

TERMS AND CONDITIONS OF GRANT AGREEMENT

I. RECITALS

1. This Agreement, is entered into between the State of California, by and through the California Department of Forestry and Fire Protection (CAL FIRE), hereinafter referred to as "STATE" and, **GRANTEE NAME**, hereinafter referred to as "GRANTEE".
2. This Agreement recognizes GRANTEE, a Federally recognized Tribal Government possessing powers of self-government, as an independent sovereign and is intended to serve as a government-to-government arrangement between GRANTEE and the STATE.
3. The STATE hereby grants to GRANTEE a sum (hereinafter referred to as "GRANT FUNDS") not to exceed [REDACTED] (\$ [REDACTED]).
4. Each of the Exhibits referenced in this Agreement is incorporated by reference as though set forth in full herein. The following Exhibits are attached to this Agreement:

Exhibit A: Limited Waiver of Sovereign Immunity.

Exhibit B: CAL FIRE Tribal Wildfire Resilience Equipment and Infrastructure Disposition Plan.

5. In addition to the terms and conditions of this Agreement, the STATE and GRANTEE agree that the terms and conditions contained in the documents set forth below are hereby incorporated and made part of this agreement.
 - a. **General Fund Addendum to the Grant Agreement for Tribal Wildfire Resilience Grants.**
 - b. **Department of Forestry and Fire Protection Forest Health Program Grant Guidelines FY 2022-2023, including Appendix A – Tribal Wildfire Resilience Program.**
 - c. **ADDITION to California Department of Forestry and Fire Protection Forest Health Program Grant Guidelines FY 2022-2023, including Appendix A – Tribal Wildfire Resilience Program.**
 - d. The submitted Application, Scope of Work, Project Workbook, and Exhibits.

II. SPECIAL PROVISIONS

1. Recipients of GRANT FUNDS pursuant to California Public Resources Code Section §4799.05 shall abide by the provisions in this Agreement. This includes the requirement that work shall not commence prior to the execution of this Agreement by both parties. Any work started prior to the execution of this Agreement will not be eligible for funding under the terms of this Agreement.
2. As precedent to the STATE's obligation to provide funding, GRANTEE shall provide to the STATE for review and approval a detailed budget, specifications, and project description. Approval by the STATE of such plans and specifications, or any other approvals provided for in this Agreement, shall be for scope and quality of work, and shall not relieve GRANTEE of the obligation to carry out any other obligations required by this Agreement, in accordance with applicable law or any other standards ordinarily applied to such work or activity.
3. All informational products (e.g., data, studies, findings, management plans, manuals, photos, etc.) relating to California's natural environment produced with the use of GRANT FUNDS shall be available for public use.
4. GRANTEE shall provide a copy of a certified resolution or similar action of the Tribal Council or other body possessing authority to enter contracts on behalf of GRANTEE as is dictated in the Tribe's constitution. The abovementioned resolution or similar action shall certify that all items in this Agreement are valid, legal, binding, and enforceable upon GRANTEE, including the limited waiver of sovereign immunity, and shall authorize execution and performance of this Agreement. The STATE shall have reviewed and approved this document prior to the execution of this Agreement by both parties.

III. GENERAL PROVISIONS

1. Definitions
 - a. The term "Agreement" means grant agreement number XXXXXX.
 - b. The term "GRANT FUNDS" means the money provided by the STATE to the GRANTEE in this Agreement.
 - c. The term "GRANTEE" means an applicant who has signed this Agreement for the award of GRANT FUNDS.

- d. The term “Other Sources of Funds” means all matching fund sources that are required or used to complete the Project beyond the GRANT FUNDS provided by this Agreement.
- e. The term “STATE” means the State of California, Department of Forestry and Fire Protection (“CAL FIRE”).
- f. The term “Project” means the development or other activity described in the “Project Scope of Work”.
- g. The term “Project Budget Detail” as used herein defines the approved budget plan.
- h. The term “Project Scope of Work” as used herein means the individual scope of work describing in detail the approved tasks.
- i. The terms “TRIBE” and “TRIBAL” as used herein refers to GRANTEE as a sovereign entity or GRANTEE’s laws, policies, lands, or other applicable items.

2. Project Representatives

The project representatives during the term of the agreement will be:

STATE: CAL FIRE	GRANTEE: GRANTEE NAME
Section/Unit: HQ Resource Management/Climate and Energy Program	Section/Unit: N/A
Attention: TWR Grant Manager	Attention: CONTACT
Mailing Address: TWR Grant Manager Address	Mailing Address: Grantee ADDRESS
Phone Number: TWR Grant Manager Phone	Phone Number: (XXX) XXX-XXXX Secondary: (XXX) XXX-XXXX
Email Address: TribalWildfireResilienceGrants@fire.ca.gov	Email Address: Contact email

Changes to the project representatives during the term of the agreement shall be made in writing. Notice shall be sent to the above representative for all notice provisions of this Agreement.

3. Project Execution

- a. Subject to the availability of grant monies, the STATE hereby grants to the GRANTEE a sum of money (GRANT FUNDS) not to exceed the amount stated on Section I. RECITALS, Paragraph 2 in consideration of and on condition that the sum be expended in carrying out the purposes as set forth in the description of the Project in this Agreement and its attachments and under the terms and conditions set forth in this Agreement.
- b. GRANTEE shall assume any obligation to furnish any additional funds that may be necessary to complete the Project. Any amendment to the Project as set forth in the Application on file with the STATE must be submitted to the STATE for approval in writing. No amendment is allowed until written approval is given by the STATE.
- c. GRANTEE shall complete the Project in accordance with the time of Project performance set forth in this Agreement, unless an amendment has been approved and signed by the STATE under the terms and conditions of this Agreement. Amendments must be requested in advance and will be considered in the event of circumstances beyond the control of the GRANTEE, but no less than 60 days from the Agreement expiration date. The STATE may waive the minimum timeframe for amendments at the STATE's discretion. Approval of amendment is at the STATE's discretion.
- d. Grantee certifies that the Project Scope of Work complies and will continue to comply with all applicable laws and regulations, including, but not limited to, applicable legal requirements for prevailing wage and labor compliance, construction contracts, building codes, environmental laws, health and safety codes, nondiscrimination, and disabled access laws.
- e. GRANTEE shall comply with all Tribal environmental laws. Because STATE is providing funding for GRANTEE's Project, the California Environmental Quality Act (CEQA) (Public Resources Code, Section 21000, et. seq. Title 14, California Code of Regulations, Section 15000 et. seq.) applies to any Project activity that could impact the environment (e.g., cutting, piling or burning bush, masticating, dozer work, etc.). CEQA compliance shall be completed within one (1) year from start date of the Agreement. The start date is considered the latter date of signature by the Grantee Authorized Representative or CAL FIRE Deputy Director or designee. GRANT FUNDS will be made available in advance of CEQA compliance for project activities that do not have the potential to cause an environmental impact (e.g., project planning, locating and marking property or project boundaries, contracting and signing up landowners, etc.).
- f. GRANTEE shall permit periodic, pre-arranged site visits by representative(s) of the STATE to ensure program compliance and that

work is in accordance with the approved Project Scope of Work, including a final inspection upon Project completion. GRANTEE shall have the discretion to dictate the dates and times of such site visits as is acceptable to GRANTEE so long as the STATE's ability to ensure program compliance is not unreasonably obstructed.

g. GRANTEE, and the agents and employees of GRANTEE, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents, of the STATE. No person who, as an officer, employee, or agent of the STATE participated in the preparation or creation of or determination to award this Grant Agreement shall serve as an agent or employee of GRANTEE including but not limited to those acts prohibited by Government Code Sections 1090 and 87100.

4. Project Costs and Payment Documentation

- a. Payment by the STATE shall be made after receipt of an acceptable invoice and approval by a duly authorized representative of the STATE. GRANTEE shall submit an invoice for payment to the CAL FIRE Project Representative of the STATE. A final invoice shall be submitted no later than 30 days after completion, expiration, or termination of this Agreement.
- b. For services satisfactorily rendered, and upon receipt and approval of invoices for payment, the STATE agrees to compensate GRANTEE for actual expenditures incurred in accordance with the rates and activities specified in the Final Project Budget Detail, Application, Scope of Work, and Exhibits, and made a part of this Agreement.
- c. Equipment purchased using GRANT FUNDS, wholly or in part, must be used by the GRANTEE for the project for which it was acquired. STATE retains a vested interest in the equipment for the useful life of the equipment, even after completion of the grant. GRANTEE shall provide written disposition of the equipment upon completion of the grant and upon any changes to the disposition of the equipment. Such disposition must be approved in advance by STATE. Equipment purchased using GRANT FUNDS cannot be used as collateral, financed, or sold without prior written approval from the STATE. Grantee must adhere to and submit the Equipment Disposition Plan (included as Attachment A of the Agreement) upon equipment acquisition, project completion, and biennially to CAL FIRE after completion of the grant project until notified in writing by the CAL FIRE Tribal Wildfire Resilience Grant Program that additional reporting is no longer required.
- d. GRANTEE shall submit, in arrears, not more frequently than once a month, and required quarterly, an invoice to the STATE for costs paid by GRANTEE pursuant to this Agreement. In the event no expenses are incurred, GRANTEE shall identify that no costs have been incurred within

the respective quarterly progress report in lieu of submitting a zero balance invoice. Each invoice shall contain the following information: the Agreement number, the dates or time period during which the invoiced costs were incurred, signature of an authorized representative of GRANTEE, expenditures for the current invoice and cumulative expenditures to date by major budget category (e.g., salaries, benefits, supplies, etc.), match funds when applicable, and appropriate supporting documentation consistent with the Eligible Costs section, as detailed in the Department of Forestry and Fire Protection Forest Health Program Grant Guidelines FY 2022-2023 , including Appendix A – Tribal Wildfire Resilience Program.

- e. GRANT FUNDS in this Agreement have a limited period in which they must be expended. All GRANTEE expenditures must occur prior to the end of the Project performance period of this Agreement.
- f. Except as otherwise provided herein, GRANTEE shall expend GRANT FUNDS in the manner described in the Budget approved by the STATE. The dollar amount of an item in a budget category may be increased or decreased by up to ten percent (10%) of the budget item through reallocation of funds from other budget categories, with approval by the STATE; GRANTEE shall notify the STATE in writing when any such reallocation is made, and shall identify both the item(s) being increased and those being decreased. Any increase or decrease of an item of more than ten percent (10%) of any budget category must be approved in an executed amendment to the grant agreement by both GRANTEE and the STATE before any such increase or decrease is made. A formal approved amendment is required to increase the total amount of GRANT FUNDS.
- g. GRANTEE shall promptly submit any and all records at the time and in the form as the STATE may request.
- h. GRANTEE shall submit each invoice for payment electronically using the grants management system identified by CAL FIRE. Hard copy submissions will not be accepted.
- i. Notwithstanding any of the provisions stated within this Agreement, the STATE may at its discretion make advance payment from the grant awarded to the GRANTEE as GRANTEE is a Tribe. Advance payment made by the STATE shall be subject to the following provisions.
 - GRANTEE shall submit a written request identifying how funds will be used over a six-month period. The written request must be accompanied by an invoice that contains the same level of detail as a regular invoice.

- GRANTEE shall file an accountability report with the STATE four months from the date of receiving the funds and every four months thereafter.
 - Multiple advance payments may be made to a GRANTEE over the life of a project.
 - No single advance payment shall exceed 25% of the total grant amount.
 - Advance funds must be spent on eligible costs within six months of the advance payment receipt.
 - GRANTEE may request additional time to spend advance funds but such request must be approved in writing by the STATE. CAL FIRE may bill for the return of unliquidated advance funds after the approved timeframe.
 - All work under a previous advance payment must be fully liquidated via an invoice and supporting documentation and completed to the STATE's satisfaction before another advance payment will be made.
 - Any advance payment received by a GRANTEE and not used for project eligible costs within six months of the advance payment receipt, or within an extended period of time approved in writing by the STATE, shall be returned to the STATE. The amount will be returned to the grant balance.
 - Advance payments must be deposited into an interest-bearing account. Any interest earned on advance payment funds must be accounted for and used toward offsetting the project cost or returned to the STATE.
- j. The GRANTEE shall immediately reimburse or credit, as determined by the STATE, the STATE for any over payment of any invoice, including final invoice, when either party determines an overpayment was made.

5. Budget Contingency Clause

- a. If STATE funding for any fiscal year is reduced or deleted for purposes of the Tribal Wildfire Resilience Grant Program, the STATE shall have the option to either cancel this Agreement with no liability occurring to the STATE, or if possible and desirable, offer an Agreement amendment to GRANTEE to reflect the reduced amount available for the Project at STATE's discretion.

6. Project Administration

- a. GRANTEE shall provide the STATE a written report showing total final Project expenditures and matching funds upon Project completion or grant expiration, whichever occurs first. GRANTEE must report to the STATE

all sources of other funds for the Project. If this provision is deemed to be violated, the STATE will request an audit of GRANTEE and can delay the disbursement of funds until the matter is resolved.

- b. GRANTEE shall submit written Project reports as the STATE may request throughout the term of this Agreement.
- c. GRANTEE shall submit a final accomplishment report, final invoice with associated supporting documentation, and copies of materials developed using GRANT FUNDS, including but not limited to plans, educational materials, etc. within 30 days of Project completion.

7. Financial Records

- a. GRANTEE shall retain all records described in Section 7(c) below for three (3) years after final payment by the STATE. In the case an audit occurs, all such records shall be retained for one (1) year from the date the audit is completed or three (3) years after final payment by the STATE, whichever date is later.
- b. GRANTEE shall maintain satisfactory financial accounts, documents, and records for the Project and make them available to the STATE for review during reasonable times. This includes the right to inspect and make copies of any books, records, or reports of GRANTEE pertaining to this Agreement or matters related thereto.
- c. GRANTEE shall keep such records as the STATE shall prescribe, including, but not limited to, records which fully disclose (a) the disposition of the proceeds of state funding assistance, (b) the total cost of the Project in connection with such assistance that is given or used, (c) the amount and nature of that portion of the Project cost supplied by other sources, and (d) any other such records as will facilitate an effective audit. All records shall be made available to the STATE, other State of California agency, or other entity as determined by the State of California for auditing purposes at reasonable times.
- d. GRANTEE shall use any generally accepted accounting system.

8. Research

- a. GRANTEE that receives funding, in whole or in part, in the form of a research grant shall provide for free public access to any publication of a peer-reviewed manuscript describing STATE funded knowledge, STATE funded invention, or STATE funded technology and shall be subject to the following conditions:

- i. GRANTEE is responsible for ensuring that any publishing or copyright agreements concerning peer-reviewed manuscripts fully comply with this section; and
 - ii. GRANTEE shall report to STATE the final disposition of the peer-reviewed manuscript, including, but not limited to, if it was published, date of publication, where it was published, and, when the 12-month time period from official date of publication expires, where the peer-reviewed manuscript will be available for open access.
- b. For a peer-reviewed manuscript that is accepted for publication pursuant to the terms and conditions of this Agreement, the GRANTEE shall ensure that an electronic version of the peer-reviewed manuscript is available to STATE and on an appropriate publicly accessible repository approved by the state agency, including, but not limited to, the University of California's eScholarship Repository at the California Digital Library, the California State University's ScholarWorks at the Systemwide Digital Library, or PubMed Central, to be made publicly available not later than 12 months after the official date of publication. GRANTEE shall make reasonable efforts to comply with this requirement by ensuring that the peer-reviewed manuscript is accessible on an approved publicly accessible repository, including notifying the state agency that the manuscript is available on a state-agency-approved repository. If the grantee is unable to ensure that the manuscript is accessible on an approved, publicly accessible repository, the grantee may comply by providing the manuscript to the state agency not later than 12 months after the official date of publication.
- c. For publications other than those described in (b), including scientific meeting abstracts, GRANTEE shall comply by providing the manuscript to the STATE not later than 12 months after the official date of publication.
- d. The grant shall not be construed to authorize use of a peer-reviewed manuscript that would constitute an infringement of copyright under the federal copyright law described in Section 101 of Title 17 of the United States Code and following.
- e. Use of GRANT FUNDS for publication costs, including fees charged by a publisher for color and page charges, or fees for digital distribution are allowable costs but must be within the GRANT FUNDS and item 4 of the agreement.
- f. GRANTEE may request a waiver to the publication requirement if GRANTEE has an existing publication requirement that meets or exceeds the requirements of the research provision. Waiver shall include information on GRANTEE's existing requirements. Approval of the waiver is at the STATE's discretion.

9. Project Termination

- a. This Agreement may be terminated by the STATE or GRANTEE upon 30-days written notice to the other party.
- b. If either party terminates the Agreement prior to the completion of the Project, GRANTEE shall take all reasonable measures to prevent further costs to the STATE under the Agreement and the STATE shall be responsible for any reasonable and non-cancelable obligations incurred by GRANTEE in the performance of this Agreement prior to the date of the notice to terminate, but only up to the undisbursed balance of funding authorized in this Agreement.
- c. Failure by GRANTEE to comply with the terms of this Agreement may be cause for suspension of all obligations of the STATE hereunder at the discretion of the STATE.
- d. Failure of GRANTEE to comply with the terms of this Agreement shall not be cause for the suspension of all obligations of the STATE hereunder if in the judgment of the STATE such failure was due to no fault of GRANTEE. At the discretion of the STATE, any amount required to settle at minimum cost any irrevocable obligations properly incurred shall be eligible for reimbursement under this Agreement.
- e. Final payment to GRANTEE may not be made until the STATE determines the Project conforms substantially to this Agreement.

10. Hold Harmless

- a. GRANTEE shall defend, indemnify, and hold the STATE, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims for injury or damages arising out of the performance of this Agreement under Tribal, State, or Federal law, but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of GRANTEE, its officers, agents, or employees.
- b. GRANTEE waives any and all rights to any type of express or implied indemnity or right of contribution from the STATE, its officers, agents, or employees for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement under Tribal, State, or Federal law.
- c. Nothing in this Agreement is intended to create in the public or in any member of it rights as a third-party beneficiary under this Agreement.

11. Tort Claims

FEDERAL:

The United States shall be liable, to the extent allowed by the Federal Tort Claims Act 28 United States Code 2671-2680, for claims of personal injuries or property damage resulting from the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his or her employment, arising out of this Agreement.

STATE:

The State of California shall be liable, to the extent allowed by law and subject to California Government Code, Title 1, Division 3.6, providing for the filing of tort claims against the State of California, for personal injuries or property damage resulting from the negligent or wrongful act or omission of State of California employees while acting within the scope of his or her employment, arising out of this Agreement.

12. Nondiscrimination

The State of California prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, sex, marital status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. GRANTEE shall not discriminate against any person on any of these bases. Notwithstanding the above, GRANTEE may exercise hiring preferences under a Tribal Employment Rights Ordinances (TERO) or similar formally adopted Tribal law or policy as allowed by Federal law.

13. Conflict of Interest

GRANTEE or anyone acting on behalf of GRANTEE shall not have any conflicting personal or financial interests in carrying out the duties of the Agreement.

14. Incorporation

The grant guidelines and the Project Scope of Work, Project Budget Detail, and any subsequent amendments or modifications to the Project Scope of Work and Project Budget Detail approved in writing by the STATE are hereby incorporated by reference into this Agreement as though set forth in full in this Agreement.

15. Severability

If any provision of this Agreement or the Project Scope of Work thereof is held invalid, that invalidity shall not affect other provisions or applications of this

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GRANTEE NAME

PROJECT NAME

Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable.

16. Waiver

No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing and signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether expressed or implied, will constitute consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.

17. Assignment

This Agreement is not assignable by GRANTEE either in whole or in part.

18. Survival Clause

The obligations of the Parties under Section III General Provisions, Items 4 (c) and (i) of the Project Costs and Payment Documentation and Item 10 Hold Harmless of this Agreement shall survive the termination or expiration of the Agreement.

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GRANTEE NAME

PROJECT NAME