

ATTACHMENT 3

SAMPLE ERP GRANT AGREEMENT

The California Department of Fish and Game (CDFG) and California Bay-Delta Authority (CBDA) expect to enter into grant agreements with successful applicants. The agencies are the potential State grant agreement agencies. This sample ERP grant agreement is provided so that you may assess whether you are willing and able to comply with its terms. Although the sample agreement identifies both agencies, only one of the agencies expects to be named in agreements with successful applicants. Successful applicants will be notified about which agency will be contacting them to develop an agreement when awards are announced. This following agreement is a sample format and may be adjusted in accordance to State policy and procedures.

ERP PSP ATTACHMENT 3

STATE OF CALIFORNIA

GRANT AGREEMENT	AGREEMENT NUMBER
SAMPLE SIGNATURE PAGE FOR ERP GRANT AGREEMENT	S-04-ER-XXX
	PROJECT NO.

1. This Grant Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

California Department of Fish and Game (CDFG) or California Bay-Delta Authority (CBDA)

GRANTEE'S NAME

Name of Grantee

2. The term of this Agreement is: **June 1, 2005** through **June 30, 2008**

3. The maximum amount of this Agreement is: **\$**

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Recitals

- Exhibit A – Scope of Work
- Exhibit A – Attachment 1 - Schedule and List of Deliverables
- Exhibit A – Attachment 2 – Sample Semi-Annual Report Form
- Exhibit A – Attachment 3 - ERP Amendment Guidelines
- Exhibit A – Attachment 4 – Project Data Form
- Exhibit A - Attachment 5 – Project Close Out Summary Report
- Exhibit B - Invoicing and Payment Provisions
- Exhibit B – Attachment 1 – Budget Summary and Detailed Breakdown
- Exhibit B - Attachment 2 – Sample Invoice Formats
- Exhibit B - Attachment 3 – State Travel & Per Diem Expenses Guidelines
- Exhibit B - Attachment 4 – Sample Travel Reimbursement Report
- Exhibit C – General Terms and Conditions for ERP Grants
- Exhibit D – Special Terms and Conditions for ERP Grants

IN WITNESS WHEREOF, this Grant Agreement has been executed by the parties hereto.

GRANTEE

GRANTEE'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

Name of Grantee

BY (Authorized Signature)

DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Name of Authorized Signatory, Title

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

**California Department of Fish and Game (CDFG) or
California Bay-Delta Authority (CBDA)**

BY (Authorized Signature)

DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Name of Authorized Signatory, Title

ADDRESS

Legal Counsel Use Only

**RECITALS
FOR ERP GRANT AGREEMENTS**

1. The following provisions authorize the California Department of Fish and Game (CDFG) and California Bay-Delta Authority (CBDA) to enter into this Grant Agreement:

Water Code sec. 79420 (a)(6) - applicable to CBDA only
Water Code sec. 79550 (e)
2. The Grantee has applied for a grant pursuant to the Monitoring and Evaluation Proposal Solicitation Package (PSP) authorized by CBDA pursuant to Resolution No. 04-08-06, adopted on August 12, 2004.
3. CDFG or CBDA has determined that Grantee is eligible for a grant under applicable laws and regulations, and has authorized grant funding to Grantee for the project hereinafter described pursuant to Resolution __-__-__, adopted on _____.
4. The project that is the subject of this Grant Agreement is being undertaken by Grantee for the purposes of implementing the CALFED Ecosystem Restoration Program. The grant funds may be used only for the approved project purposes as stated in this Grant Agreement.
5. Grantee accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Grant Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by Grantee in its application, accompanying documents, and communications filed in support of its application for grant funding. Grantee shall comply with and require its contractors and subcontractors to comply with all applicable laws, regulations, and policies.

EXHIBIT A
SCOPE OF WORK

“Project Title”

I. **PURPOSE OF PROJECT**

A. **Background Information**

The purpose of this project is to [insert description of project, as described in project proposal]

B. **Project Objectives**

Describe the goals and objective of this project, particularly as related to the Ecosystem Restoration Program goals and objectives. Use the discussion from your project proposal, incorporating any review comments as necessary.

1. Primary Project Goal.
2. Study Objectives. [if applicable]
3. Current Working Hypotheses and Investigative Approaches. [if applicable]

C. **Justification for Project Funding**

II. **PROJECT FUNDING SOURCE(S)**

This Grant Agreement is made in accordance with funds appropriated for Ecosystem Restoration Program activities referenced in chapter 7 Proposition 50 (Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002; Division 26.5 (commencing with Section 79500) of the Water Code), entitled CALFED Bay-Delta Program.

As used in this Grant Agreement, “CDFG” (California Department of Fish and Game) means the state agency charged with implementing the Ecosystem Restoration Program element of the CALFED Bay-Delta Program.

As used in this Grant Agreement, “CBDA” (California-Bay Delta Authority) means the state agency charged with oversight and coordination of the CALFED Bay-Delta Program, including, for a transitional period, implementation of the Ecosystem Restoration Program element together with the Department of Fish and Game.

III. **PROJECT OFFICIALS**

The ERP’s Grant Manager shall be ***insert name here***. The Grant Manager shall be the day-to-day representative for administration of this agreement. Except as otherwise expressly provided, all communications relative to this agreement shall be submitted to ERP’s Grant Manager.

The Grantee's Project Director shall be ***insert name here***, The Project Director shall be the Grantee's representative for the technical conduct, administration, and performance for this agreement and shall have full authority to act on behalf of the Grantee. All communications submitted to the Project Director shall be as binding as if given to the Grantee.

The Project Representatives during the term of this agreement shall be:

**EXHIBIT A
SCOPE OF WORK**

IV. WORK TO BE PERFORMED

- A. Scope of Work**
- B. Schedule of Activities and Completion Dates**
- C. Reports and Due Dates**

END OF EXHIBIT A – SCOPE OF WORK

Upon award, grantees will be provided with templates for Exhibit A – Scope of Work and Exhibit B – Budget Summary and Detailed Breakdown to use as a guide for developing Scope and Budget for the Grant Agreement.

**EXHIBIT A
SCOPE OF WORK**

LIST OF ATTACHMENTS SHOWN ON THE SIGNATURE PAGE

Following is a list of Attachments and a brief description of each. A copy of each of these attachments may be requested from CDFG or CBDA.

Exhibit A – Attachment 1 – **Schedule and List of Deliverables** – Provide a table with detailed description of deliverables for each task, sub-task and estimated due date for each deliverable.

Exhibit A – Attachment 2 – **Semi-Annual Report Form** – Provides specific project related status, progress, and fiscal report for each Grant.

Exhibit A – Attachment 3 – **ERP Amendment Guidelines** – Provides grantees with specific detailed information on requirements that grantees need to meet provide when requesting an amendment.

Exhibit A – Attachment 4 – **Project Data Form** – This forms provides specific detailed information about each project/Grant. This information is entered into ERP's database.

Exhibit A – Attachment 5 – **Project Close Out Summary Report** – This report results, findings as well as provides specific recommendations for improvement, future work, etc.

Exhibit B – Attachment 1 – **Budget Summary and Detailed Breakdown** – This form/format is detailed, specific and is required for ERP Grants.

Exhibit B – Attachment 2 – **Sample Invoice Forms** – These are the specific formats required to process invoices.

Exhibit B – Attachment 3 – **State Travel & Per Diem Expense Guidelines** – State of California guidelines for reimbursing travel. Note that the Dept of Personnel Administration's most current travel guidelines will be used at the time the Grant is prepared and executed.

Exhibit B – Attachment 4 – **Travel Reimbursement Report** – This form is used by Grantee when requesting reimbursement for travel. This form provides specific information on back up documentation required for reimbursement.

**EXHIBIT B
INVOICING AND PAYMENT PROVISIONS**

“Project Title”

1. **BUDGET SUMMARY:**

For the purposes of this Grant Agreement, payment for work performed under this Grant Agreement shall not exceed the amount indicated for each task. The Grantee shall invoice no more frequently than monthly based upon percent complete by task and deliverables.

See Budget Breakdown Exhibit B – Attachment 1 – Budget Summary and Detailed Breakdown

2. **INVOICING AND PAYMENT:** Grantee shall submit three (3) copies of the invoice to CDFG or CBDA upon receipt of notice of satisfactory completion or acceptance of work by ERP’s Grant Manager. The State will not accept an invoice for which work has not been approved and will return the invoice as a disputed invoice to the Grantee.

Invoices shall be submitted no more frequently than monthly in arrears, at a minimum one invoice for each one-half year of the Grant Agreement, bearing the Grant Number and ERP Project Number.

Milestones - In consideration of the satisfactory completion of the services described herein, the State agrees to pay the Grantee, in arrears, upon receipt of an invoice in triplicate, for services rendered under this Grant. The invoice shall be submitted by the Grantee in sufficient scope and detail to define the actual work performed and specific milestones completed, including a description of the activities of the Grantee and subcontractors and the hours expended to perform or complete those activities. The hourly rate for services rendered shall not exceed the rates set forth in this Grant Agreement.

Submit one (1) signed original and two (2) additional copies of each invoice to the Grant Manager at the following address:

Attention: _____
For: _____, Grant Manager
California Department of Fish and Game
4001 N. Wilson Way
Stockton, CA 95205

or Attention: _____, Chief Accounting Unit
For: _____, Grant Manager
California Bay-Delta Authority
650 Capitol Mall, 5th Floor
Sacramento, California 95814

Undisputed invoices shall be approved for the payment within 45 days of the date received by the Grant Manager and/or the Accounting Office, whichever date occurs later.

**EXHIBIT B
INVOICING AND PAYMENT PROVISIONS**

3. **BUDGET CONTINGENCY CLAUSE:** It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Grant does not appropriate sufficient funds for the program, this Grant shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Grant and Grantee shall not be obligated to perform any provisions of this Grant Agreement.

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

4. **BUDGET FLEXIBILITY:**

- A. Line item adjustment(s). Subject to the prior review and approval of the Grant Manager, line item shifts of up to \$25,000 or ten percent of the annual contract total, whichever is less, may be made up to a cumulative maximum of \$50,000 per fiscal year. Line item shifts may be proposed/requested by either the State or the Grantee in writing and must not increase or decrease the total contract amount allocated per fiscal year. Line item adjustments in excess of these amounts shall require a formal agreement amendment pursuant to the ERP Grant/Contract Amendment Workshop process (see Exhibit A – Attachment 3 – ERP Amendment Guidelines).
- B. Procedure to Request an Adjustment. Adjustments may be proposed/requested by either CDFG or CBDA or the Grantee in writing and must not increase or decrease the total grant amount allocated per fiscal year. The adjusted budget request shall be clearly indicated in the request by submitting a copy of the original Agreement Budget sheet reflecting the requested changes. Changes shall be noted by striking the original amount(s) followed with revisions in bold and underlined. Budget adjustments deleting a budget line or adding a new budget line item requires a formal agreement amendment through the ERP Grant/Contract Amendment Workshop process and is not permissible under this provision. The Grant Manager shall forward one copy of the request and the approval to the Contracts Office to be retained in the agreement file.

5. **DETAILED INVOICE INSTRUCTIONS:**

- A. The Grantee shall be paid in arrears, upon submission of an original and two copies of the invoice including detailed and itemized charges, expenses, direct and indirect costs based on a not to exceed fiscal year funding shown in the spending plan. Invoices shall provide sufficient detail and information to provide a basis for payment of invoices. The Grantee agrees to submit an interim progress report with each invoice presented for payment.

Payment of any invoice will be made only after receipt of a complete, adequately supported, properly documented and accurately addressed invoice or payment request. Failure to use the address exactly as provided above may result in return of the invoice or payment request to the Grantee. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. ERP's Grant Manager must approve all invoices.

**EXHIBIT B
INVOICING AND PAYMENT PROVISIONS**

The invoice shall contain the following information:

- 1) The word "INVOICE" should appear in a prominent location at the top of the page(s);
- 2) Printed name of the Grantee;
- 3) Business address of the Grantee, including P.O. Box, City, State, and Zip Code;
- 4) The date of the invoice;
- 5) The ERP Grant Agreement number and ERP project number upon which the claim is based; and,
- 6) An itemized account of the services for which the ERP Program is being billed:
 - i. The time period covered by the invoice, i.e., the term "from" and "to";
 - ii. A brief description of the services performed;
 - iii. The total amount due shall include all costs incurred by the Grantee under the terms of this Grant Agreement; and,
 - iv. Original signature of Grantee firm using preprinted letterhead invoices.
- 7) Itemized invoices shall include the following information:
 - i. Explain and provide specific detailed information on what is included in calculating Other Direct Costs (ODC);
 - ii. Explain and provide specific detailed information on what is included in calculating Indirect Costs (IDC);
 - iii. Explain and provide specific detailed information on what is included in calculating Overhead Costs (OH);
 - iv. Explain and provide specific detailed information on what is included in calculating General Expenses.

The State reserves the right to request copies of back up documentation to support rates used for ODC, IDC, OH, and General Expenses.

- 8) Grantee shall provide the following information for land acquisition projects:

Escrow accounts will be held at:

Name of Title Company
Name of Escrow Officer
Address
Tel. No.
Fax No.
E-mail address:

No 10% retention shall be required for land acquisition invoices.

- B. For services satisfactorily rendered and upon receipt and approval of the invoices, the CDFG or CBDA agrees to compensate the Grantee for actual expenditures incurred in accordance with the rates specified in Exhibit B Attachment 1 – Budget Summary and Detailed Breakdown for this Grant Agreement.
- C. If there are any disputes regarding an invoice, the Grant Manager shall notify the Grantee within 15 calendar days of receipt of a properly submitted invoice. Grantee shall have the

**EXHIBIT B
INVOICING AND PAYMENT PROVISIONS**

option of revising the invoice and resubmitting a corrected invoice within 10 days of notification. In the event that CDFG or CBDA does not receive a revised invoice from the Grantee resolving the items disputed, CDFG or CBDA shall complete DGS Invoice Dispute Form No. STD 209. The Invoice Dispute shall serve as formal notification from CDFG or CBDA to the Grantee that the disputed invoice shall not be paid by CDFG or CBDA until a corrected invoices is submitted.

The detailed breakdown of fees and charges will be shown on each invoice (see Exhibit B – Attachment 2 - Sample Invoice Formats. Expenses for travel shall be reimbursed in accordance with Exhibit B – Attachment 3 – State Travel and Per Diem Expense Guidelines using the ERP Reimbursement Format shown as Exhibit B – Attachment 4 – Sample Travel Reimbursement Report.

- D. A request for a budget change not covered by Section 4 of this Exhibit B shall be submitted in writing when the Grantee requests an amendment to this Grant. Requests for amendment must include a justification for the request and indicate that the requested amendment shall in no way compromise or change the overall scope and intent of the project. All amendment requests shall be submitted to ERP's Grant manager and follow the ERP Amendment Process (see Exhibit A - Attachment 3 – ERP Amendment Guidelines).
- E. Consulting and research services will be billed on a cost reimbursement basis for all costs incurred in carrying out the terms of this Grant Agreement. Personnel costs will be shown in detail and back up documentation submitted with each invoice. All costs agreed to by ERP's Grant Manager will be charged in accordance with the spending plan as shown in Exhibit B – Attachment 1 – Budget Summary and Detailed Breakdown which provides the task by task spending plan for this Grant Agreement.
- F. The Grantee will be compensated for all expenses incurred in the performance of this Grant Agreement, including travel and per diem at reimbursement rates and schedule specified by the Department of Personnel Administration (DPA) for represented employees under collective bargaining agreements currently in effect. No travel outside of California shall be reimbursed unless prior written authorization is obtained from the State. Reimbursement for travel must be documented in detail and copies of receipts attached to the Travel Reimbursement Report.

6. PERFORMANCE RETENTION:

The CDFG or CBDA may withhold, from the invoiced payment amount to the Grantee, an amount equal to ten percent (10%) of that payment.

Payments prior to satisfactory completion of all work required by the agreement shall not exceed, in the aggregate, ninety percent (90%) of the total earned with the balance to be paid upon satisfactory completion of the agreement. The State shall retain from the Grantee's earnings for each period for which payment is made an amount equal to ten percent (10%) of such earnings, pending satisfactory completion and acceptance by the ERP Grant Manager of all deliverables and the completion of the agreement.

EXHIBIT B
INVOICING AND PAYMENT PROVISIONS

In turn, the Grantee agrees to retain from its subcontractor's earnings for each period for which payment is made an amount equal to ten percent (10%) of such earnings, pending satisfactory completion and acceptance by the ERP Grant Manager of all deliverables specified in Scope of Work and List of Deliverables listed in the subcontract .

Exhibit C
General Terms and Conditions for ERP Grant Agreements

Note that agreements with State agencies may use the GIA 101 in place of this Exhibit C. Some terms and conditions may differ for other agencies (i.e., federal agencies, University of California).

1. **APPROVAL**: This Grant Agreement is of no force or effect until signed by both parties. Grantee shall not commence work under this Grant Agreement until such signatures have been obtained. Work performed prior to having a fully executed Grant Agreement is performed at the Grantee's risk, with no expectation of reimbursement.
2. **AMENDMENT**: No amendment or variation of the terms of this Grant 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 Grant Agreement is binding on any of the parties.
3. **ASSIGNMENT**: This Agreement is not assignable by the Grantee, either in whole or in part, without the consent of the California Department of Fish and Game or the California Bay-Delta Authority in the form of a formal written amendment.
4. **AUDIT**: Grantee agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Grant Agreement. Grantee agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Grantee agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION**: Grantee agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Grantee in the performance of this Agreement.
6. **DISPUTES**: Grantee shall continue with the responsibilities under this Grant Agreement during any dispute.
7. **TERMINATION**: This Grant Agreement may be terminated by written notice at any time prior to completion of the Project, at the option of the CDFG or CBDA, upon violation by the Grantee of any material provision of this Grant Agreement 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 Grant Agreement within a reasonable time as established by the CDFG or CBDA. In the event of such termination, the Grantee agrees, upon demand, to immediately repay to the CDFG or CBDA an amount equal to the

Exhibit C
General Terms and Conditions for ERP Grant Agreements

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.

8. **INDEPENDENT STATUS**: Grantee, and the agents and employees of Grantee, in the performance of this Grant Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. **NON-DISCRIMINATION CLAUSE**: During the performance of this Grant Agreement, Grantee and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Grantee and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Grantee and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Grantee and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

10. **COMPENSATION**: The compensation to be paid Grantee, as provided herein, shall be in compensation for all of Grantee's expenses incurred in the performance of this Grant Agreement, including travel, per diem, and taxes, unless otherwise expressly so provided.

11. **GOVERNING LAW**: This Grant Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

12. **TRAVEL**: Any reimbursement for necessary travel and per diem shall be at rates specified by the California Department of Personnel Administration for similar employees or verification supplied that such rates are not available to the Grantee.

13. **CONFLICTS OF INTEREST**: Grantee shall comply with all applicable State laws and rules pertaining to conflicts of interest including, but not limited to, Government Code section 1090, Public Contract Code sections 10410 & 10411, and Public Contract Code section 10365.5.

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

Exhibit C
General Terms and Conditions for ERP Grant Agreements

15. **DRUG-FREE WORKPLACE CERTIFICATION:** By signing this Grant Agreement, the Grantee hereby certifies under penalty of perjury under the laws of the State of California that the Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - b) Establish a Drug-Free Awareness Program to inform employees about all of the following:
 - 1) The dangers of drug abuse in the workplace,
 - 2) The person's or organization's policy of maintaining a drug-free workplace,
 - 3) Any available counseling, rehabilitation and employee assistance programs, and
 - 4) Penalties that may be imposed upon employees for drug abuse violations.
 - c) Every employee who works on the proposed grant agreement:
 - 1) Will receive a copy of the company's drug-free policy statement, and
 - 2) Will agree to abide by terms of the company's statement as a condition of employment on the grant agreement.

This Grant Agreement may be subject to suspension of payments or termination, or both, and the Grantee may be subject to debarment if the department determines that: (1) the Grantee has made a false certification, or (2) the Grantee violates the certification by failing to carry out the requirements noted above.

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS
FOR
ERP GRANT AGREEMENTS**

1. **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 Grant Agreement.
2. **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 Grant 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 Grant Agreement.
3. **NOTICE:** The Grantee shall promptly notify the CDFG or CBDA of events or proposed changes that could affect the scope, budget, or work performed under this Grant 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 CDFG or CBDA, and an agreement amendment has been executed through the ERP Amendment Workshop process for such change. The Grantee shall notify the CDFG or CBDA at least ten (10) working days prior to any public or media event publicizing the accomplishments and/or results of this Grant Agreement and provide opportunity for attendance and participation by CDFG or CBDA representatives. The Grantee shall promptly notify the CDFG or CBDA in writing of completion of work on the Project.
4. **OPERATIONS AND MAINTENANCE:** The Grantee shall maintain and operate the facility and structures constructed or improved as part of the project, if any, throughout the term of this Grant Agreement, consistent with the purposes for which this grant was made. The Grantee assumes all operations and maintenance costs of the facilities and structures; the CDFG or CBDA 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 Grant Agreement, "operation costs" include direct costs incurred for material and labor needed for operation, 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.
5. **INSPECTION:** Throughout the term of this Grant Agreement, the CDFG or CBDA shall have the right to inspect the project area to ascertain compliance with this Grant Agreement. The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Grant Agreement including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made by the State of the premises of the Grantee or a subcontractor, the Grantee shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the State representatives in the performance of their duties. All

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inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

6. **PERMISSION FOR ACCESS TO PRIVATE PROPERTY:** If Grantee requires access across private property, Grantee shall provide written evidence of the property owner's permission for access to the property.
7. **SETTLEMENT OF DISPUTES:** In the event of a dispute, Grantee shall file a "Notice of Dispute" with the ERP Program Manager, or Designee, within ten (10) days of discovery of the problem. The State and Grantee shall then attempt to negotiate a resolution of such claim and, if appropriate, process an amendment to implement the terms of any such resolution. If the State and Grantee are unable to resolve the dispute, the decision of the ERP Program Manager or Designee shall be final.

In the event of a dispute, the language contained within this agreement shall prevail over any other language including that of the bid proposal.

8. **SUBCONTRACTS:**
 - a) Grantee is responsible for all subcontracted work. Subcontractors not specifically identified in the grant proposal must be obtained using a competitive bidding process, or non-competitive selection process that meets basic State requirements. The Grantee must provide copies of all executed subcontracts to the ERP Grant Manager.
 - b) All subcontracts must be in writing and must include specific language which establishes the rights of the auditors of the State to examine the records of the subcontractor relative to the services and materials provided under the subcontract and/or the grant agreement.
 - c) Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Grantee of its responsibilities and obligations hereunder. The Grantee agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Grantee. The Grantee's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Grantee. As a result, the State shall have no obligation to pay or enforce the payment of any moneys to any subcontractor.
9. **COMPUTER SOFTWARE:** For Grants in which software usage is an essential element of performance under this Agreement, 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 Grant for the acquisition, operation or maintenance of computer software in violation of copyright laws.
10. **RIGHTS IN DATA:** The Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Grant are subject to the rights of the State as set forth

**SPECIAL TERMS AND CONDITIONS
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- in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Grantee may copyright the same, except that, as to any work which is copyrighted by the Grantee, the State reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so. 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. Grantee shall include in any publication (including Internet web pages) of any material based on or developed under this project, and during any media event publicizing the same, appropriate acknowledgement of credit to the CALFED Bay-Delta Program, CDFG or CBDA and to other CALFED cost-sharing partners for their financial support.
11. **INSURANCE:** Throughout the term of this Grant Agreement, 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 grant, 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 30 day's prior written notice to the CDFG or CBDA.
12. **DAMAGES FOR BREACH AFFECTING TAX EXEMPT STATUS:** In the event that any breach of any of the provisions of this Grant 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.
13. **PREVAILING WAGES AND LABOR COMPLIANCE:** The Grantee agrees to be bound by all the provisions of State Labor Code Section 1771 regarding prevailing wages. The Grantee shall monitor all agreements subject to reimbursement from this Grant Agreement to assure that the prevailing wage provisions of State Labor Code Section 1771 are being met. The Grantee agrees to fulfill its responsibilities under Section 1771.8 of the Labor Code, where applicable.
14. **WITHHOLDING OF GRANT DISBURSEMENTS:** The CDFG or CBDA may withhold all or any portion of the grant funds provided for by this Grant Agreement in the event that the Grantee has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Grant Agreement or the Grantee fails to maintain reasonable progress toward completion of the project.
15. **GOVERNMENT PERMITS AND ENVIRONMENTAL REVIEW:** Grantee is responsible for ensuring compliance with all applicable permitting and environmental review requirements that may be required to accomplish the project described in the Scope of Work. No work that is subject to any such requirements may proceed under this Grant Agreement until written evidence of compliance is received by the Grant Manager.

As a condition of grant funding, Grantee is required to utilize the information and analysis in the CALFED Programmatic Environmental Impact Statement/Environmental Impact

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS
FOR
ERP GRANT AGREEMENTS**

Report (PEIS/EIR), to the extent applicable, in evaluating CEQA and NEPA compliance needs for the Project.

As a further condition of grant funding, Grantee is required to utilize the information, analysis, and procedures in the CALFED Multi-Species Conservation Strategy (MSCS), to the extent applicable, in complying with state and federal endangered species acts for the Project.