545 Fax: (805) 568-3434 Email: <a href="mailto:lflecken@cosbpw.net">lflecken@cosbpw.net</a>														
8. TECHNICAL REPRESENTATIVE (NAME, ADDRESS, TELEPHONE, E-MAIL) Mr. David Woolley Bureau of Reclamation South Central California Area Office 1243 N Street Fresno, California 93721-1813 Phone: (559) 487-5049 Fax: (559) 487-5397 Email: <a href="mailto:dwoolley@usbr.gov">dwoolley@usbr.gov</a>			9. EFFECTIVE DATE  <b>SEE BLOCK 17a</b>														
			10. COMPLETION DATE  <b>October 01, 2011</b>														
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12. FUNDING INFORMATION			13. REQUISITION NUMBER														
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16. RECIPIENT IS <u> X </u> , IS NOT <u> </u> , REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u> ALL </u> COPIES TO THE ISSUING OFFICE.																	
16a. Acceptance of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the above-named recipient			17a. Acceptance of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the United States of America, Bureau of Reclamation														
BY _____ DATE _____			BY _____ DATE _____														
16b. NAME, TITLE, AND TELEPHONE NUMBER OF SIGNER (Type or print)			17b. NAME OF GRANTS OFFICER (Type or print)														
			Maria E. Castaneda														

Additional signatures are attached

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Additional signatures are attached

**Grant Agreement  
Between  
Bureau of Reclamation  
And  
Santa Barbara County Water Agency  
For  
CALFED - Water Use Efficiency (WUE) – Smart Landscaping Rebate Program**

**A.1 AUTHORITY**

This Grant Agreement (Agreement) is entered into between the United States of America, acting through the Department of Interior, Bureau of Reclamation, hereinafter referred to as "Reclamation", and Santa Barbara County Water Agency, hereinafter referred to as the "Recipient", pursuant to Omnibus Appropriations Act, 2009 (Public Law 111-8), Energy and Water Development and Related Agencies Appropriations Act, Division C, Title II, Section 205.

**A.2 BACKGROUND**

The Santa Barbara County Water Agency (County) does not have facilities, meters, customers or any other function related to directly treating or purveying water from federal projects for which it holds the master agreements to other purveyors or end users. These functions are performed by the Bureau, the Cachuma Operations and Maintenance Board, and the individual Member Units.

The County's residents obtain their potable water from several sources: storm runoff collected in reservoir systems, groundwater withdrawal, and the State Water Project (SWP). The County's potable water supply is delivered to the public through a variety of water purveyors: incorporated cities, community service districts, water districts, public utility companies, conservation districts and others.

There are four major reservoirs located in the County. Two reservoirs, Cachuma and Twitchell, are owned by the Federal Government, administered by the Santa Barbara County Water Agency, and operated by local/regional water districts. The third, Gibraltar Reservoir, is owned and operated by the City of Santa Barbara. The fourth, Jameson Reservoir, is owned and operated by the Montecito Water District. Water from Cachuma, Gibraltar and Jameson is delivered to the South Coast through three tunnels built into the Santa Ynez Mountains. Surface water accounts for approximately 40% of County water supply. Additionally, 2% of the County water supply is recycled water for non-potable uses in the City of Santa Barbara and Goleta Water District.

Groundwater is another source of potable water for County residents. Since groundwater fluctuations are cyclical and sensitive to overdraft, groundwater withdrawal is closely monitored. In the south County, water purveyors use groundwater as a secondary source of potable water. In the north County communities, groundwater is a significant source of potable water, from as much as 100% of production in communities such as Lompoc, down to less than half of water supplied in communities such as Buellton. Groundwater accounts for about 28% of the County water supply. The groundwater is recharged by surface flows, including releases from Lake Cachuma into the Santa Ynez River to help aquifers downstream, including down to Lompoc.

The SWP has served as another source of potable water since 1997. Water is delivered to Santa Barbara County from the Lake Oroville Reservoir located in Plumas County through a series of aqueducts, reservoir systems, and open river transport. The amount of SWP water, as a portion of the county's total water supply, varies from year to year, and likewise varies considerable across member units which purchase SWP water. State water accounts for approximately 30% of the County water supply.

### **A.3 PURPOSE**

The County seeks to expand the geographic scope of a current pilot program which provides rebates to property owners (both residential and commercial) who make changes to reduce water use in the landscape. The existing pilot program is currently limited to the City of Santa Barbara and Goleta Water District. The expanded program would be coordinated by the County Water Agency for participating water districts serving customers in: Carpinteria Valley Water District, City of Santa Barbara, Goleta Water District, City of Lompoc, and Vandenberg Village Community Service District. Rebates may cover up to 50% of the cost of approved irrigation equipment and landscape materials (but not landscaper labor costs) as an incentive for customer participation, not to exceed \$1,000 per site. Rebate limits and approval processes may vary across participating districts. The program anticipates 260 rebates which will equate to approximately 15.7AFY/year savings.

### **A.4 OBJECTIVE**

This program will reduce water demand in the participating districts, thereby giving each district, greater flexibility in allocating its water supplies to meet customers' needs. Reduced demand at the district level will also reduce demand for State water which is a key water source for most of the participating districts; even districts which don't receive State water are still reliant to a certain extent on groundwater recharge from downstream releases from Cachuma Lake, which is the reservoir where State water is stored before it goes to district along Santa Barbara County's south coast.

### **A.5 BENEFITS**

Any reduced water demand at the district level will translate into reduced demand for State Water Project water which would otherwise flow into the Bay-Delta. This benefit will continue indefinitely while the renovated landscapes continue to grow. In fact, demand should actually decrease over time as the initial plantings of water wise species become more naturalized and less dependent on irrigation water. Benefits will occur year round because the properties will be less dependent on high-water-using turf, especially during summer months, and will have low-water-using plants which require less frequent watering during the wet season and are more drought-tolerant during the dry season.

### **A.6 STATEMENT OF WORK**

Santa Barbara County Water Agency will perform services in accordance with the CALFED – Water Use Efficiency (WUE), Smart Landscaping Rebate Program, Santa Barbara, California proposal dated June 7, 2009. (See Attachment 1)

### **A.7 PERFORMANCE PERIOD**

The performance period of this agreement is from date of execution (Award) to October 01, 2011.

### **A.8 FUNDING**

Reclamation will make advanced payments or reimburse the recipient for allowable costs incurred, in accordance with applicable OMB Circular during the effective period of this agreement. Please reference Special Provision B.1 Payment Policy of this agreement.

(a) **SUMMARY OF FUNDING ESTIMATES.** The following is a summary of the funding periods of the agreement, and the amounts of funding estimated for those periods:

<u>Period No.</u>	<u>Dates Covered</u>	<u>Amount</u>
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<b>1.</b>	<b>Date of Execution through October 01, 2011</b>	<b>\$165,200.00</b>
	TOTAL ESTIMATED AMOUNT	\$165,200.00*

It is understood that any estimated amounts are not binding on either party and are for informational purposes only, until such time as a modification is issued to provide funding for that period. **(\*) Unexpended funds obligated from previous fiscal years, may also be made available for costs incurred during this period.**

(b) **SUMMARY OF FUNDING OBLIGATIONS.** The following is a summary of the funding that has been **obligated** for this agreement:

<u>Period #</u>	<u>Accounting and Appropriation Data</u>	<u>Amount</u>
<b>1.</b>	<b>N12 1852 7901 300 00 0 0 2142400 411G</b>	<b>\$165,200.00</b>
	TOTAL OBLIGATED AMOUNT	\$165,200.00

The Government is under no obligation to provide funds in addition to those reserved in writing. Except as required by other provisions of this Agreement specifically citing and to be an exemption from this clause, Reclamation shall not be obligated to reimburse the Recipient for costs incurred in excess of the estimated cost set forth in the approved annual budget.

**A.9 REPORTING REQUIREMENTS AND DISTRIBUTION**

Failure to comply with the reporting requirements contained in this agreement may be considered a material non-compliance with the terms and conditions of the award. Non-compliance may result in withholding of payments pending receipt of required reports, denying both the use of funds and matching credit for all or part of the cost of the activity or action not in compliance, whole or partial suspension or termination of the agreement, recovery of funds paid under the agreement, withholding of future awards, or other legal remedies.

**A.9.1. Financial Report** – Financial Status Reports shall be submitted according to the Report Frequency and Distribution schedule below. All financial reports shall be signed by an Authorized Certifying Official for the Recipient’s organization. The following form is available at [http://www.whitehouse.gov/omb/grants/grants\\_forms.html](http://www.whitehouse.gov/omb/grants/grants_forms.html).

a) **SF-425, Financial Status Report** -- This form is utilized to report total expenditures for the reporting period and funds received by the recipient.

One original and one copy of this form will be submitted **semi-annually** within 30 days following the end of each period (see Table below).

One final SF-425 will be submitted within 90 days following completion of the Agreement.

**A.9.2. Performance Progress Reports.** Performance Progress Reports shall be submitted according to the Report Frequency and Distribution schedule below. While there is no standard format for the Performance Progress Report, the report should, at a minimum, provide information on the following (43 CFR §12.80 or §12.951):

- a) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.
- b) Reasons why the established goals were not met, if appropriate.

- c) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs

**A.9.3. Project Monitoring and Assessment Reports** - An original and two copies of the program performance measures report shall be submitted within 90 days following the end of each year of the agreement. A final program performance measures report shall be submitted within 90 days following the expiration or termination of the agreement. If the information needed to quantify project benefits is not available immediately at the close of the project period (generally 24 months from the date of award), the agreement will be modified to remain open until such information is available.

Performance measure information will be submitted to the Reclamation in an electronic format such as an Excel spreadsheet or delimited texts file. In addition, all data should be clearly labeled and include units and a time dimension where applicable.

Data described in section E1 of the proposal/application:

- Equipment costs
- Program admin cost
- For all controller installs;
  1. only do projects on connections with meters that have recorded data for the past three years
  2. area measurements of turf, and overall landscape area;
  3. provide estimated pre and post project total water use, non-irrigation season water use and irrigation season water use
  4. CIMIS weather data for pre and post project analysis
  5. Audit reports for all sites
- Post project cost to benefit analysis

**A.9.3. Report Frequency and Distribution.** The following table is the reporting requirements for this agreement.

REQUIRED REPORTS	Interim Reports	Final Report
<b>Program Performance Report</b>		
Format	No specific format required. See content requirements above	No specific format required. See content requirements above
Reporting Frequency	Semi-Annual	Final Report due upon completion of agreement's period of performance
Reporting Period	Federal fiscal periods ending: March 31 and September 30	Entire period of performance
Due Date	30 days after the end of the Reporting Period	Within 90 days after the completion date of the agreement
Send one original to both:	GO and GOTR	GO and GOTR
<b>Financial Status Report</b>		
Format	SF-425	SF-425
Reporting Frequency	Semi-Annual	Final Report due upon completion of agreement's period of performance
Reporting Period	Federal fiscal periods	Entire period of performance

	ending: March 31 and September 30	
Due Date	30 days after the end of the Reporting Period	Within 90 days after the completion date of the agreement
Send one original to both:	GO and GOTR	GO and GOTR

**A.9.4. Reports on Significant Developments.** During the term of the agreement, the Recipient must immediately notify the GO if any of the following conditions occur:

- a) Problems, delays, or adverse conditions which will impair the Recipient's ability to meet the terms and conditions of the agreement;
- b) Favorable developments which will enable the Recipient to complete the scope of work under budget and/or under an accelerated schedule.

This notification is to include information on the actions taken or contemplated to resolve problems, delays, or adverse conditions, and any assistance needed from Reclamation to help resolve the problem.

**A.10 RECIPIENT'S PROJECT MANAGER (Reclamation 08/03)**

The Recipient's Project Manager for this Agreement shall be:

**Mr. Leonard Fleckenstein**

Santa Barbara County Water Agency  
123 East Anapamu St., Suite 240  
Santa Barbara, California 93101  
Phone: (805) 568-3545  
FAX: (805) 568-3434  
Email: [lflecken@cosbpw.net](mailto:lflecken@cosbpw.net)

**A.11 GRANTS OFFICER TECHNICAL REPRESENTATIVE (GOTR) (Reclamation 08/03)**

The GOTR for this agreement will be:

**Mr. David Woolley**

Bureau of Reclamation  
South Central California Area Office  
1243 N Street  
Fresno, California 93721-1813  
Phone: (559) 487-5049  
Email: [dwoolley@usbr.gov](mailto:dwoolley@usbr.gov)

The GOTR is authorized to act only on technical matters during the term of this Agreement. The GOTR and the Recipient's Project Manager shall work closely to insure that all requirements of the Agreement are being met. The GOTR's responsibilities include, but are not limited to, the following:

- (a) Assist the Recipient concerning the accomplishment of the tasks described in the Agreement;
- (b) Provide information to the Recipient which assists in the interpretation of the tasks; and
- (c) Review, and where required, approve reports and information to be delivered to the Government.

Technical assistance must be within the general scope of the Agreement. The GOTR does not have the authority to and may not issue any technical assistance which:

- (a) Constitutes an assignment of additional work outside the general scope of the Agreement;
- (b) In any manner causes an increase or decrease in the total estimated cost or the time required for performance; or
- (c) Changes any of the expressed terms, conditions, or specifications.

#### **A.12 Environmental Compliance – NEPA/ESA/NHPA and Inadvertent Discovery**

For projects involving a physical change to the environment:

As of the date of this agreement, Reclamation has not yet completed compliance with the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA) and the National Historic Preservation Act (NHPA). To ensure timely completion of all necessary NEPA, ESA, and NHPA compliance, the recipient shall coordinate with the GOTR to determine what the appropriate processes and policies are followed for obtaining environmental compliance required for the project.

**Until the NEPA, ESA, and NHPA compliance processes have been completed, all funds under this agreement are frozen except for those funds budgeted for environmental compliance and obtaining appropriate permits. The recipient, or any sub-recipient or contractor, shall not take an action that would; 1) have an adverse environmental impact, 2) limit the choice of reasonable alternatives, 3) make any irreversible or irretrievable commitment of resources, or 4) disturb any ground or commence any construction activities associated with the funded project until notified in writing by Reclamation that environmental compliance is complete and those activities can commence.**

The grant recipient is responsible for all costs of mitigation, associated with environmental compliance. However, costs of mitigation – up to the amount allocated to environmental reviews in the budget submitted in the application as amended (see above) – may be allowable costs and charged to the agreement funds. If the applicant decides to forego required mitigation, Reclamation cannot release the remaining agreement funds; at which time, the grantee may request that Reclamation terminate the agreement pursuant to the Department of the Interior regulations codified at 43 C.F.R. Part 12.

#### **DISCOVERY NOTICE:**

After NEPA compliance has been completed and once construction begins, the applicant is responsible for notifying Reclamation in the event of a discovery of sensitive environmental or cultural resources during construction.

In the event that any cultural and/or paleontological site (historic or prehistoric) is discovered, it shall be immediately reported to the Reclamation GOTR. Work must be halted in the vicinity of the discovery until Reclamation complies with 36 CFR Part 800.13. An evaluation of the significance of the discovery will be made by Reclamation to determine appropriate actions to be taken to prevent loss of significant cultural or scientific value.

In the event that human remains are discovered during project implementation, then, work shall stop in the vicinity of the discovery and the Reclamation GOTR shall be notified immediately. The response will be determined by the land status at the discovery site. The appropriate State law shall be followed for discoveries of human remains on private land. The regulations that implement the Native American Graves Protection and Repatriation Act and any specific agencies guidance will be followed for discoveries on Federal land.



## **SPECIAL PROVISIONS (06/06)**

### **B.1 PAYMENT POLICY (Reclamation 11/03)**

Acceptance of a financial assistance agreement from Reclamation creates a legal responsibility on the part of the recipient organization to use the funds and property provided in accordance with the terms and conditions of the agreement. Reclamation has a reversionary interest in the unused balance of funding and in any funds improperly applied.

Payments to recipients are made in accordance with the basic standards and methods stated in the payment regulations at 43 CFR 12.61 or 43 CFR 12.922, as applicable to this agreement. These requirements are intended to minimize the time elapsing between the transfer of funds from the Federal government and the disbursement of these funds by the recipient.

Payment will be made in advance or by reimbursement as follows:

**(1) Advance Payment** -- Recipients shall be paid in advance provided (1) they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of funds and their disbursement by the recipient, (2) they comply with reporting requirements for timely submission of financial status reports, and (3) they impose these same standards on sub-recipients.

Advances to recipients shall be limited to the minimum amounts needed and shall be timed to be in accordance with the actual, immediate cash requirements of the recipient in carrying out the purpose of the agreement. The timing and amount of cash advances shall be as close as administratively feasible (generally no more than 3 days) to actual disbursements for direct program costs and the proportionate share of allowable indirect costs.

**(2) Reimbursement** -- Reimbursement shall be the preferred method of payment when a recipient (1) does not meet the requirements for advance payment stated above; (2) does not have financial management systems that meet the standards in 43 CFR 12.60 or 43 CFR 12.921, as applicable; or (3) has been converted to payment restrictions for non-compliance with the terms and conditions of the agreement. Reimbursement is also the preferred method of payment for agreements involving construction.

### **B.2 PAYMENT METHOD (Reclamation 11/03)**

**Electronic Funds Transfer** -- Payments under this agreement will be made to recipients by electronic funds transfer (EFT) unless the recipient qualifies for exemption from this payment method. Reclamation utilizes the Automated Clearinghouse (ACH) Vendor Express payment system for EFT. Whether funds are paid in advance or as a reimbursement, the actual payment will be made through Vendor Express. Vendor Express allows the Government to transfer funds to a recipient's financial institution along with explanatory information regarding the payment.

**Enrollment** -- Upon award, recipients will receive a copy of the SF-3881, ACH Vendor/Miscellaneous Payment Enrollment Form. This form is required to implement the Vendor Express system and to notify Reclamation of any change or corrections to financial institution information.

**Requesting Payments** -- Requests for advance or reimbursement may be made by the following methods:

**(1) SF-270, Request for Advance or Reimbursement** -- On a *monthly* basis, recipients may submit an original and two copies of a properly certified SF-270 form to the address identified in **Block 4, page 1**, of this agreement. For advance payments, this form may be submitted on a *monthly* basis, at least two weeks prior to the date on which funds are required, and on the basis of expected disbursements for the succeeding month and the amount of Federal funds already on hand. Requests for reimbursement may be submitted on a

**monthly** basis, or more frequently if authorized by the Grants Officer (GO). Requested funds are delivered to the recipient via ACH Vendor Express. This form is available on the Internet at [http://www.whitehouse.gov/omb/grants/grants\\_forms.html](http://www.whitehouse.gov/omb/grants/grants_forms.html).

**(2) SF-271, Outlay Report and Request for Reimbursement for Construction Programs**

-- The SF-271 shall be used for construction agreements paid by the reimbursement method, letter of credit, electronic funds transfer, or Treasury check advance, except where the advance is based on periodic requests from the recipient, in which case the SF-270 shall be used. This request may be submitted on a **quarterly** basis, but no less frequently than on an annual basis. Recipients may submit an original and two copies of a properly certified SF-271 form to the address identified in **Block 4, page 1**, of this agreement. This form is available on the Internet at [http://www.whitehouse.gov/omb/grants/grants\\_forms.html](http://www.whitehouse.gov/omb/grants/grants_forms.html).

**(3) Automated Standard Application for Payments (ASAP)** -- Recipients may utilize the Department of Treasury ASAP payment system to request advances or reimbursements. ASAP is a recipient-initiated payment and information system designed to provide a single point of contact for the request and delivery of Federal funds. Once a request is made through ASAP, funds are provided to the recipient either through ACH or Fedwire. Further information regarding ASAP may be obtained from the ASAP website at <http://www.fms.treas.gov/asap>. Upon award, you will be provided with information regarding enrollment in the ASAP system.

**B.3 MODIFICATIONS (Reclamation 08/03)**

Any changes to this agreement shall be made by means of a written modification. Reclamation may make changes to the agreement by means of a unilateral modification to deal with administrative matters, such as changes in address, no-cost time extensions, the addition of previously agreed upon funding, or de-obligation of excess funds at the end of the agreement. Additionally, a unilateral modification may be utilized by Reclamation if it should become necessary to suspend or terminate the agreement in accordance with 43 CFR 12.83 or 43 CFR 12.961, as applicable.

All other changes shall be made by means of a bilateral modification to the agreement. No oral statement made by any person, or written statement by any person other than the GO, shall be allowed in any manner or degree to modify or otherwise effect the terms of the Agreement.

All requests for modification of the Agreement shall be made in writing, provide a full description of the reason for the request, and be sent to the attention of the GO. Any request for project extension shall be made at least 45 days prior to the expiration date of the agreement or the expiration date of any extension period that may have been previously granted. Any determination to extend the period of performance or to provide follow-on funding for continuation of a project is solely at the discretion of Reclamation.

**B.4 FUNDS AVAILABLE FOR PAYMENT (Reclamation 08/03)**

The Government's obligation under this Agreement is contingent upon the availability of appropriated funds from which payment for Agreement purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the GO for this Agreement, and until the Recipient receives notice of such availability, to be confirmed in writing to the Recipient by the GO.

Pursuant to the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all commonly known as Reclamation Law, funds for payment under the first year of this agreement are included in the **fiscal year 2009 Omnibus Appropriations Act , Public Law 111-8, Energy and Water Development and Related Agencies Appropriations Act**. Funding for any optional year of the agreement is contingent upon subsequent Congressional funding.

### **B.5 REIMBURSABLE COSTS AND LIMITATIONS (Reclamation 08/03)**

**B.5.1** The Recipient shall provide all personnel, services, facilities, equipment, materials and supplies, and perform all travel which may be necessary and appropriate for the proper performance of this Agreement. Costs so incurred will be paid for as provided herein. Reclamation's obligation to provide funding to the Recipient for costs incurred in these connections shall be limited to the Recipient's direct and indirect costs associated with this Agreement. All such direct and indirect costs must be determined to be allowable under the regulations contained in 48 CFR Subpart 31.2 or an OMB Cost Principle Circular, as applicable, which are incorporated herein through the General Provisions of this agreement.

**B.5.2** The recipient shall not incur costs or obligate funds for any purpose pertaining to operation of the program or activities beyond the expiration date stated in the agreement. The only costs, which are authorized for a period of up to 90 days following the award expiration date are those strictly associated with closeout activities for preparation of the final report.

**B.5.3** Reclamation shall not be obligated to provide funding to the Recipient and the Recipient shall not be obligated to continue performance under the Agreement or to incur costs in excess of the costs set forth in the annual project budget unless the GO has furnished the Recipient a modification to increase the available funding for the Agreement.

### **B.6 BUDGET REVISIONS (Reclamation 08/03)**

The Recipient shall follow the requirements at 43 CFR 12.70(c) or 43 CFR 12.925, as applicable, when making revisions to budget and program plans. Additionally, approval shall be requested for transfers of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa.

### **B.7 PROCUREMENT STANDARDS (Reclamation 08/03)**

When utilizing Federal funds for the procurement of supplies and other expendable property, equipment, real property, and other services under this agreement, the Recipient shall utilize the Procurement Standards set forth at 43 CFR 12.76 or 43 CFR 12.940 -12.948, as applicable. The Recipient may be required to submit evidence that its procurement procedures are in compliance with the standards stated therein. Additional guidance for contracting with small and minority firm's, and women's business enterprises is included in the General Provisions section of this agreement.

### **B.8 PROPERTY STANDARDS (Reclamation 08/03)**

All property, equipment and supplies acquired by the Recipient with Federal funds shall be subject to usage, management, and disposal in accordance with the Property Standards at 43 CFR 12.72 - 12.73, or 43 CFR 12.930 - 12.937, as applicable.

### **B.9 PROPERTY STANDARDS - REAL PROPERTY (Reclamation 08/03)**

In accordance with 43 CFR 12.71 or 43 CFR 12.932, as applicable, if real property is acquired in whole or in part under this agreement, it shall be subject to the following regulations:

**B.9.1 Title --** Title to real property acquired under this agreement shall vest upon acquisition in the Recipient or Sub-recipient, shall be used for the originally authorized purpose of the project as long as it is needed, and shall not be disposed of or encumbered without Reclamation approval.

**B.9.2 Disposition --** When the real property is no longer needed for the originally authorized purpose, the Recipient or Sub-recipient shall request disposition instructions from Reclamation. The instructions shall provide for one of the following alternatives:

**B.9.2.1 Transfer --** The Recipient may be permitted to transfer the property to another Federally-sponsored project if the Recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects or programs shall be limited to those that have purposes consistent with those authorized for support by the Department of the Interior.

**B.9.2.2 Retention of Title --** The Recipient may be allowed to retain the title after compensating Reclamation for that percentage of the current fair market value of the property attributable to the Federal government's financial participation in the project.

**B.9.2.3 Sale of Property --** The Recipient may be directed to sell the property under guidelines provided by Reclamation, and to compensate Reclamation in an amount calculated by applying Reclamation's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fix-up expenses. When the Recipient is directed to sell the property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

**B.9.2.4 Transfer of Title** The Recipient may be directed to transfer title to the Federal Government or to an eligible third-party. The Recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

## **B.10 INSPECTION (Reclamation 08/03)**

Reclamation has the right to inspect and evaluate the work performed or being performed under this agreement, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If Reclamation performs inspection or evaluation on the premises of the Recipient or a sub-recipient, the Recipient shall furnish and shall require sub-recipients to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

## **B.11 AUDIT (Reclamation 01/04)**

Non-Federal entities that expend \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, which is available at [http://www.whitehouse.gov/omb/grants/grants\\_circulars.html](http://www.whitehouse.gov/omb/grants/grants_circulars.html). Federal awards are defined as Federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities. They do not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Non-Federal entities that expend less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in A-133, §\_215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

Audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits. Additional audit requirements applicable to this agreement are found at 43 CFR 12.66 or 43 CFR 12.926, as applicable. General guidance on the single audit process is included in a pamphlet titled, "Highlights of the Single Audit Process" which is available on the internet at <http://www.dot.gov/ost/m60/grant/sincontact.htm> . Additional information on single audits is available from the Federal Audit Clearinghouse at <http://harvester.census.gov/sac/> .

### **B.12 ENFORCEMENT (Reclamation 08/03)**

In accordance with 43 CFR 12.83 or 43 CFR 12.962, as applicable, if the recipient materially fails to comply with any term of this agreement, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, Reclamation may take one or more of the following actions as appropriate:

**B.12.1** Temporarily withhold cash payments pending correction of the deficiency by the recipient or sub-recipient or more severe enforcement action by the awarding agency;

**B.12.2** Disallow (deny both use of funds and any matching credit for) all or part of the cost of the activity or action not in compliance;

**B.12.3** Wholly or partly suspend or terminate the current award for the recipient's or sub-recipient's program;

**B.12.4** Withhold further awards for the program; or

**B.12.5** Take other remedies that may be legally available.

### **B.13 TERMINATION (Reclamation 08/03)**

In accordance with 43 CFR 12.84 or 43 CFR 12.961, as applicable, and except as provided for in the Enforcement Provision, above, this agreement may be terminated in whole or part only as follows:

**B.13.1** By the awarding agency with the consent of the recipient or sub-recipient in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

**B.13.2** By the recipient or sub-recipient upon written notification to Reclamation, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either the Enforcement Provision or paragraph 1 of this Provision.

### **B.14 PATENTS AND INVENTIONS (Reclamation 08/03)**

The administrative standards set forth in OMB Circular A-102 and OMB Circular A-110, as implemented by 43 CFR 12.936(b), require recipients of agreements which support experimental, developmental, or research work to be subject to applicable regulations governing patents and inventions, including the government-wide regulations issued by the Department of Commerce at 37 CFR 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements. These regulations do not apply to any agreement made primarily for educational purposes.

In accordance with 37 CFR 401.3(a), the provision at 37 CFR 401.14(a), with authorized modifications for the Bureau of Reclamation, is hereby included in this agreement:

#### **PATENT RIGHTS**

##### **(a) Definitions**

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(2) *Subject invention* means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this agreement, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of agreement performance.

(3) *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) *Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *Small Business Firm* means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this provision, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) *Nonprofit Organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

## **(b) Allocation of Principal Rights**

The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to this provision and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

## **(c) Invention Disclosure, Election of Title and Filing of Patent Application by Recipient**

(1) The Recipient will disclose each subject invention to the Bureau of Reclamation within two months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to the Bureau of Reclamation shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Bureau of Reclamation, the Recipient will promptly notify the Bureau of Reclamation of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.

(2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying the Bureau of Reclamation within two years of disclosure to the Bureau of Reclamation. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Bureau of Reclamation to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Recipient will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory

period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may, at the discretion of the Bureau of Reclamation, be granted.

#### **(d) Conditions When the Government May Obtain Title**

The Recipient will convey to the Bureau of Reclamation, upon written request, title to any subject inventions

(1) If the Recipient fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the Bureau of Reclamation may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.

(2) In those countries in which the Recipient fails to file patent applications within the times specified in (c) above; provided, however, that if the Recipient has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the Bureau of Reclamation, the Recipient shall continue to retain title in that country.

(3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

#### **(e) Minimum Rights to Recipient and Protection of the Recipient Right to File**

(1) The Recipient will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the invention within the times specified in (c), above. The Recipient's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of the Bureau of Reclamation except when transferred to the successor of that party of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by the Bureau of Reclamation to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and Bureau of Reclamation licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Bureau of Reclamation to the extent the Recipient, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Bureau of Reclamation will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed thirty days (or such other time as may be authorized by the Bureau of Reclamation for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and Bureau of Reclamation regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

#### **f) Recipient Action to Protect the Government's Interest**

(1) The Recipient agrees to execute or to have executed and promptly deliver to the Bureau of Reclamation all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Recipient elects to retain title, and (ii) convey title to the Bureau of Reclamation when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under agreement in order that the Recipient can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The Recipient shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Recipient will notify the Bureau of Reclamation of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the agreement) awarded by (identify the Federal agency). The government has certain rights in the invention."

#### **(g) Subcontracts**

The Recipient will include this provision, suitably modified to identify the parties, in all sub-agreements or subcontracts, regardless of tier, for experimental, developmental or research work. The sub-recipient or subcontractor will retain all rights provided for the Recipient in this provision, and the Recipient will not, as part of the consideration for awarding the sub-agreement or subcontract, obtain rights in the sub-recipient's or subcontractor's subject inventions.

#### **(h) Reporting on Utilization of Subject Inventions**

The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient, and such other data and information as the Bureau of Reclamation may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by the Bureau of Reclamation in connection with any march-in proceeding undertaken by the Bureau of Reclamation in accordance with paragraph (j) of this provision. As required by 35 U.S.C. 202(c)(5), the Bureau of Reclamation agrees it will not disclose such information to persons outside the government without permission of the Recipient.

#### **(i) Preference for United States Industry**

Notwithstanding any other part of this provision, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Bureau of Reclamation upon a showing by the Recipient or its assignee that



reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

#### **(j) March-in Rights**

The Recipient agrees that with respect to any subject invention in which it has acquired title, the Bureau of Reclamation has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the Bureau of Reclamation to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Recipient, assignee, or exclusive licensee refuses such a request the Bureau of Reclamation has the right to grant such a license itself if the Bureau of Reclamation determines that:

(1) Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs, which are not reasonably satisfied by the Recipient, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this provision has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

#### **(k) Special Provisions for Agreements with Nonprofit Organizations**

If the Recipient is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Bureau of Reclamation, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Recipient;

(2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the Bureau of Reclamation deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Bureau of Reclamation may review the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures, or practices with the Bureau of Reclamation when this review discloses that the Recipient could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

#### **(l) Communication**

Communications regarding matters relating to this provision shall be directed to the Deputy Associate Solicitor, Branch of Procurements and Patents, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240.

### **B.15 COPYRIGHTS (Reclamation 08/03)**

**B.15.1** For recipients subject to the administrative standards set forth in OMB Circular A-110, the following copyright provision, as implemented by 43 CFR 12.936(a), shall apply:

The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

**B.15.2** For recipients subject to the administrative standards set forth in OMB Circular A-102 and the Grants Management Common Rule, the following copyright provision, as implemented by 43 CFR 12.74, shall apply:

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

- (a) The copyright in any work developed under a grant, sub-grant, or contract under a grant or sub-grant; and
- (b) Any rights of copyright to which a grantee, sub-grantee or a contractor purchases ownership with grant support.

### **B.16 RIGHTS TO DATA (Reclamation 08/03)**

For recipients subject to the administrative standards set forth in OMB Circular A-110, the following provision, as implemented by 43 CFR 12.936(c), shall apply:

The Federal Government has the right to:

- (1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and
- (2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

## **GENERAL PROVISIONS (06/04)**

### **C.1 Regulations and Guidance**

The regulations at 43 CFR, Part 12, Subparts A, C, E, and F, are hereby incorporated by reference as though set forth in full text. The following Office of Management and Budget (OMB) Circulars, as applicable, and as implemented by 43 CFR Part 12, are also incorporated by reference and made a part of this agreement. Failure of a recipient to comply with any provision may be the basis for withholding payments for proper charges made by the recipient and for termination of support. Copies of OMB Circulars are available on the Internet at [http://www.whitehouse.gov/omb/grants/grants\\_circulars.html](http://www.whitehouse.gov/omb/grants/grants_circulars.html). The implementation of the circulars at 43 CFR Part 12 is available at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>.

**C.1.1. Agreements with colleges and universities shall be in accordance with the following circulars:**

Circular A-21, revised May 10, 2004, "Cost Principles for Educational Institutions"

Circular A-110, as amended September 30, 1999, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"

Circular A-133, revised June 27, 2003, "Audits of States, Local Governments, and Non-Profit Organizations"

**C.1.2. Agreements with State and local governments shall be in accordance with the provisions of the following circulars:**

Circular A-87, revised May 10, 2004, "Cost Principles for State, Local, and Indian Tribal Governments"

Circular A-102, as amended August 29, 1997, "Grants and Cooperative Agreements with State and Local Governments" (Grants Management Common Rule, Codification by Department of Interior, 43 CFR 12)

Circular A-133, revised June 27, 2003, "Audits of States, Local Governments, and Non-Profit Organizations"

**C.1.3. Agreements made with nonprofit organizations shall be in accordance with the following circulars and provisions:**

Circular A-110, as amended September 30, 1999, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"

Circular A-122, revised May 10, 2004, "Cost Principles for Non-Profit Organizations"

Circular A-133, revised June 27, 2003, "Audits of States, Local Governments, and Non-Profit Organizations"

**C.1.4. All agreements with organizations other than those indicated above** shall be in accordance with the basic principles of OMB Circular A-110, and cost principles shall be in accordance with 48 CFR Subpart 31.2 titled "Contracts with Commercial Organizations" which is available on the Internet at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>.

**C.2 Debarment and Suspension**

The Department of the Interior regulations at 43 CFR 42—Government-wide Debarment and Suspension (Non-procurement), which adopt the common rule for the government-wide system of debarment and suspension for non-procurement activities, are hereby incorporated by reference and made a part of this agreement. By entering into this grant or cooperative agreement with the Bureau of Reclamation, the recipient agrees to comply with 43 CFR 42, Subpart C, and agrees to include a similar term or condition in all lower-tier covered transactions. These regulations are available at [http://www.access.gpo.gov/nara/cfr/cfrhtml/00/Title\\_43/43cfr42\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml/00/Title_43/43cfr42_00.html).

**C.3 Drug-Free Workplace**

The Department of the Interior regulations at 43 CFR 43—Government-wide Requirements for Drug-Free Workplace (Financial Assistance), which adopt the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq, as amended) applicable to grants and cooperative agreements,

are hereby incorporated by reference and made a part of this agreement. By entering into this grant or cooperative agreement with the Bureau of Reclamation, the recipient agrees to comply with 43 CFR 43, Subpart B, if the recipient is not an individual, or with 43 CFR 43, Subpart C, if the recipient is an individual. These regulations are available at [http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_43/43cfr43\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_43/43cfr43_00.html).

#### **C.4 Assurances and Certifications Incorporated by Reference**

a. The provisions of the Assurances, SF 424B or SF 424D as applicable, executed by the Recipient in connection with this agreement shall apply with full force and effect to this agreement as if fully set forth in these General Provisions. Such Assurances include, but are not limited to, the promise to comply with all applicable Federal statutes and orders relating to nondiscrimination in employment, assistance, and housing; the Hatch Act; Federal wage and hour laws and regulations and work place safety standards; Federal environmental laws and regulations and the Endangered Species Act; and Federal protection of rivers and waterways and historic and archeological preservation.

b. When required by 43 CFR 18—New Restrictions on Lobbying, recipients shall complete a Certification Regarding Lobbying form. This certification is incorporated by reference and made a part of this agreement. These regulations are available at [http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_43/43cfr18\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_43/43cfr18_00.html).

#### **C.5 Covenant Against Contingent Fees**

The recipient warrants that no person or agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide offices established and maintained by the recipient for the purpose of securing agreements or business. For breach or violation of this warranty, the Government shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement amount, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### **C.6 Contracting with Small and Minority Firms, and Women's Business Enterprises**

It is a national policy to award a fair share of contracts to small and minority business firms. The Department of the Interior is strongly committed to the objectives of this policy and encourages all recipients of its grants and cooperative agreements to take affirmative steps to ensure such fairness.

a. The grantee and sub-grantee shall take all necessary affirmative steps to assure that minority firms, and women's business enterprises are used when possible.

b. Affirmative steps shall include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(5) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce as appropriate, and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in b(1) through (5) above.

### **C.7 Notice Regarding Buy American Act**

In accordance with the annual Energy and Water Development Appropriations Act, please be advised that it is and has been the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made. This provision shall remain in effect unless revoked by a future specific act of Congress.

### **C.8 Resolving Disagreements**

When entering into a cooperative agreement with a recipient, Reclamation commits itself to working with the recipient in a harmonious manner to achieve the objectives of the project successfully. When disagreements arise between the parties, they must be resolved according to the procedures discussed below:

a. Reclamation shall attempt first to resolve disagreements with the recipient through informal discussion among the Grants or Contract Specialist, the Program Officer, and the recipient's Project Director.

b. If the disagreement cannot be resolved through informal discussion between these parties, the Grants Specialist and the Program Officer shall document the nature of the disagreement and bring it to the attention of the Grants Officer.

c. After reviewing the facts of the disagreement, as presented by the Grants and Program Offices, the Grants Officer will arrange a formal meeting. If agreement still cannot be reached, the parties will collectively decide on any varied approaches, which might be used to resolve the disagreement. The parties shall be responsible for their individual expenses related to any approach utilized to resolve the disagreement. If attempts at resolving the disagreement fail, the Chief, Acquisition and Assistance Management Services, or the Regional Director, whichever is applicable, shall make a decision which shall be final and conclusive.

d. Nothing herein shall be construed to delay or limit Reclamations right to take immediate and appropriate action, as set forth at 43 CFR Subpart 12.83 or 12.962, as applicable, in the event of material noncompliance by the recipient, and no attempts at informal resolution shall be necessary.

Any post award issue will be open for resolution in accordance with the above procedures, with the exception of disagreements regarding continuation of the agreement (termination must be in accordance with 43 CFR 12), or other matters specifically addressed by the agreement itself.

### **C.9 Lobbying Restrictions**

In accordance with the annual Energy and Water Development Appropriations Act, please be advised that it is and has been the sense of Congress that none of the funds appropriated by this Act may be used in any way, directly or indirectly, to influence Congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This provision shall remain in effect unless revoked by a future specific act of Congress.

### **C.10 Electronic Funds Transfer (EFT)**

In accordance with the Debt Collection Improvement Act of 1996, 31 CFR 208, effective January 2, 1999, all Federal payments to recipients must be made by EFT unless a waiver has been granted in accordance with 31 CFR 208.4. Upon award of a financial assistance agreement, Reclamation will provide the recipient with further instructions for implementation of EFT payments or a certification form to request exemption from EFT.

### **C.11 Endorsement of Commercial Products and Services**

In accordance with 43 CFR 12.2(d), this provision applies to grants and cooperative agreements whose principal purpose is a partnership where the recipient contributes resources to promote agency programs, publicize agency activities, assists in fund-raising, or provides assistance to the agency. If the agreement is awarded to a recipient, other than a State government, a local government, or a federally-recognized Indian tribal government, and the agreement authorizes joint dissemination of information and promotion of activities being supported, the following provision shall be made a term and condition of the award:

Recipient shall not publicize or otherwise circulate, promotional material (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles, manuscripts or other publications) which states or implies governmental, Departmental, bureau, or government employee endorsement of a product, service or position which the recipient represents. No release of information relating to this award may state or imply that the Government approves of the recipient's work products, or considers the recipient's work product to be superior to other products or services.

All information submitted for publication or other public releases of information regarding this project shall carry the following disclaimer:

The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government.

Recipient must obtain prior Government approval for any public information releases concerning this award, which refer to the Department of the Interior or any bureau or employee (by name or title). The specific text, layout photographs, etc. of the proposed release must be submitted with the request for approval.

A recipient further agrees to include this provision in a sub-award to any sub-recipient, except for a sub-award to a State government, a local government, or to a federally-recognized Indian tribal government.

### **List of Documents, Exhibits, or Other Attachments (06/04)**

**D.1 The following documents, exhibits or attachments are incorporated and made a part of this agreement.**

Attachment Number	Title	No. of Pages
1	Santa Barbara CWA proposal dated June 7, 2009	25



# United States Department of the Interior

BUREAU OF RECLAMATION  
Mid-Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825-1898

IN REPLY  
MP-3813  
REFER TO:  
ACM-4.00

AUG 18 2004

## MEMORANDUM

To: Bureau of Reclamation, South Central California Area Office  
Attention: David Woolley

From: *Maria E. Castaneda*  
Maria E. Castaneda  
Grants Officer

Subject: Appointment of Grants Officer Technical Representative (GOTR) - Financial Assistance Agreement **R09AP20053** - CALFED (WUE) – Smart Landscaping Rebate Program

Pursuant to the authority vested in the Grants Officer (GO) by the Reclamation Manual ACM 01-01, paragraph 3, and the Reclamation Financial Assistance Handbook, you are hereby designated, on a non-redelegable basis, as GOTR for the subject agreement.

As a matter of practice, you shall prepare memorandums for the record (MFR) of all meetings, trips, and telephone conversations relating to this agreement. Each MFR, other similar records, and all correspondence relating to the agreement shall cite the agreement number and name. A copy of all actions or correspondence shall be furnished to the GO and to all other interested parties having a need to know. Please ensure any restrictions regarding proprietary data, as well as classified and business-sensitive information, are enforced.

In your capacity as GOTR, you should become thoroughly familiar with the agreement and all of the general and special terms and conditions. In performing your GOTR duties, you are not authorized to:

1. Award, agree to, or execute any agreement, agreement modification, or notice of intent;
2. Obligate, in any way, the payment of money by the Government;
3. Make a final decision on any agreement matter;
4. Suspend or terminate the agreement, for cause or convenience; or
5. Take actions that would alter or redirect any aspect of the project.

Your GOTR duties will consist of the following:

1. Monitor agreement performance and compliance.

- a. Represent Reclamation in technical phases of the project within the scope of the agreement and attempt to resolve questions regarding interpretation of agreement specifications, drawings, and/or other technical matters. In the event of disagreement with the recipient in this regard, or if there is a question regarding whether a change falls within the scope of the agreement, please refer the matter to the GO for resolution. Your referral report should contain facts and recommendations.

- b. Review any changes or modifications proposed by the recipient and provide such information to the GO along with your recommendations regarding the action the GO should take.

- c. Monitor recipient performance to ensure that the project progresses in accordance with the agreement and on schedule.

- d. Actively monitor the agreement to ensure that the recipient complies with the terms and conditions of the agreements for timely submission of all progress and financial reports. If the recipient is believed to not be in compliance, the GOTR shall promptly inform the GO so that actions can be taken in accordance with the Department of the Interior "Policy Regarding Financial Status Reporting Requirements Related to Grants," which was transmitted by Reclamation Financial Assistance Memorandum (RFAM) 04-02.

- e. Advise the GO promptly of any situations, actual or potential, which you believe could adversely affect the interests of the Government, e.g., recipient financial or personnel problems, non-compliance with Federal regulations, etc.

- f. When required, obtain quarterly accrual information from the recipient and submit this information to the GO or other designated point of contact.

- g. Furnish copies of all applicable reports, letters, and any other pertinent agreement-related correspondence to the GO, Mail Code: MP-3813.

2. Administer Payment and Property.

- a. Review and concur or provide prompt rejection of recipient SF-270 - Request for Advance or Reimbursement. Timely certification and submission of SF-270 forms is extremely important.

You should reject SF-270 forms if agreement terms and conditions have not been met, if the recipient has failed to make satisfactory progress, if the recipient is not meeting its cost sharing requirements, or if it appears the recipient is requesting an advance of funds in excess of their immediate cash disbursement requirements.



b. If the recipient has elected to use the Automated Standard Application for Payments system, the GOTR should monitor drawdown requests and alert the GO if it appears the recipient is requesting an advance of funds in excess of their immediate cash disbursement requirements, or if the recipient is violating any other terms and conditions of the award, as discussed in paragraph B.1.

c. Monitor Government property furnished under this agreement. Maintain property records in connection with this agreement and provide property disposition recommendations to the GO upon completion of the agreement.

In the event you are in doubt as to the extent of your authority with respect to an agreement matter, you should contact the GO for guidance before taking action on the matter. You are cautioned that you may be held personally liable for actions taken or direction given beyond the authorities delegated by this memorandum.

You are reminded of the applicability of the Department of the Interior Employee Responsibility and Conduct Regulations (see 43 CFR 20), and the Standards of Ethical Conduct for Employees of the Executive Branch (see 5 CFR 2635). In particular, 5 CFR 2635, Subpart B, contains standards that prohibit you from soliciting or accepting any gift, gratuity, favor, discount, entertainment, hospitality, loan, or other item having monetary value from a prohibited source (see 5 CFR 2635.203), unless otherwise excepted.

If you have any questions concerning this matter, please contact Maria E. Castaneda, at (916) 978-5148.

cc: Santa Barbara County Water Agency  
SCCAO (D. Woolley)

Note to Recipient: Please acknowledge your receipt of this memorandum and understanding of the identity and function of the Grants Officer Technical Representative by signing below and returning one copy of this memorandum to the Grants Officer, (MP-3813).

\_\_\_\_\_  
Recipient's Representative

\_\_\_\_\_  
Date

Note to GOTR: Please acknowledge your receipt of this memorandum and understanding of your responsibilities and limitations as the Grants Officer Technical Representative for this Agreement, by signing below and returning one copy of this memorandum to the Grants Officer, (MP-3813).

\_\_\_\_\_  
Grants Officer Technical Representative

\_\_\_\_\_  
Date



# United States Department of the Interior

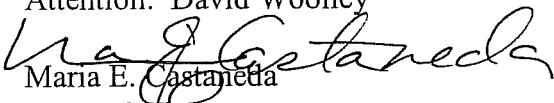
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IN REPLY  
MP-3813  
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AUG 18 2003

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