

AGREEMENT NUMBER

12-002-250

REGISTRATION NUMBER

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

STATE AGENCY'S NAME

(Also referred to as SWRCB or the State)

State Water Resources Control Board

CONTRACTOR'S NAME

(Also referred to as Contractor)

El Dorado County

2. The term of this Agreement is: July 1, 2012 through June 30, 2013

3. The maximum amount of this Agreement is: \$99,745
 Ninety Nine Thousand Seven Hundred Forty Five Dollars

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.

Exhibit A – Scope of Work	16 pages
Exhibit B – Budget Detail and Payment Provisions	3 pages
Exhibit B, Attachment I – Budget	1 page
Exhibit C* - General Terms and Conditions	<u>GTC 610</u>
Exhibit D – Additional Provisions	5 pages

Items shown with an Asterisk (*) are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language

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

CONTRACTOR		<i>California Department of General Services Use Only</i>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) El Dorado County		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS 2850 Fairlane Court Placerville, CA 95667		
STATE OF CALIFORNIA		
AGENCY NAME State Water Resources Control Board		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING David Brady, Manager Procurement and Contracts		
ADDRESS 1001 I Street, 18 th Floor, Sacramento, CA 95814		

EXHIBIT A
Scope of Work

1. Service Overview

The Contractor agrees to provide to the State Water Resources Control Board (State Water Board) services described herein:

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

2. Service Location

The Contractor services provided to oversee UST corrective action shall be performed in the respective County. Contractor training classes and/or meetings may be attended within the State.

3. Service Hours

The services shall be provided during Contractor working hours.

4. Project Representatives

A. The project representatives during the term of this agreement will be:

State Water Resources Control Board	Contractor Name
George Lockwood, Contract Manager	Barbara Houghton, Project Director
Telephone: (916) 341-5752	Telephone: (530) 621-6649
Fax: (916) 341-5808	Fax: (530) 295-2747
E-mail: glockwood@waterboards.ca.gov	E-mail: barbara.houghton@edcgov.us

B. Direct all inquiries to:

State Water Resources Control Board	Contractor Name
Division of Water Quality – Underground Storage Tank Section	El Dorado County, Environmental Management Department
Attention: Jenniffer Jorden, Program Analyst	Barbara Houghton, Admin Contact
P.O. Box 2231 Sacramento, CA 95812	2850 Fairlane Ct Placerville, CA 95667
Telephone: (916) 341-5826	Telephone: (530) 621-6649
Fax: (916) 341-5808	Fax: (530) 295-2747
E-mail: jjorden@waterboards.ca.gov	E-mail: barbara.houghton@edcgov.us

C. Either party may make changes to the contact information above by giving ten (10) days written notice to the other party. Said changes shall not require an amendment to this agreement.

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5. Definitions

The term “Regional Water Board” is defined to mean the appropriate “California Regional Water Quality Control Board(s).” Under this agreement, the appropriate Regional Water Board(s) are: Central Valley, or Lahontan Regional Water Quality Control Board, which have jurisdiction at a release site.

Unless otherwise specifically provided herein, any reference to an underground storage tank (UST) means a petroleum UST as defined in Health and Safety Code (H&SC) section 25299.24, and any reference to an “unauthorized release” or “release” refers to an unauthorized release of petroleum from a UST.

6. Background

Substances hazardous to the public health and safety and to the environment are stored prior to use or disposal in thousands of underground locations in the State. Underground tanks used for the storage of hazardous substances and wastes are potential sources of contamination of the ground and underlying aquifers, and may pose other dangers to public health and the environment.

H&SC section 25297.1 authorizes the State Water Board to “implement a local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks by local agencies.” Additionally, H&SC section 25296.35 requires the State Water Board to maintain a system for storing and retrieving data pertaining to the remediation of unauthorized releases from USTs. GeoTracker is a state-wide historical database designed to be accessible to government agencies and the general public to meet data system requirements. This contract implements the Local Oversight Program (LOP) for leaking USTs and ensures that records are maintained in GeoTracker.

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

- 1) Provide reasonable and appropriate technical assistance to the Contractor to aid in the remediation of sites. This assistance shall include providing available information on (1) chemical constituents, (2) toxicology, (3) environmental fate, and (4) risk appraisal. In addition, guidance documents shall be prepared as needed;
- 2) Research available information as requested by the Contractor regarding constituents of petroleum products stored in USTs. This information may include chemical/physical properties, environmental fate properties, toxicity, flammability, corrosiveness, and applicable laws, regulations, and regulatory criteria;
- 3) Use in-house information to assist Contractor to evaluate risk appraisals to be used in making cleanup decisions for petroleum unauthorized release cases. The risk appraisal will analyze the behavior of the constituents of petroleum products in the subsurface environment and evaluate the resulting exposure and health risk;

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- 4) Prepare appropriate guidance documents to assist the Contractor performing work covered under this agreement. These documents shall consist of the LOP Guidebook, along with manuals and references to be used in the field, laboratory, and office. Guidance letters will also be prepared in response to the need for interpretation of laws and regulations pertaining to UST remediation; and
- 5) Provide annual training courses on (1) UST site inspection, monitoring, corrective action, and closure procedures, and (2) health and safety procedures for employees of the Contractor.

Additional examples of training courses that will be provided to the Contractor are (1) annual CUPA/UST Conference, (2) ad hoc roundtable meetings, and (3) other classes related to site remediation of UST unauthorized releases.

7. **Program Priorities**

The State Water Board UST Cleanup Program is targeting as priorities the following:

1)	Expedite any case that threatens public health and safety or the environment
2)	Enforce removal of free product within two years of discovery
3)	Close cases no longer requiring corrective action (monitoring is corrective action)
4)	Respond to work plans and closure requests within 60 days
5)	Review all open cases at least once per year
6)	Receive/deny Electronic Submittal of Information (ESI) documents within 60 days
7)	Enforce compliance with GeoTracker Reporting Requirements
8)	Provide quality data input to GeoTracker
9)	Provide documentation to UST Cleanup Fund as requested
10)	Provide closure summary to Regional Water Board 30 days prior to case closure

8. **Work To Be Performed**

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

The Contractor agrees to provide all labor, materials, and equipment necessary to conduct a UST corrective action program to identify and oversee the investigation and remediation of unauthorized releases from petroleum USTs within its jurisdiction and to maintain records in GeoTracker in accordance with the terms and conditions contained herein and all exhibits attached hereto. Performance of services pursuant to the requirements of this agreement shall conform to high professional standards, including applicable portions of the State Water Board's Incompatible Activities Statement.

http://www.waterboards.ca.gov/laws_regulations/docs/incompatible_activities_statement.doc

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The Contractor shall oversee UST corrective action in accordance with applicable sections of Health and Safety Code Chapter 6.7. The corrective action shall ensure protection of human health, safety, and the environment and shall be consistent with UST regulations, any applicable waste discharge requirements or other order issued by the State Water Board and all applicable state policies for water quality control, and all applicable water quality control plans adopted pursuant to the Water Code.

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

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

Task 1 - Remediation Process

The Contractor shall be responsible for identifying, issuing directives, and providing a completion certification to Responsible Parties for the remediation of an unauthorized release from USTs. This work includes overseeing the planning, scheduling, and performance of all work as set forth herein below, including but not limited to, the maintenance of site specific records and the preparation of reports as specified in Task 3. The Contractor shall maintain the official site-specific records pertaining to each case placed in the LOP and provide for public access to those records for review and copying in compliance with the California Public Records Act. The Contractor may satisfy this requirement by use of paper records, electronic records, or a combination of both. At a minimum during this contract period, the Contractor shall upload the following documents to GeoTracker for permanent public access: Directive Letters (i.e., letters issued to Responsible Parties regarding the planning, scheduling, and performance of work), Case Closure Summaries, and Remedial Action Completion Certifications.

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

The Contractor shall, at a minimum, consider methods described in the most recent version of the Leaking Underground Fuel Tank (LUFT) Manual or Regional Water Board corrective action guidelines, and direct responsible parties or their consultants to conform to all applicable State laws, rules, regulations, and local ordinances specifically, including but not limited to, environmental, procurement and safety laws, rules, regulations, and ordinances when performing investigation and remedial work under this agreement.

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

For Each Suspected Site

Task 1.1: Confirm Unauthorized Release (hereafter release)

- a) In conjunction with the Unified Program Agencies (UPAs), the Contractor shall oversee confirmation of all suspected UST release sites within its programmatic jurisdiction. Included in this task is the inspection of an excavation pit or borings during removal or in-place closure of a UST associated with a suspected release. Suspected release does not include failure of a precision test unless other evidence exists supporting the conclusion that an unauthorized release may have occurred. The existence of a leak shall be confirmed by testing or inspection of the tank and appurtenant plumbing or sampling adjacent soil or water including any necessary uncovering of the UST and/or associated plumbing. In conjunction with the UPAs, the Contractor shall verify that an Unauthorized Release Form has been filed by the Responsible Party for each new release. The Contractor shall fill out an electronic New Project Form in the format provided in GeoTracker (see Section 5 of the Guidebook) to create a new case in the database by entering and editing data via the Internet. Activities normally associated with the UST permit program such as oversight of routine tank testing or retesting performed as part of a UST monitoring program are not covered under this agreement.
- b) The Contractor shall oversee investigation and remediation on all eligible leaking UST sites under this agreement unless an agreement is reached between the Contractor and appropriate Regional Water Board to transfer lead status of a case to the Regional Water Board. The Contractor shall notify the State Water Board of any transfer agreement. Case transfer can occur during any phase of the remediation project upon mutual agreement between the Contractor and the Regional Water Board. If the Contractor has determined that it cannot reach an agreement with the Regional Water Board, the State Water Board's Contract Manager must be informed immediately in writing.
- c) State funds may only be used for sites which involve releases from a UST as defined by H&SC section 25299.24. For purposes of this agreement, such UST includes any one or a combination of tanks, including pipes connected thereto, which is or was used for the storage of petroleum and which is substantially beneath the surface of the ground as defined in section 2611 of title 23, division 3, chapter 16 of the California Code of Regulations. "Substantially beneath the surface of the ground" means that at least ten percent (10%) of the UST volume, including connected piping, is below the ground surface.

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Such a UST does not include:

- (1) a tank or combination of manifolded tanks with a combined capacity of 1,100 gallons or less which is located on a farm and which stores motor vehicle fuel used primarily for agricultural purposes and not for resale; nor
- (2) a tank that is located on a farm which has a capacity of 1,100 gallons or less and which stores home heating oil for consumptive use on the premises where stored; nor
- (3) a tank that is located at the residence of a person which has a capacity of 1,100 gallons or less that stores home heating oil for consumptive use on the premises where stored unless it meets the criteria of small heating oil tank as defined below; nor
- (4) any other facilities or structures specifically excluded from the definitions of a UST by H&SC section 25281(y) or excluded from regulation under H&SC section 25283.5.

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

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

Funds may be used at a private- or locally-owned site that meets H&SC section 25299.24 definition above as well as at state- or federally-owned sites.

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

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Task 1.2: Identify and Notify Responsible Party(s) and Owner(s)

- a) The Contractor shall identify the Responsible Party or Parties and conduct an appropriate investigation to make such identification. This investigation shall, at a minimum, include a review of land title records at the County Recorder's Office, or equivalent (e.g., Dataquik), to identify the last assessee of record. Work shall not take place at any site before a Responsible Party has been identified.
- b) Prior to initiating work at a site, the Contractor, using language specified by the State Water Board (see Section 8 of the LOP Guidebook), shall notify each Responsible Party who has been identified of Responsible Party's obligation to investigate and remedy UST releases. Each notice must be sent to the Responsible Party or Parties by way of certified mail return receipt requested. The Contractor shall notify each Responsible Party of the names and addresses of other Responsible Parties on those sites that have multiple Responsible Parties. If a Responsible Party requests that they be considered secondarily responsible, then the Contractor shall make a determination of secondary responsibility only if requested to do so and both of the following apply:
 - (1) The primary Responsible Party is performing corrective action, and
 - (2) It is clear that the party seeking secondary status did not, in any way, initiate or contribute to the actual discharge.

If the primary Responsible Party fails to perform corrective action, then the secondary Responsible Party or Parties will be considered a primary Responsible Party. The Contractor shall provide notification to the affected Responsible Party or Parties for primary responsibility. If the Contractor makes a change in the determination as to who is a Responsible Party, the previously notified Responsible Parties must be notified of the change and the basis for such change, by certified mail return receipt requested.

H&SC section 25297.15 requires the primary or active Responsible Party to notify all current record owners of fee title for real properties affected before the local agency considers remediation or case closure proposals or issues a "Remedial Action Completion Certification" as identified in Section 6 of the LOP Guidebook. H&SC section 25297.15 also requires the primary or active Responsible Party to provide the local agency with a list of said owners. For purposes of implementing this section, the local agency shall determine who will be the primary or active Responsible Party. The Contractor shall inform the primary or active Responsible Party of these requirements with the language provided in Section 8 of the LOP Guidebook. The Contractor shall require the primary or active Responsible Party to comply with H&SC section 25297.15.

Task 1.3: Oversee Preliminary Site Assessment

- a) The Contractor shall oversee performance of a preliminary assessment of UST sites when unauthorized releases have been confirmed and Responsible Party or Parties identified. Preliminary assessment includes, at a minimum, initial site investigation, initial abatement actions, and initial site characterization. The purpose of the preliminary assessment is to determine the extent of existing soil contamination and its impact on groundwater. Soil samples shall be obtained to determine the concentration of pollutants in the soil and the vertical and lateral extent of contaminated soil. Oversight of preliminary site assessment

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also includes oversight of the following work: (1) removal or in-place closure of the UST and inspection of any related excavation pit or borings, (2) excavation and disposal or on-site treatment of contaminated backfill and surrounding native soils, (3) removal of any floating product and/or free product discovered during tank removal and soil excavation, and (4) drilling of groundwater wells as necessary to determine whether groundwater has been affected. Oversight of preliminary site assessment does not include oversight of long term investigation and remediation after the extent and nature of the release has been determined.

- b) During preliminary site assessment, the Contractor shall, at a minimum, consider methods described in the most recent version of the LUFT Manual or Regional Water Board preliminary site assessment guidelines, and direct responsible parties or their consultants to conform to all applicable State laws, rules, regulations, and local ordinances specifically, including but not limited to, environmental, procurement and safety laws, rules, regulations, and ordinances when performing preliminary site assessments.
- c) If at any time during the preliminary assessment it becomes evident to the Contractor that work beyond preliminary assessment will be necessary, the Contractor shall proceed to Tasks 1.5 through 1.10 as appropriate.

Task 1.4: Determine Site Status and Notify State Water Board

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

- a) If the site has been satisfactorily remediated, the Contractor shall certify that fact as specified in "Task 1.10: Certification" and provide the Regional Water Board with documentation to that effect. Documentation shall be in a standard format as specified in Sections 6 and 9 of the LOP Guidebook.
- b) If additional corrective action is indicated, the Contractor shall continue with Tasks 1.5 through 1.10.

Task 1.5: Oversee Investigation, Feasibility Study, and Corrective Action Plan

- a) The Contractor shall oversee an investigation of the site to determine the hydrogeological characteristics, the lateral and vertical extent of contamination, the sensitivity of the site, and the potential threat of exposure to humans.

In cases affecting surface or groundwater, monitoring wells shall be properly installed and used to obtain samples to: (1) detect any free product, (2) define the plume of contaminated water, and (3) monitor concentrations of hazardous substances dissolved in water. In cases where groundwater is at risk, the investigation shall determine: (1) distance to nearest surface water, (2) depth to the highest groundwater, (3) the structure and composition of subsurface materials for the area affected, and (4) the current and potential beneficial uses of affected areas and contiguous surface and groundwater.

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

- b) The Contractor shall oversee the preparation of a feasibility study report that identifies and evaluates feasible alternatives for remediating the site and remedying current and future threats to public health and safety. The effectiveness of an alternative shall be evaluated using the following primary criteria: (1) human health and safety risk, (2) ground or surface water polluted, (3) beneficial uses affected, (4) carcinogenicity of pollutant, and (5) threat of contamination to ground or surface water. Secondary criteria shall also be evaluated and shall include consideration of: (1) availability of an alternative water supply, and (2) vulnerability of the water supply. Remedial action options may include the following or other actions, in any combination: (1) excavation, (2) leave in place, (3) enhanced bio-degradation, (4) soil venting, (5) free product removal, (6) air stripping, (7) treatment at individual water supply hookup, (8) replacement of water supply, and (9) relocation of residents. Other "proven" technologies (proven but currently used only on a limited basis) may be used to speed up site assessment and remediation.
- c) The Contractor shall oversee the preparation of a corrective action plan that identifies the selected remedial action alternative and sets forth the details for implementation of the selected action. The Contractor shall concur on the corrective action plan only after: (1) taking all reasonable steps necessary to accommodate responsible landowner participation in the remediation or case closure process, (2) considering all input and recommendations from any responsible landowner wishing to participate, and (3) concluding that implementation of the plan will adequately protect human health, safety, and the environment.
- d) The Contractor shall oversee the establishment of the schedule, format, and procedures for the corrective action plan. One or more documents may be incorporated to meet all requirements of the corrective action plan.

Task 1.6: Provide Public Participation Opportunity

- a) The Contractor shall comply with provisions of article 11, section 2728, Public Participation requirements of the Underground Storage Tank Regulations,
- b) The Contractor shall design and implement a UST release case reporting procedure which complies with requirements of H&SC section 25180.7.
- c) The Contractor shall certify, on all UST release reports submitted, that the reporting requirements of H&SC section 25180.7 have been met. Such certification does not mean that the release has been determined to pose a significant threat to human health or safety, only that notification procedures have been followed, if they were required.

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- d) Contractor shall provide an opportunity for reviewing and providing responses to closure recommendations to the applicable water replenishment district, municipal water district, county water district, or special act district with groundwater management authority if the UST case is located in the jurisdiction of that district.

Task 1.7: Reopen Closed Case

The Contractor may reopen a closed case if the Contractor obtains information that it considers sufficient justification to reopen the case. The justification to reopen a case shall be referenced in a directive letter to the responsible party and uploaded to GeoTracker. The Contractor shall not reopen a case that has been closed by the State Water Board, unless the Contractor identifies “new” information that was not available and previously considered when the State Water Board ordered case closure. A violation of this provision constitutes a failure by the Contractor to perform in accordance with this agreement and shall be grounds for the State Water Board to order the Contractor to suspend work under this agreement and may terminate this agreement.

Task 1.8: Oversee Remedial Action

- a) The Contractor shall oversee implementation of the corrective action plan. The Contractor shall establish a schedule and format for the Responsible Party to monitor, evaluate, and report the results of implementing the corrective action plan.
- b) Interim remedial action is corrective action that takes place outside of the corrective action plan, either because it was needed as determined by the Contractor earlier in the investigative process or conditions developed to protect public health and safety or the environment that required immediate remediation. Interim remedial action can occur concurrently with any phase of corrective action.

Task 1.9: Oversee Post Remedial Action Monitoring

The Contractor shall, when appropriate, oversee periodic groundwater or other monitoring of the site, as necessary, following remedial action.

Task 1.10: Issue Certification

- a) Upon completion of all remedial action at a site, the Contractor shall summarize closure data on the Case Closure Summary currently identified in Section 9 of the LOP Guidebook. This form must be signed by the Environmental Health Director (or equivalent) and uploaded to Geo Tracker, forwarded to all Responsible Parties, and landowners identified pursuant to H&SC sections 25297.1 and 25297.15. Signature authority may be delegated to a qualified individual within the Contractor’s organization upon written notification from the Environmental Health Director (or equivalent) to the State Water Board Contract Manager. The Contractor shall submit copies of the draft Case Closure Summary to the Regional Water Board 30 days prior to case closure.
- b) To close a case, the Contractor shall certify that remedial action is complete by using the “Remedial Action Completion Certification” form found in Section 6 of the LOP Guidebook and upload the certification to GeoTracker for public review.

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- c) If disputes arise regarding case closures that cannot be resolved between the Contractor and Regional Water Board staff, the Contractor may choose to close the case or transfer the case to the Regional Water Board for further oversight.
- d) Before issuing the Remedial Action Completion Certification specified in Item e) below, each site must be tested for the presence of Methyl Tertiary Butyl Ether (MTBE), except diesel fuel and jet fuel sites where the Contractor is certain that MTBE was never present. The Contractor may require testing for MTBE at a diesel or jet fuel site if there is evidence that MTBE may have been, or is, present at the site.
- e) As mentioned in Item b) above, the Remedial Action Completion Certification shall be identical to the language specified in Section 6 of the LOP Guidebook. The certification shall be signed by the Environmental Health Director (or equivalent) and mailed to the Responsible Party or Parties for the site. Signature authority on this certification “cannot” be delegated. The Contractor is required to upload signed copies of the Final Case Closure Summary and Remedial Action Completion Certification (in “pdf” format) to GeoTracker.

Task 2 – Exercise Enforcement Action

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

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

Task 3 – Submit Reports and Data

- 3.1. The Contractor shall submit written reports in accordance to the schedule outlined in Section 10 of the LOP Guidebook unless the Contractor certifies that, for all open cases, all required fields in GeoTracker are current and correct. Site-specific information shall be sent to the Regional Water Board unless the Regional Water Board requests otherwise.
- 3.2. The Contractor shall submit a regular, quarterly written summary to the State Water Board Contract Manager unless the Contractor certifies that all required fields (described in 3.4 below) are current and correct for open cases in GeoTracker. Said report shall be in a standard format as described in Section 5 of the LOP Guidebook.
- 3.3. The Contractor shall maintain the case management data in GeoTracker using the GeoTracker data dictionary, fields, and valid values, by entering and editing data “real-time” via the Internet.

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- 3.4. For each open case, payment of the Contractor’s invoices for site specific work may be withheld until the following current information for that case is in GeoTracker. Required fields as appropriate:

GeoTracker 2 Screen	GeoTracker 2 Field Name
Project Information	Site Type
Project Information	Status
Project Information	Status Date
Project Information	Funding for Cleanup
Project Information	File Location
Project Information	RP Identification
Project Information	Site History
Project Information	Case Number
Project Information	Cleanup Oversight Agency
Project Information	Lead
Project Information	Lead Date
Project Information	Latitude/Longitude
Project Information	Human Health Exposure/Controlled/Date
Project Information	Groundwater migration/Controlled/Date
Risk Information	Release Type
Risk Information	Contaminant(s) of Concern
Risk Information	Redevelopment Planned (Yes/No)
Risk Information	Current Land Use
Risk Information	Beneficial Use
Risk Information	Potential Media of Concern
Risk Information	# Impacted Drinking Water Wells
Risk Information	Report Date
Risk Information	Discharge Cause
Risk Information	Discharge Source
Facility / Site Address	Is this Project a Residence
Facility / Site Address	Project Name
Facility / Site Address	Street #
Facility / Site Address	Street Name / Location

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GeoTracker 2 Screen	GeoTracker 2 Field Name
Facility / Site Address	City
Facility / Site Address	Zip
Facility / Site Address	County
Contacts/Search to Add Contact	Oversight Agency/Regional Board/Responsible Party Contact
Contacts/Search to Add Contact	Begin Date (for each contact)
Contacts/Search to Add Contact	End Date (for each contact that is historical)
Activities Report/Regulatory Action	Type (Deed Restriction, CAOs, MRPs, 13267 Letters, etc.)/Date
Activities Report/Compliance Rsp	Type (Workplans, Reports, Other) Issue Date/Received Date
Activities Report/Compliance Rsp	Reviewed (Y/N)
Cleanup Action	Method
Cleanup Action/NewCleanup Action/Insert New	Removal / Remedial Method/Begin Date/End Date
Cleanup Action/NewCleanup Action/Insert New	Est. Completion Date Action End Date
Cleanup Action/NewCleanup Action/Insert New	Treated Phase Est. Completion Date
Cleanup Action/NewCleanup Action/Insert New	Volume Treated Treated Phase
Cleanup Action/ NewCleanup Action/Insert New	Contaminant Mass Removed Volume Treated
Community Involvement	Public Participation Description/Document Type/Date
Project IDs/Names/APNs	Project ID Type
Site Documents	Upload to New Regulatory Action
Site Documents	Upload RP/3rd Party Document

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

EXHIBIT A
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- 3.6. Using the form and instructions contained in Section 4 of the LOP Guidebook, the Contractor shall provide an informational report on each of the training courses taken by technical staff as completed per Task 5. The report shall be submitted to the State Water Board Contract Manager with each invoice. Information provided on the form must include course title and course date.
- 3.7. When requested, Contractor shall expeditiously provide comments to the UST Cleanup Fund Manager on 5-year reviews performed by the UST Cleanup Fund.

Task 4 – Petition Response

In accordance with procedures established by the State Water Board in Resolution 88-23 (see Section 11 of the LOP Guidebook), any Responsible Party or other aggrieved person may petition the State Water Board for review of any action or inaction by the Contractor under the agreement. Upon request from the Petitioner, as discussed in Section 11 of the LOP Guidebook, or the State Water Board's Contract Manager, the Contractor shall provide a copy of the complete case file to the State Water Board.

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

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

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

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

EXHIBIT A
Scope of Work

Task 5 – Complete UST Technical Training Requirement

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

Task 6 - Achieve Performance Measures

Contractor agrees to exert its best efforts to achieve the following performance measures in so far as practicable:

- 6.1. The Contractor projects that 5 cases will be closed during this contract period.
- 6.2. The Contractor projects reviewing 100% of cases at least once during this contract period.
- 6.3. The Contractor projects status changes on 6 cases during this contract period.
- 6.4. The Contractor projects that 100% of cases in “remediation” status will also have a remedial method entered into GeoTracker.
- 6.5. The Contractor projects 90% Electronic Submission of Information (ESI) compliance for all Contractor lead cases in GeoTracker.
- 6.6. The Contractor projects that measurable free product in monitoring wells will be eliminated within two years from the time of discovery at 100% of lead cases.

Task 7 - Suspend Work

- 7.1. After the Cleanup Fund staff sends a Review Summary to Contractor that recommends case closure, Contractor shall have a 30-day period to review the summary in accordance with existing Cleanup Fund procedures. The Contractor shall refrain from issuing new corrective action directives at the site before the State Water Board issues a decision on closure, unless:
 - a) There is an imminent threat to human health, safety, or the environment.
 - b) Other site-specific needs warrant additional directives during the period that the State Board is considering case closure.
 - c) Cleanup Fund staff revises its recommendation.
 - d) Contractor decides to close the case, closure related directives are excepted.
- 7.2 The State Water Board may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work under this agreement for such period of time as the State Water Board determines to be appropriate for the convenience of the State Water Board or

EXHIBIT A
Scope of Work

because of alleged failure of the Contractor to perform in accordance with the provisions of this agreement. The Contractor shall suspend, delay, or interrupt work as directed in such written order and shall resume the suspended work only upon receipt of written notice to proceed from the State Water Board.

- 7.3. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted for the convenience of the State Water Board, or by an act of the State Water Board in violation of State Water Board obligations under this agreement, or by failure of the State Water Board to act within the time specified in this agreement, an equitable adjustment shall be made for any increase in the cost of performance of work under this agreement (excluding profit) caused by such unreasonable suspension, delay, or interruption and the agreement shall be modified in writing accordingly. No equitable adjustment shall be made under this "Exhibit" for any suspension, delay, or interruption to the extent that (1) performance would have been so suspended, delayed, or interrupted by any other cause, including fault or negligence on the part of the Contractor, or (2) to the extent that performance is suspended, delayed, or interrupted due to failure or default of the Contractor in fulfillment of any obligation under this agreement, or (3) for which an equitable adjustment is provided for or excluded under any other provision of this agreement.
- 7.4. No Contractor claim under "**Suspension of Work**" for alleged increase in costs due to suspension, delay, or interruption of work shall be allowed (1) for any costs incurred more than ten (10) days prior to written notice from the Contractor stating that the Contractor asserts that an act or failure to act by the State Water Board has or is suspending, delaying, or interrupting work under the agreement (but this requirement shall not apply to a written suspension order issued by the State Water Board), and (2) unless the amount of monetary claim by the Contractor is asserted in writing and provided to the State Water Board as soon as practical after the termination of such suspension, delay, or interruption.
- 7.5. No suspension order issued by the State Water Board because of alleged fault or negligence on the part of the Contractor, or because of alleged failure or default of the Contractor in fulfillment of any obligation under this agreement, shall be deemed to preclude the State Water Board from thereafter terminating this agreement for the same fault, negligence, failure, or default which gave rise to the suspension order.
- 7.6. If it is ultimately determined that alleged fault or negligence on the part of the Contractor did not occur, and that the Contractor was not guilty of any failure or default in fulfillment of agreement obligations, the suspension order shall be deemed to have been given for the convenience of the State Water Board and the agreement price shall be equitably adjusted as provided in Task 7.3 above.

Exhibit B
Budget Detail and Payment Provisions

1. Invoicing and Payment

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the budget(s) attached hereto.
- B. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than quarterly in arrears to:

Attention: Jenniffer Jordan
State Water Resources Control Board
Division of Water Quality
1001 I Street, 15th Floor
Sacramento, CA 95814

- C. Invoices shall:
 - 1) Be prepared on company letterhead. If invoices are not on produced letterhead, invoices must be signed by an authorized official, employee, or agent certifying that the expenditures claimed represent actual expenses for the service performed under this contract.
 - 2) Bear the Contractor's name as shown on the agreement.
 - 3) Identify the billing and/or performance period covered by the invoice.
 - 4) Itemize costs for the billing period in the same or greater level of detail as indicated in this agreement. Subject to the terms of this agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by the State Water Board.

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. 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 Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.
- C. The State's obligation to make any payments under this contract shall be suspended during such time as the Budget Act covering that fiscal year has not been approved by the Legislature and signed into law by the Governor.

Exhibit B
Budget Detail and Payment Provisions

3. Prompt Payment Clause

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

4. Amounts Payable

A. The amounts payable under this agreement shall not exceed:

\$99,745 for the budget period of July 1, 2012 through June 30, 2013.

B. Reimbursement shall be made for allowable expenses up to the amount annually encumbered commensurate with the State fiscal year in which services are performed and/or goods are received.

5. Timely Submission of Final Invoice

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

B. The State may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written State approval of an alternate final invoice submission deadline. Written approval shall be sought from the Contract Manager prior to the expiration or termination date of this agreement.

6. Reimbursement Limitations

A. Contractor shall not be reimbursed for invoices submitted after September 30, 2013.

B. Contractor shall not be reimbursed for any site activities for which local fees have been levied to cover Contractor expenses, e.g., oversight of the removal or in-place closure of the UST.

C. Contractor shall be limited to reimbursement of costs actually incurred in administration of the LOP, provided the total reimbursement shall not exceed \$225 per hour multiplied by the total hours of site-specific oversight work performed. The \$225 maximum is based on a cumulative average of all current-year invoices submitted to date. (Per 25297.1(i)(4)(C) determined in April 2011 @ Department of Finance website http://www.dof.ca.gov/HTML/FS_DATA/LatestEconData/documents/BBDEFL05.xls).

7. Expense Allowability/Fiscal Documentation

A. Invoices received from a Contractor and accepted and/or submitted for payment by the State, shall not be deemed evidence of allowable agreement costs.

Exhibit B
Budget Detail and Payment Provisions

- B. Contractor shall maintain for review and audit and supply to the State Water Board upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.
- C. If the allowability or appropriateness of an expense cannot be determined by the State because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the State. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.
- D. If travel is a reimbursable expense, receipts must be maintained to support the claimed expenditures.
- E. Costs and/or expenses deemed unallowable are subject to recovery by the State Water Board. See provision 8 of this exhibit entitled, "Recovery of Overpayments" for more information.

8. Recovery of Overpayments

- A. Contractor agrees that claims based upon a contractual agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by the State and/or Federal Government by one of the following options:
 - 1) Contractor's remittance to the State of the full amount of the audit exception within 30 days following the State's request for repayment;
 - 2) A repayment schedule which is agreeable to both the State and the Contractor.
- B. The State reserves the right to select which option will be employed and the Contractor will be notified by the State in writing of the claim procedure to be utilized.
- C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 days after Contractor's receipt of the State's demand for repayment.
- D. If the Contractor has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If the Contractor loses the final administrative appeal, Contractor shall repay to the State, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues from the Contractor's first receipt of State's notice requesting reimbursement of questioned audit costs or disallowed expenses.

**Exhibit B, Attachment I
 Budget
 FY 12/13 (7/1/12 - 6/30/13)**

Personnel Services	Positions	Hourly Rate*	# of Hours	Annual Cost
Supervising HMS	0.03	\$ 84.25	62.4	\$ 5,257
Hazardous Materials Specialist I	0.005	\$ 68.52	10.4	713
Hazardous Materials Specialist II	0.005	\$ 56.71	10.4	590
Environmental Health Manager	0.03	\$ 74.96	62.4	4,677
Senior Office Assistant	0.03	\$ 31.58	62.4	1,970
Principal Geologist	0.5	\$ 67.94	1040	\$ 70,658
Total Personnel				\$ 83,865

*Fringe benefits included in salary

Travel / Transportation	Annual Cost
Travel	1,000
Total Travel / Transportation	\$ 1,000

Other Costs	Annual Cost
Split Samples	\$ 750
Soil Test Kits	\$ 950
Training	600
Total Other Costs	\$ 2,300

Indirect Costs 15% of personnel	\$ 12,580
Total Costs	\$ 99,745

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

1. **DISPUTE RESOLUTION PROCESS:** Any dispute arising under or relating to the terms of this Agreement, or related to the performance hereunder, which is not disposed of by Agreement shall be decided by the Contract Manager, who shall reduce such decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contract Manager shall be final and conclusive unless, within fifteen (15) calendar days from the date of receipt of such copy, the Contractor mails or otherwise delivers a written appeal to the State Water Resources Control Board Executive Director. The decision of the Executive Director, or authorized representative, on such appeal 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 any substantial evidence. In connection with any appeal under this Section, the Contractor shall be afforded an opportunity to be heard and to offer evidence and argument in support of the appeal. Pending final decision on any dispute hereunder, the Contractor shall proceed diligently with the performance of the Agreement work as directed by the Contract Manager unless the Contractor has received notice of termination. Decisions on any disputes hereunder may include decisions of both fact and law; provided, however, that nothing herein shall be construed as making final any decision on a question of fact or law in the event of any subsequent legal proceeding before a court of competent jurisdiction.

Authority to terminate performance under the terms of this Agreement is not subject to appeal under this Section. All other issues including, but not limited to, the amount of any equitable adjustment and the amount of any compensation or reimbursement which should be paid to the Contractor shall be subject to the disputes process under this Section. (PCC 10240.5, 10381, 22200 et seq, 40 CFR 31.70)

2. **RIGHTS IN DATA:** The Contractor agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth 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 Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, 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. (40 CFR 31.34, 31.36)
3. **PROPERTY ACQUISITIONS:** Property, as used in this section, shall include:

Equipment - Tangible property (including furniture) with a unit cost of \$5,000.00 or more and a useful life of one (1) year or more. Actual cost includes the purchase price plus all costs to acquire, install and prepare the equipment for its intended use.

Furniture - Standard office furnishings including desks, chairs, bookcases, credenzas, tables, coat racks, etc.

Portable Assets - Items considered "highly desirable" because of their portability and value; e.g., calculators, cell phones, blackberry's, laptop computers, cameras and microscopes.

Electronic Data Processing (EDP) Equipment - All computerized and auxiliary automated information handling including system design and analysis, conversion of data, computer programming, information storage and retrieval, voice, video and data communications, requisite system controls, simulation and all related interactions between people and machines.

- A. The Contractor may purchase property under this Agreement only if specified in Exhibit "B" (Budget Detail and Payment Provisions). Any property purchased by the Contractor with funds provided under this Agreement shall be the property of the State during the customary depreciable life thereof. The Contractor shall promptly report any such purchase to the Contract Manager and to the State's Property Officer (Property Officer). Should this Agreement be terminated for any reason, or upon expiration and failure to negotiate renewal hereof, all such property shall be returned to the State within the timeframe negotiated between the Contractor and the State.
- B. Prior written authorization by the Contract Manager shall be required before the Contractor will be reimbursed for any property purchases not specified in the Budget. The Contractor shall provide to the

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Contract Manager all particulars regarding the necessity for such property and the reasonableness of the cost.

- C. Before property purchases made by the Contractor are reimbursed by the State, the Contractor shall submit paid vendor receipts identifying the Agreement number, purchase price, description of the item, serial number, model number, and location including street address where property will be used during the term of this Agreement. Said paid receipts shall be attached to Contractor's invoices.
 - D. The Contractor shall keep adequate and appropriate records of all property purchased with Agreement funds and at the time of purchase prepare a "Property Purchased with State Funds" (Form SWRCB 3-016) and submit one copy to the Contract Manager one copy to the Property Officer. A copy must be retained by the Contractor.
 - E. The State reserves the right at any time to evaluate the cost of property and reimburse at an amount equal to costs reflected in but not limited to Agreements the State Department of General Services, Office of Procurement has negotiated with vendors who supply the same type of property.
 - F. All property shall be tagged after acquisition by Contractor in accordance with instructions provided. The purpose of tagging assets is to designate the assets as belonging to the State.
 - G. Whenever property is lost, stolen, or destroyed, the Contractor shall immediately report the loss, theft or destruction to the local law enforcement agency (or the California Highway Patrol (CHP) if the crime occurs on either state-owned or state leased property) and to the Contract Manager and prepare a Property Survey Report. In the case of stolen property, the Contractor shall also complete a CHP Report of Crime on State Property form (Std. 99), obtain a copy of the law enforcement agency's report and submit these to the Contract Manager. The Contractor shall adjust its property accounting records and retain a copy of the Property Survey Report as documentation.
 - H. Losses of State property due to fraud or embezzlement shall be reported in the same manner as described above. The Contractor shall be charged with any loss and damages to State property due to the Contractor's negligence.
 - I. Contractor shall, at the request of the State, submit an inventory of property furnished or purchased under the terms of this Agreement. Such inventory will be required not more frequently than annually.
 - J. Upon termination, expiration or failure to negotiate renewal of this Agreement, all property purchased with Agreement funds shall promptly be returned to the State. The Contractor shall prepare an "Inventory of State Furnished Property" and submit to the Contract Manager and shall at that time query the Contract Manager as to the State's requirements, including the manner and method, in returning said property to the State. Final disposition of such property shall be at State expense in accordance with instructions from the Contract Manager to be issued immediately after receipt of the final inventory.
 - K. State policies and procedures applicable to procurement with nonfederal funds shall apply to procurement by Contractor under this Agreement provided that procurements conform to applicable State law and the standards identified in this section. These include but are not limited to statutes applicable to State agencies, statutes applicable to State college and university public works projects, the California Constitution governing University of California contracting, the State Administrative Manual (SAM), statutes applicable to specific local agencies, applicable city and county charters and implementing ordinances including policies and procedures incorporated in local government manuals or operating memoranda. (40 CFR 31.36) (SCM 7.29)
4. EVALUATION OF CONTRACTOR: The contractor's performance under this agreement shall be evaluated within thirty (30) days after completion. For this purpose a form designated by the Department of General

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

Services (the "Contract/Contractor Evaluation," Form STD. 4) shall be used. Post-evaluations shall remain on file for a period of thirty-six (36) months. If the contractor did not satisfactorily perform the work or service specified in the agreement, Contract Manager shall place one copy of the evaluation form in the agreement file and send one copy of the form to the Department of General Services within five (5) working days of the completion of the evaluation. Upon filing an unsatisfactory evaluation with the Department of General Services, the Contract Manager shall notify and send a copy of the evaluation to the contractor within fifteen (15) days. The contractor shall have thirty (30) days to prepare and send a statement to the Contract Manager and the Department of General Services defending his or her performance under the agreement. The contractor's statement shall be filed with the evaluation in the Contract Manager's file and at the Department of General Services. (PCC 10369)

5. PERMITS, WAIVER, REMEDIES AND DEBARMENT: The Contractor 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 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.

Contractor shall not subcontract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension". Contractor shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code 4477)

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

7. CANCELLATION / TERMINATION:

- A. This agreement may be cancelled or terminated without cause by either party by giving thirty (30) calendar days advance written notice to the other party. Such notification shall state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements.
- B. Upon receipt of a notice of termination or cancellation from the SWRCB, Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent contract costs.
- C. Contractor shall be entitled to payment for all allowable costs authorized under this agreement, including authorized non-cancelable obligations incurred up to the date of termination or cancellation, provided such expenses do not exceed the stated maximum amounts payable.

8. BUDGET FLEXIBILITY:

- A. Subject to the prior review and approval of the contract manager, line items 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 \$25,000 or 10%, whichever is less, for all line item shifts over the life of the contract.

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SPECIAL TERMS AND CONDITIONS

- B. There must be a substantial business justification for any shifts made. Fund shifts which increase Indirect, Overhead or General Expense line items are prohibited. Line item shifts may be proposed/requested by either the SWRCB or the Contractor in writing and must not increase or decrease the total contract amount allocated.
- C. Any line item shifts must be approved in writing by the Deputy Director of (managing division), or his or her designee, and must be sent to Contracts Office within 10 days of approval for inclusion in contract folder. If the contract is formally amended, any line item shifts agreed to by the parties must be included in the amendment.
9. FOUR-DIGIT DATE COMPLIANCE: Contractor warrants that it will provide only Four-Digit Date Compliant deliverables and/or services to the State. "Four Digit Date Compliant" deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Agreement and does not limit the generality of warranty obligations set forth elsewhere herein.
10. COMPUTER SOFTWARE: Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
11. CONTRACT AMENDMENTS: Should either party, during the term of this Agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the State's official agreement amendment process. No amendment will be considered binding on either party until it is formally approved by both parties and the Department of General Services, if such approval is required.
12. POTENTIAL SUBCONTRACTORS: Nothing contained in this Agreement or otherwise, shall create any contractual relation between the SWRCB and any subcontractors, and no subcontract shall relieve the Contractor of his responsibility and obligations hereunder. The Contractor agrees to be as fully responsible to the SWRCB 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 Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the SWRCB's obligation to make payments to the Contractor. As a result, the SWRCB shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.
13. SUBCONTRACTING: The Contractor is responsible for any work it subcontracts. Subcontracts must include all applicable terms and conditions of this Agreement. Any subcontracts, outside associates, or consultants required by the Contractor in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified in the bid or agreed to during negotiations for this agreement, or as are specifically authorized by the Contract Manager during the performance of this Agreement. Any substitutions in, or addition to, such subcontractors, associates, or consultants shall be subject to prior written approval of the Contract Manager. Contractor warrants, represents and agrees that it and all its subcontractors, employees, and representatives shall at all times comply with all applicable laws, codes, rules, and regulations in the performance of this Agreement. Should SWRCB determine that the work performed by a subcontractor is substantially unsatisfactory and is not in substantial accordance with the contract terms and conditions, or that the subcontractor is substantially delaying or disrupting the process of work, SWRCB may request substitution of the subcontractor.
14. APPROVAL: This agreement is not valid until signed by both parties and approved by the Department of General Services, if required.

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15. FORCE MAJEURE:

Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disaster, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact. If a delay or failure in performance by the Contractor arises out of a default of its subcontractor, and if such default of its subcontractor, arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for damages of such delay or failure, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

16. PROHIBITED PRACTICES:

The contractor warrants that the contract was not obtained through rebates, kickbacks, or other unlawful considerations either promised or paid to a board employee. Facts showing failure to adhere to this warranty may be cause for contract termination and recovery of damages under the rights and remedies due the board under the default provision of the contract due the board per Exhibit C, General Terms and Conditions, paragraph 7. Termination for Cause.