Yucaipa Valley Water District

Director Memorandum 12-022

Date: March 7, 2012

Prepared By: Joseph Zoba, General Manager

Subject: Ratification of State Water Resources Grant Agreement No. 11-162-550 for the Construction of Recycled Water Facilities and the WISE Project

Recommendation: That the Board of Directors ratifies the Recycled Water Grant Agreement in the amount of $3,197,000 from the State Water Resources Control Board.

On February 23, 2012, the District received a State Water Resources Control Board Grant Agreement No. 11-162-550 for the construction of recycled water facilities. The $3,197,000 grant will be used for the construction of recycled water infrastructure and reverse osmosis equipment to be installed at the Wochholz Regional Water Recycling Facility.

This item was presented and discussed at the board workshop on February 28, 2012 as Workshop Memorandum No. 12-043.

CALIFORNIA Water Boards

EDMUND G. BROWN JR. GOVERNOR

MATTHEW RODRIQUEZ SECRETARY FOR ENVIRONMENTAL PROTECTION

State Water Resources Control Board

DO NOT MODIFY ENCLOSED GRANT AMENDMENT SETS

Mr. Joseph Zoba
P.O. Box 730
Yucaipa, CA 92399-0730

February 23, 2012

Dear Mr. Zoba:

Enclosed are four (4) original sets of your Grant Agreement Amendment (Agreement No. 11-162-550. Page two of each Grant Agreement set must be signed and dated in **BLUE INK** by you, as the General Manager, who is authorized to sign on behalf of your agency as designated in your authorizing resolution.

It is imperative that all four (4) sets, bearing an original signature on each, be returned within ten (10) working days from the date of this letter.

PLEASE NOTE: VERY IMPORTANT TO SUCCESSFUL GRANT COMPLETION

Timely return of the signed four (4) Grant Agreement sets is essential. Project funding may be jeopardized by not responding to this letter in a timely manner.
If you cannot comply with the ten (10) day turnaround, you must notify us by e-mail immediately with the reason for the delay and an approximate date when you will be able to comply.
Your immediate attention and compliance with the request(s) in this letter is greatly appreciated.

Grant documents may be sent by Overnight or Certified mail to:

Susan Mitchell
Division of Financial Assistance
State Water Resources Control Board
1001 I Street, 17th Floor
Sacramento, CA 95814

OR

by U. S. Postal Service to:

Susan Mitchell
Division of Financial Assistance
State Water Resources Control Board
P. O. Box 944212
Sacramento, California 94244-2120

Upon execution, we will provide you an original signed copy of the Amended Grant Agreement. If you have any questions, please contact Susan Mitchell at (916) 322-3603 or at smitchell@waterboards.ca.gov.

Sincerely,

Susan Mitchell

Enclosures

FOR STATE USE ONLY
DGS REGISTRATION NO.

PROPOSITION 50 – WATER RECYCLING GRANT PROGRAM
GRANT AGREEMENT
BETWEEN THE
STATE WATER RESOURCES CONTROL BOARD, hereinafter called "State" or "State Water Board"
AND

Yucaipa Valley Water District, hereinafter called "Grantee"

Non-Potable Water Infrastructure Project Phase II Expansion, hereinafter called "Project"

AGREEMENT NO.11-162-550

State and Grantee hereby agree as follows:

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

Water Code § 79550(g) (Proposition 50 Water Recycling)

The State Water Board, pursuant to the Preliminary Funding Commitment, Division of Financial Assistance (Division) Determination No. 2011-023 approved on December 19, 2011 and State Water Board Delegation Resolution No. 2007-0004 has authorized Water Recycling Grant Program funds for the Project.

PURPOSE. State shall provide a grant to and for the benefit of Grantee for the purpose of installing Reverse Osmosis facilities for the Wocholz Improvement Salinity Effluent project at the Wocholz Regional Water Recycling Facility and construct the infrastructure required to deliver recycled water to existing and future users connected to the non-potable system

GRANT AMOUNT. The maximum amount payable under this Agreement shall not exceed $3,197,000. Global Positioning System (GPS) locations for any monitoring must be identified for this Project prior to any disbursements.

TERM OF AGREEMENT. The term of the Agreement shall begin on December 19, 2011 and continue through final payment plus thirty-five (35) years unless otherwise terminated or amended as provided in the Agreement. HOWEVER, ALL WORK SHALL BE COMPLETED BY MARCH 31, 2015. ABSOLUTELY NO FUNDS MAY BE REQUESTED AFTER MAY 1, 2015.

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

State Water Resources Control Board	Grantee: Yucaipa Valley Water District
Name: Mr. Daniel Newton, Grant Manager	Name: Mr. Joseph Zoba, Project Director
Address: 1001 I Street, 16th Floor Sacramento, CA 95814	Address: P.O. Box 730 Yucaipa, CA 92399-0730
Phone: (916) 324-8404	Phone: (909) 797-5119
Fax: (916) 341-5707	Fax: (909) 797-6381
e-mail: dnewton@waterboards.ca.gov	e-mail: jzoba@yvwd.dst.ca.us

Direct all inquiries to:

State Water Resources Control Board	Grantee: Yucaipa Valley Water District
Section/Unit: Division of Financial Assistance	Section/Unit:
Attention: James Garcia, Project Manager	Attention: Mr. Scott Goldman, Grant Contact
Address: 1001 I Street, 16th Floor Sacramento, CA 95814	Address: P.O. Box 730 Yucaipa, CA 92399-0730
Phone: (916) 341-5647	Phone: (949) 587-1700
Fax: (916) 341-5707	Fax: (949) 587-1300
e-mail: jgarcia@waterboards.ca.gov	e-mail: sgoldman@rmcwater.com

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

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

Exhibit A SCOPE OF WORK

Exhibit B INVOICING, BUDGET DETAIL, AND REPORTING PROVISIONS

Exhibit C STATE WATER BOARD - GENERAL CONDITIONS

Exhibit D WATER RECYCLING GRANT PROGRAM – SPECIAL CONDITIONS

GRANTEE REPRESENTATIONS. The Grantee accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by the Grantee in its application, accompanying documents, and communications filed in support of its request for grant funding. Grantee shall comply with and require its contractors and subcontractors to comply with all applicable laws, policies and regulations.

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

By: _____
Grantee Signature

_____
Grantee Typed/Printed Name

_____
Title and Date

By: _____
Elizabeth L. Haven, Deputy Director
Division of Financial Assistance,
State Water Resources Control Board

_____
Date

Reviewed by:
Office of Chief Counsel
Date:

EXHIBIT A – SCOPE OF WORK

1. Work To Be Performed by Grantee:

All work under this Grant Agreement shall be performed in accordance with the "Facilities Plan Approval" Letter dated August 23, 2011 and any amendments thereto, State Water Board "Preliminary Funding Commitment", Division Determination No. 2011-023 dated December 19, 2011, and Project construction plans and specifications approved by the State Water Board.

If the Water Recycling Funding Program financing agreement is not signed by February 28, 2012 this Grant Agreement shall immediately and automatically terminate, unless a time extension of up to one hundred twenty (120) days is approved.

State Disclosure Requirements – Include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

"Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

Signage shall be posted in a prominent location at Project site (if applicable) and shall include the State Water Board logo (available from the Program Analyst) and the following disclosure statement:

Water Boards

"Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board."

The Grantee shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this work item. (Gov. Code, § 7550)

Documents referenced above are hereby incorporated into this Grant Agreement in their entirety.

EXHIBIT B – DISBURSEMENT, BUDGET DETAIL AND REPORTING PROVISIONS

1. Request for Disbursement

1.1 An original Disbursement Request (Form 260) along with an original Grantee invoice shall be submitted to the State Water Board's Disbursement Coordinator. The Grantee may submit disbursement requests initially after this Agreement has been executed and subsequently not more frequently than every thirty (30) calendar days. Also required for disbursement of funds for Construction projects is a Construction Spreadsheet (Form 259). All disbursement forms and supporting documentation must be completed in accordance with the supplied instructions. All documents must have original signatures and dates (in ink) by Grantee's Authorized Representative, designee, or Project Director. Final disbursement requests shall be clearly marked 'FINAL" and submitted NO LATER THAN MAY 1, 2015.

The address for submittal is:

State Water Resources Control Board,
Division of Financial Assistance
Attention: Disbursement Coordinator
17th Floor, Administration Unit
P. O. Box 944212
Sacramento, CA 94244-2120

Street Address: 1001 I Street, 17th Floor
Sacramento, CA 95814

1.2 Payment will be made only after receipt of a complete, adequately supported, properly documented and accurately addressed Form 260. Forms received by the State Water Board that are not consistent with the approved format will cause delay in disbursement. In the event of a delayed disbursement, the State Water Board's Disbursement Coordinator will notify the Grantee. Full payment will not be made until the issue(s) for the delay are resolved. Failure to use the address exactly as provided above may result in return of the invoice or payment request to the Grantee. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. The State Water Board's Grant Manager must approve all payments.

1.3 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-free status on State bonds, pursuant to any Federal statute or regulation.

1.4 Grantee shall use disbursement amounts to pay outstanding costs incurred immediately, if Grantee has not already paid such costs.

2. Budget Contingency Clause

The maximum amount to be encumbered under this Agreement for the 2010-11 fiscal year ending June 30, 2011 shall not exceed three million one hundred ninety-seven thousand dollars ($3,197,000).

The Grantee agrees to pay any and all costs associated with the completion of the Project, including without limitation, any and all Project costs exceeding the State Water Board approved grant amount.

If federal or other state funding assistance for Project costs is made available, the Grantee may retain all federal or other state funds received up to an amount that equals the Grantee's local share of Project costs. Any excess funds received, up to the total amount of the State Water Board grant funds received, shall be remitted to the State Water Board to the extent not prohibited by the requirements of the other funding sources. Any residue shall be the property of the Grantee.

Upon execution and delivery of this Agreement, and award of a construction subcontract or commencement of construction by a force account, the Grantee may request disbursement of funds based on eligible construction costs incurred. Grant Project Funds will be disbursed to the Grantee upon receipt of Disbursement Request (Form 260) duly completed and executed by the Grantee for incurred costs consistent with the Final Plans and Specifications Approval Letter. Only costs incurred in accordance with Water Recycling Funding Program (WRFP) Guidelines are eligible for reimbursement under this Agreement. Disbursement requests shall not be submitted more frequently than every thirty (30) days.

The Grantee may request a grant allowance for engineering, legal, and construction management costs for the purposes of design and construction of the Project. Legal costs incurred for Project-related litigation are not reimbursable. The eligible allowance shall be at most fifteen percent (15%) of the eligible construction costs, provided the allowance does not exceed the actual costs incurred for the purposes of the allowance or of other purposes associated with the design or construction of the Project. For purposes of this provision, "construction cost" means the cost of erecting, installing, placing, altering, remodeling, improving, or extending facilities, whether accomplished by subcontract or force account. The allowance provided for herein shall be the total amount allowed under this Agreement for engineering, legal, and construction management of the Project, regardless of the actual costs thereof. The allowance shall be disbursed as part of each disbursement request and shall not exceed fifteen percent (15%) of the eligible construction costs for that disbursement request.

If the State 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 is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to the Grantee to reflect the reduced amount.

3. Line Item Budget

Description	Grant Amount
Construction	$3,197,000
Total	$3,197,000

4. Reports.

4.1 Grantee shall submit quarterly progress reports/construction status reports to the State Water Board's Grant Manager by the end of the calendar quarter (March, June, September, and December). The Grantee agrees to expeditiously provide, status reports on the Project no less frequently than quarterly, starting with the execution of this Agreement. At a minimum the reports will contain the following information: a summary of progress to date including a description of progress since the last report, milestones achieved, and any problems encountered in the performance of the work under this Agreement. Items to include during construction include: percent construction complete, percent contractor invoiced, and percent schedule elapsed; a listing of change orders including amount, description of work, and change in contract amount and schedule; and any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

4.2 Every three (3) months (quarterly) during the work performed under Exhibit A section of this Agreement, the Grantee shall develop and submit to the Grant Manager expenditure/invoice projections for future quarters to enable funding to be available for payment of invoices.

4.3 The Grantee shall submit annual reports to the State Water Board for a period commencing with completion of construction, as determined by the State Water Board, through one (1) full year after all proposed recycled water users included in the Project are connected for service (minimum five [5] years).

The first annual report is due on February 28th following the first complete calendar year of operation and shall cover the period from the completion of construction through the end of the first full calendar year thereafter. Subsequent annual reports are due by February 28th following the year covered. The annual reports shall be prepared in accordance with the "Water Reclamation Loan Program Guidelines for Annual Progress Reports," dated July 2008, or any successor guidelines.

The reports shall be submitted in hard copy and electronically to the Grant Manager and shall include the following:

4.3.1 Data on monthly recycled water deliveries to each user identified in the Facilities Plan Approval and any new users;

4.3.2 Data on total amount of recycled water delivered by the Grantee by the following use types: agricultural irrigation, landscape irrigation, industrial reuse, energy production, groundwater recharge, seawater barrier, recreational impoundment, wildlife habitat, or other;

4.3.3 An updated schedule for any existing/future user added to the Project since the original Project user list was approved;

4.3.4 Any current plans for use of any Project capacity not under contract for use;

4.3.5 A description of compliance with any special conditions of this Agreement;

4.3.6 A list of the power and maintenance costs associated with the Project for the period; and,

4.3.7 Any other information as may be reasonably required to evaluate the Project's benefits and use of Project facilities.

4.4 Within one hundred twenty (120) days after Completion of Construction, the Grantee agrees to provide to the Grant Manager a final cost summary report on the Project. The summary shall include at a minimum, a statement of:

4.4.1 Total Eligible Project Costs and total Project costs including change orders;

4.4.2 The amount of any unexpended Grant Project Funds;

4.4.3 The total amount of assistance funds received from all sources and the allocation of those funds to the Project's costs;

4.4.4 The amount of interest earned, if any, on Grant Project Funds before expenditure on incurred Project costs. If no interest has been earned, this fact shall be expressly stated;

4.4.5 The report shall be accompanied by such other financial information as may be reasonably required by the State Water Board to verify Grantee entitlement to assistance, to assure program integrity of the WRFP. The Authorized Representative shall certify the report as correct, that costs attributed to the Project have been incurred in the amounts and for the purposes represented, and that the work or material for which payment has been requested is satisfactory. Any change in the information supplied shall be promptly reported to the State Water Board.

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

5. 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.

6. Final Disbursement. Notwithstanding any other provision of this Agreement, the Grantee agrees that the State Water Board may retain an amount equal to ten percent (10%) of the grant amount specified in this Agreement until 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.

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

8. Project Certification. One (1) year after initiation of operations, the Grantee shall certify to the State Water Board whether or not the Project, as of that date, meets the Project performance standards agreed upon as part of final plans and specifications approval, including the quality of recycled water and the expected deliveries of recycled water during the first year of Project operation. If the Grantee cannot certify that the Project meets such performance standards at that time, the Grantee will, at its own expense and in a timely manner, expeditiously make all needed corrections and perform all additional work necessary to allow affirmative certification for the Project.

9. Project Access. The Grantee agrees to ensure that the State Water Board, or any authorized representative thereof, will have suitable access to the Project site at all reasonable times during Project construction and thereafter for the useful life of the Project.

10. Project Deliveries. The Grantee agrees to obtain sufficient recycled water users connected to Project facilities to make deliveries of recycled water in accordance with the schedule specified in Exhibit A.

11. Failure To Submit Report. Failure to submit any reports pursuant to this Exhibit required by the State Water Board shall constitute a breach of a material provision of this Agreement. The Grantee understands and acknowledges that upon failure to provide any such report pursuant to this Exhibit, the Division of Financial Assistance (Division) will stop processing any pending and future applications for new loans or grants and withhold payments on any existing loans and grants that the Grantee may have with the State Water Board until the report has been submitted to the Grant Manager's reasonable satisfaction. Further, upon failure to submit a report pursuant to this Exhibit, the Division shall issue a notification and request for the report and initiate administrative proceedings pursuant to Water Code sections 13267 and 13268 or use any other legal means to obtain the report. The Grantee further acknowledges that failure to submit required reports may result in termination of this Agreement and immediate repayment of all grant funds disbursed hereunder.

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

EXHIBIT C — STATE WATER BOARD GENERAL CONDITIONS

1. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

2. APPROVAL: The Grantee will not proceed with any work on the Project until authorized in writing by the State Water Board.

3. ASSIGNMENT: This Grant is not assignable by the Grantee, either in whole or in part, without the written consent of the State Water Board.

4. AUDIT: The Grantee agrees that the State Water Board, the Bureau of State Audits, the Governor of the State, of the Internal Revenue Service, or any authorized representative of the foregoing shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Division of Financial Assistance (Division), at its option, may call for an audit of financial information relative to the Project, where the Division determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of federal requirements. Where such an audit is called for, the audit shall be performed by a certified public accountant independent of the Grantee and at the cost of the Grantee. The audit shall be in the form required by the Division. The Grantee agrees to maintain such records for a possible audit for a minimum of thirty-five (35) years after final payment, unless a longer period of records retention is stipulated. The Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Grantee agrees to include a similar right of the State to audit records and interview staff in any contract related to performance of this Agreement. The Grantee agrees it shall return any audit disallowances to the State Water Board.
(Gov. Code, § 8546.7; Pub. Contract Code, § 10115 et seq.)

5. BONDING: Where contractors are used, the Grantee shall not authorize construction to begin until each such 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 $20,000.00. Copies of performance bonds must be submitted to the Grant Manager prior to the authorization of construction activities.

6. CEQA/NEPA: No work that is subject to the California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA) may proceed under this Agreement until documents that satisfy the CEQA/NEPA process are received by the Grant Manager and the State Water Board has given environmental clearance. No work that is subject to an Environmental Impact Report or a Mitigated Negative Declaration may proceed until and unless approved by the Deputy Director of the Division. Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. Proceeding with work subject to CEQA and/or NEPA without environmental clearance by the State Water Board shall constitute a breach of a material provision of this Agreement.

7. COMPLIANCE WITH LAW, REGULATIONS, ETC.: The Grantee agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, the Grantee agrees that, to the extent applicable, the Grantee will comply with the provisions of the adopted environmental mitigation plan for the term of this Agreement, or the useful life of the Project, whichever is longer.

8. 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.

9. CONFLICT OF INTEREST: The Grantee certifies that it is in compliance with applicable state and/or federal conflict of interest laws.

10. 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, or dispose of the Project or any significant part or portion thereof during the useful life of the Project without prior written approval of the State Water Board. Such approval may be conditioned as determined to be appropriate by the State Water Board, including conditions requiring repayment of all grant funds or any portion of disbursed grant funds covered by this Agreement together with accrued interest and any penalty assessments that may be due. The Grantee shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of the Grantee to meet its obligations under this Agreement, without prior written permission of the State Water Board.

11. DAMAGES FOR BREACH AFFECTING TAX EXEMPT STATUS: In the event that any breach of any of the provisions of this Agreement by the Grantee shall result in the loss of tax exempt status for any state bonds, or if such breach shall result in an obligation on the part of the State to reimburse the federal government by reason of any arbitrage profits, the Grantee shall immediately reimburse the State in an amount equal to any damages paid by or loss incurred by the State due to such breach.

12. DATA MANAGEMENT: This Project includes appropriate data management activities so that Project data can be incorporated into appropriate statewide data systems.

13. DISPUTES: The Grantee shall continue with its responsibilities under this Agreement during any dispute. Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Deputy Director of the Division, or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Grantee and to the State Water Board's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Grantee, the Grantee mails or otherwise furnishes a written appeal of the decision to the State Water Board's Executive Director. The decision of the State Water Board's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Grantee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Grantee shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement. This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.

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. GRANTEE'S RESPONSIBILITY 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, including but not limited to payment disputes with contractors, subcontractors. The State will not mediate disputes between the Grantee and any other entity concerning responsibility for performance of work.

17. 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.

18. 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.

19. INSPECTION: The State Water Board, the Bureau of State Audits, or any authorized representative of the foregoing, shall have suitable access to the Project site at all reasonable times during Project implementation and thereafter for the life of the Project to ascertain compliance with this Agreement and its goals. The Grantee acknowledges that the Project records and location are public records.

20. INSURANCE: Throughout the 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 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.

21. NONDISCRIMINATION:

    a. During the performance of this Agreement, the Grantee and its consultants and contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.

    b. The Grantee, its consultants, and contractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

    c. The Grantee, its consultants, and contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

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

    e. The Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement. Failure by the Grantee to carry out these requirements and applicable requirements of 40 C.F.R. part 33 is a breach of a material provision of this Agreement which may result in its termination

22. 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.

23. NOTICE:

    a. The Grantee shall notify the State Water Board prior to conducting construction, monitoring, demonstration, or other implementation activities such that State Water Board and/or Regional Water Quality Control Board (Regional Water Board) staff may observe and document such activities.

b. 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.

c. The Grantee shall promptly notify the State Water Board of the discovery of any potential archeological or historical resources. Should a potential archeological or historical resource be discovered during construction of the Project, the Grantee agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resources, and the Division has determined what actions should be taken to protect and reserve the resources. The Grantee agrees to implement appropriate actions as directed by the Division.

d. The Grantee shall promptly notify the State Water Board of the discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Grantee agrees to cease all work in the area until a qualified biologist has evaluated the situation and made recommendations regarding the avoidance or minimization of impact on the species and/or habitat. The Grantee agrees to implement appropriate actions as directed by the Division.

e. 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 State Water Board representatives.

f. The Grantee shall promptly notify the State Water Board in writing of completion of work on the Project.

g. The Grantee shall promptly notify the State Water Board in writing of any cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more and of any circumstance, combination of circumstances, or condition, which is expected to or does delay completion of construction for a period of ninety (90) days or more beyond the estimated date of completion of construction previously provided.

24. OPERATIONS & MAINTENANCE: The Grantee shall maintain and operate the facility and structures constructed or improved as part of the Project throughout the life of the Project, consistent with the purposes for which this Grant was made. The Grantee assumes all operations and maintenance costs of the facilities and structures; the State Water Board shall not be liable for any cost of such maintenance, management or operation. The Grantee may be excused from operations and maintenance only upon the written approval of the Grant Manager. For purposes of this Agreement, "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses. "Maintenance costs" include ordinary repairs and replacements of a recurring nature necessary to prolong the life of capital assets and basic structures, and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures.

25. PERMITS, CONTRACTING, 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, if any, or as are specifically authorized by the State Water Board's Grant Manager during the performance of this Agreement. Any substitutions in, or additions to, such contractors, associates, or consultants, shall be subject to the prior written approval of the State Water Board's Grant Manager. The Grantee shall not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension." The Grantee shall not contract with any individual or organization on USEPA's List of Violating Facilities. (40 C.F.R. Part 31.35; Gov. Code, § 4477) www.epls.gov. The Grantee 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;

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; and

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.

26. PREVAILING WAGES AND LABOR COMPLIANCE: If applicable, the Grantee agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. The Grantee certifies that it has a Labor Compliance Program (LCP) in place or has contracted with a third party that has been approved by the Director of the Department of Industrial Relations (DIR) to operate an LCP pursuant to Labor Code, § 1771.5 and section 16423 of title 8 of the California Code of Regulations. Current DIR requirements may be found at http://www.dir.ca.gov/lcp.asp.

27. PROFESSIONALS: The Grantee agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for.

28. RECORDS: Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles, the Grantee agrees to:

    a. Establish an official file for the Project which shall adequately document all significant actions relative to the Project;

    b. Establish separate accounts which will adequately and accurately depict all amounts received and expended on this Project, including all grant funds received under this Agreement;

    c. Establish separate accounts which will adequately depict all income received which is attributable to the Project, especially including any income attributable to grant funds disbursed under this Agreement;

    d. Establish an accounting system which will adequately depict final total costs of the Project, including both direct and indirect costs;

    e. Establish such accounts and maintain such records as may be necessary for the state to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and

    f. If a Force Account is used by the Grantee for any phase of the Project, establish an account that documents all employee hours, and associated tasks charged to the Project per employee.

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.

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

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 System; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Grantee for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement. To the fullest extent permitted by law, the Grantee agrees to pay and discharge any judgment or award entered or made against the State Water Board and/or the State with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of this Agreement.

32. SUPPLEMENTAL ENVIRONMENTAL PROJECTS: Grant Funds shall not be used for supplemental environmental projects required by Regional Water Boards.

33. STATE WATER BOARD ACTION, COSTS, AND ATTORNEY FEES: The Grantee agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State Water Board as a result of breach of this Agreement by the Grantee, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by the State Water Board shall not preclude the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own filing costs and attorney fees.

34. TERMINATION, IMMEDIATE REPAYMENT, INTEREST: This Grant Agreement may be terminated by written notice at any time prior to completion of the Project, at the option of the State Water Board, upon violation by the Grantee of any material provision after such violation has been called to the attention of the Grantee and after failure of the Grantee to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the State Water Board. In the event of 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 of full repayment by the Grantee.

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

36. TRAVEL AND PER DIEM: Any reimbursement for necessary travel shall be at rates not to exceed those set by the Department of Personnel Administration. These rates may be found at http://www.dpa.ca.gov/personnel-policies/travel/hr-staff.htm. 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.

37. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement shall continue to have full force and effect and shall not be affected thereby.

38. 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.

39. 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, or in the United States District Court in and for the Eastern District of California. The Grantee hereby waives any existing sovereign immunity for the purposes of this Agreement.

40. WAIVER AND RIGHTS OF THE STATE WATER BOARD: Any waiver of rights with respect to a default or other matter arising under the Agreement at any time by either party shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State provided for in this Agreement are in addition to any other rights and remedies provided by law.

41. WATERSHED MANAGEMENT PLAN CONSISTENCY: Grantee certifies that any watershed protection activity undertaken as part of this Project will be consistent with the applicable, adopted, local watershed management plans and the applicable Water Quality Control Plan (Basin Plan) adopted by a Regional Water Board, where such plans exist.

42. 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 – WATER RECYCLING GRANT PROGRAM TERMS AND CONDITIONS

1. If this Project affects water quality, the Grantee certifies that it shall include a monitoring component that allows the integration of data into statewide monitoring efforts, including but not limited to, the State Water Board's surface water ambient monitoring program (SWAMP).

2. The Grantee certifies that this Project shall be consistent with the CALFED Programmatic Record of Decision.

3. If this Project affects groundwater, the Grantee certifies that it shall include a monitoring component consistent with the Groundwater Quality Monitoring Act of 2001 (Wat. Code, § 10780 et seq.).

4. The Grantee certifies that activities carried out under this Agreement comply with the requirements of the California Environmental Quality Act.

5. The Grantee certifies that it is an Urban Water Supplier and the Department of Water Resources has determined that the Grantee is eligible to receive this grant.

6. The Grantee acknowledges that its eligibility for project financing is conditioned on its compliance with Water Code section 5103(e)(1), if applicable. The Grantee further certifies that it has filed, and will continue to file, its required Statements of Diversion with the State Water Board in accordance with Water Code sections 5101 and 5103.