

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
Beverage Container Recycling Grant Program - RBC23
Fiscal Year 2011/12 (Revised June 2012)

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GENERAL PROVISIONS

1. Grant Authority and Term:

- A. This Grant Agreement (hereinafter "Agreement") is between the Department of Resources Recycling and Recovery, (hereinafter "CalRecycle"), and the Grantee. Hereinafter, CalRecycle and the Grantee collectively shall be referred to as "the Parties".
- B. The Parties mutually agree and understand that this Agreement is a legally binding document, inuring to the benefit of the public, that is authorized pursuant to Section 14581 (a)(5) of the Public Resources Code (PRC). Any references to "contractor" herein, including references in this Agreement, in documents attached thereto, and/or in documents, statutes and regulations incorporated herein by reference, shall be deemed to be references to "Grantee."
- C. The signatories for this Agreement hereby certify that they are authorized to act on behalf of the Parties in approving this Agreement. If the Grantee is a non-profit entity, the signatory for the Grantee further certifies that the Board of Directors for the Grantee has endorsed Grantee's receipt of grant funds pursuant to this Agreement and performance of activities and expenditure of funds in a manner consistent with the Grant Summary at Exhibit B, Implementation Schedule at Exhibit C, Budget at Exhibit D, Grantee Certification of Compliance at Exhibit E and Grant Payment Request (may be downloaded from the CalRecycle website at <http://www.calrecycle.ca.gov/Grants/Forms/default.htm#General>).

2. Grant Manager: The Grant Manager is CalRecycle's representative for this Agreement. The Grant Manager's responsibilities include monitoring grant progress, and reviewing and approving Grant Payment Requests and other documents delivered to CalRecycle pursuant to this Agreement. The Grant Manager does not have the authority to control or direct specifically how the Grantee carries out activities authorized and funded pursuant to this Agreement, but may monitor Grantee performance to ensure that the Grantee expends grant funds appropriately and in a manner consistent with the terms and conditions contained herein. All official communication from the Grantee to CalRecycle shall be directed to the Grant Manager as identified in Exhibit B – Grant Summary.

3. Scope of Agreement: The terms and conditions of this Agreement constitute and contain the entire Agreement and understanding between the Parties, and may not be contradicted by evidence of any prior or contemporaneous oral agreement. The Guidelines and any applicable amendments thereto as well as the Grantee's application for the current grant year are incorporated herein by reference. To the extent that any conflicts or inconsistencies exist between the terms and conditions of this Agreement, including the attached exhibits, the guidelines or the Grantee's proposal, the terms and conditions of this Agreement shall prevail and be controlling.

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4. **Modifications-Changes:** CalRecycle may extend or otherwise amend the terms of this Agreement by formal amendment. Minor changes to the Agreement, including minor revisions to the Grant Summary, Budget and Implementation Schedule may not require a formal amendment of the Agreement; however, the Grantee shall obtain written approval from the Grant Manager before making such changes. The Grants Supervisor may elect to approve budget line item changes after the expenditure was made if prior approval was not possible due to unforeseen circumstances and the line item is included in the budget.
5. **Subcontractors:**
- A. The Grantee shall be entitled to make use of its own staff and such subcontractor(s) as are mutually acceptable to the Grantee and CalRecycle. All subcontractor(s) specifically identified in the Grant Summary are considered to be acceptable to CalRecycle. Any change in subcontractor(s), or change as to how the Grantee intends to use the services of a subcontractor, shall require a formal amendment of this Agreement.
 - B. It is understood and agreed by the Parties that the Grantee and each subcontractor shall comprise the "Grantee team." The Grantee shall manage the performance of the project and shall manage the performance of the Grantee team.
 - C. In carrying out activities funded under this Agreement, the Grantee, its subcontractors and its employees shall exercise the degree of skill and care required by customarily accepted good professional practices and procedures. Any costs incurred due to failure to meet the foregoing standards, or due to otherwise defective services that cause redundancy, shall be borne by the Grantee and not CalRecycle.
7. **Ownership of Property and Equipment:** The Parties agree that CalRecycle shall hold and retain throughout the term of this Agreement rights to and interest in personal property, including equipment, purchased with funds provided through this Agreement. In the event this Agreement is terminated before full performance and completion of all activities and work authorized and funded herein, the Grantee shall, within thirty (30) days of Grantee's receipt of a written demand from CalRecycle, surrender possession of and any rights to all such property specified in CalRecycle's written demand.
- A. All real and personal property, including equipment and supplies, acquired with grant funds shall be used by the Grantee only for the purposes for which CalRecycle approved their acquisition for so long as such property is needed for such purposes, regardless of whether the Grantee continues to receive grant funds from CalRecycle for such purposes. In no event shall the length of time during which such property, including equipment and supplies, acquired with grant funds, is used for the purpose for which CalRecycle approved its acquisition be less than five (5) years after the end of the grant term, during which time the property, including equipment and supplies, must remain in the State of California.
 - B. Subject to the obligations and conditions set forth in this section, title to all real and personal property acquired with grant funds, including all equipment, shall vest upon

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acquisition in the Grantee. The grantee shall execute all documents required to provide CalRecycle with a purchase money security interest in any real or personal property, including equipment, and it shall be a condition of receiving this grant that CalRecycle shall be in first priority position with respect to the purchase money security interest on any such property acquired with the grant funds, unless pre-approved in writing by the Grant Manager that CalRecycle will accept a lower priority position with respect to the purchase money security interest on the property. Grantee shall inform any lender(s) from whom it is acquiring additional funding to complete the property purchase of this grant condition.

- C. The Grantee may not transfer Title to any real or personal property, including equipment and supplies, acquired with grant funds to any other entity without the express authorization of CalRecycle.
 - D. CalRecycle will not reimburse the Grantee for the acquisition of equipment that was previously purchased with CalRecycle grant funds, unless the acquisition of such equipment with grant funds is pre-approved in writing by the Grant Manager. In the event of a question concerning the eligibility of equipment for grant funding, the burden will be on the Grantee to establish the pedigree of the equipment.
7. **Stop Work Notice:** Immediately upon receiving a written notice from CalRecycle to stop work, the Grantee shall cease all work under this Agreement.
8. **Discretionary Termination:** Either party shall have the right to terminate this Agreement at any time upon thirty (30) days written notice to the other. In the case of such “early” or “discretionary” termination, defined as termination occurring before full performance of all objectives and activities described in the Grant Summary at Exhibit B and authorized for funding herein, a final payment will be made to the Grantee, if due, upon receipt of a financial report and invoices covering costs incurred to termination, and a written report describing all work performed by the Grantee to date of termination. Upon discretionary termination of this Agreement and upon receipt of a written demand from CalRecycle, Grantee also shall relinquish to CalRecycle possession and control of any property purchased pursuant to this Agreement.
9. **Disputes:** In the event of a dispute regarding performance under this Agreement or interpretation of requirements contained therein, the Grantee may, in addition to any other remedies that may be available, provide written notice of the particulars of such dispute to the Branch Chief of Financial Resources Management Branch, Department of Resources Recycling and Recovery, PO Box 4025, Sacramento, CA 95812-4025. Such written notice must contain the grant number.

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10. Publicity and Acknowledgment:

- A. Grantees are no longer required to acknowledge CalRecycle's support whenever activities or projects funded, in whole or in part, by this Agreement are publicized in any news media, brochures, articles, seminars or other type of promotional material.
- B. The Grantee shall place the following notice, preceding the text, on draft reports, on the final report, and on any other report or publication resulting from work performed under this Agreement.

Disclaimer

"The statements and conclusions of this report are those of the Grantee and/or Subcontractor and not necessarily those of CalRecycle, or its employees. CalRecycle makes no warranties, express or implied, and assumes no liability for the information contained in the succeeding text."

- C. The Grantee shall provide CalRecycle with an opportunity to review materials or other publications funded in whole or in part pursuant to this Agreement before they are published.

11. Copies of Data, Plans and Specifications: The Grantee shall, at the request of CalRecycle or as specifically directed in the Grant Summary at Exhibit B herein, provide CalRecycle with copies of any data, design plans, specifications, photographs, negatives, audio and video productions, films, recordings, reports, findings, recommendations and memoranda of every description or any part thereof, prepared under this Agreement.

The State of California shall have the right to copy and distribute said copies in any manner when and where it may determine without any claim on the part of the Grantee, its vendors or subcontractors to any additional compensation.

- 12. Site Visits:** CalRecycle may conduct periodic site visits, at its own expense, to monitor progress during the grant term. Also, interim oral or written progress reports may be required to supplement the more formal status reports.
- 13. Governing Law/Locus:** This Agreement is governed by, and shall be interpreted in accordance with, the laws of the State of California. For the purpose of any litigation related to and/or challenging any aspect of this Agreement or performance thereunder, the locus is Sacramento, California.

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14. **Insurance:** The Grantee shall obtain and keep in force for the term of this Agreement, and require its subcontractors to obtain and keep in force, the following insurance policies which cover any acts or omissions of the Grantee, or its employees engaged in the provision of services or performance of activities funded pursuant to and specified in this Agreement:
- A. Worker's Compensation Insurance in accordance with the statutory requirement of the State of California.
 - B. Commercial general liability insurance in the amount of \$1,000,000 per occurrence and aggregate for bodily injury and property damage.
 - C. Automobile liability in the amount of \$1,000,000 for each accident for owned or non-owned or hired vehicles, whichever is applicable.

The Grantee shall name the State of California, its officers, agents, employees and servants as additional insured parties for all insurance required and is responsible for guaranteeing that a copy of each Certificate of Insurance is submitted to CalRecycle within thirty (30) days of the execution of the grant.

The certificate of insurance shall state a limit of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage combined.

Self-insured entities must provide a copy of a Certificate of Consent to Self-Insure issued by the California Department of Industrial Relations.

The Grantee shall notify CalRecycle prior to any insurance policy cancellation or substantial change of policy.

15. **Liability Indemnification and Waiver:**

- A. Grantee agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Grantee or its contractors, subcontractors, laborers, suppliers or employees in the performance of this Agreement.
- B. The Grantee waives any and all rights to any type of express or implied indemnity or right of contribution from the State, officers, agents or employees, for any liability arising from, growing out of, or in any way connected with this Agreement.

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16. **Assignment:** The Grantee's interest in and responsibilities under this Agreement shall not be assignable by the Grantee either in whole or in part without the written consent of CalRecycle.
17. **Grantee Independence/Not an Agent of the State:** In the performance of this Agreement, Grantee, and the agents and employees of the Grantee, shall act in an independent capacity and not as officers or employees or agents of CalRecycle.
18. **Severability/Unenforceable Provision:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, it shall be severable from the remainder of the Agreement. The Parties agree that all other provisions of this Agreement shall have force and effect and not be affected thereby.
19. **Timeliness:** Time is of the essence in the performance of this Agreement. Grantee is required to begin implementation of this Agreement as soon as possible following its execution and shall abide by the Implementation Schedule at Exhibit C. Eligible costs may be incurred only during the "Grant Performance Period" which starts on the date of the "Notice to Proceed" from CalRecycle, and ends on the date specified on the Grant Agreement Cover Sheet, (CalRecycle 110.) The Notice to Proceed, which is issued after the Grantee and CalRecycle have both executed the Grant Agreement, is a formal notification from CalRecycle that authorizes the Grantee to begin the Grant Project and incur costs.
20. **Discharge of Grant Obligations:** The Grantee's obligations under this Agreement shall be deemed discharged only upon acceptance of the final report by CalRecycle. If the Grantee is a non-profit entity, the Grantee's Board of Directors shall accept and certify as accurate the final report prior to its submission to CalRecycle.
21. **Certification Clauses:** The Grantee hereby certifies its compliance throughout the grant term with all applicable requirements contained in the Grantee Certification of Compliance at Exhibit E of this Agreement.
22. **Breach of Conditions/Remedy for Default:**
 - A. In the event of Grantee's breach of any conditions or terms of this Agreement, CalRecycle will give written notice to the Grantee, describing the breach. Notice shall be deemed given when deposited in the U.S. Post Office, postage prepaid, addressed to Grantee, or by personal delivery to Grantee's place of business. If Grantee does not, within thirty (30) days after the notice is given, (1) cure the breach described in CalRecycle's notice or (2) if the breach is not curable within thirty (30) days, commence to cure the breach, the Grantee shall be in default under this Agreement.
 - B. In the event of a default under this Agreement, CalRecycle shall be entitled to all remedies available at law including, but not limited to, termination of the Agreement, withholding of amounts billed and/or recovery of funds disbursed and equipment purchased pursuant to the Agreement. Grantee may appeal such action by filing a dispute pursuant to Clause #9 above.

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EXPENDITURE, PAYMENT AND RECORDKEEPING PROVISIONS

- 23. Allowable Costs and Documentation:** To be allowable under this Agreement, costs must meet the following criteria:
- A. Be necessary and reasonable for the performance of the Agreement.
 - B. Be determined in accordance with generally accepted accounting principles.
 - C. Not be included as a cost or used to meet cost sharing or matching requirements of any other CalRecycle funded program in either the current or prior period.
 - D. Be adequately documented.
- 24. Reasonable Costs:** A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. Consideration will be given to:
- A. Whether the cost is of a type generally recognized as ordinary and necessary for the performance of the grant.
 - B. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms-length bargaining, federal and state laws and regulations and the terms and conditions of the grant.
 - C. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, clients, and the public at large.
 - D. Significant deviations from the established practices of the organization which may unjustifiably increase the grant costs.
- 25. Competitive Bid Requirements:** Grantee shall secure at least three competitive bids or price quotes for goods (including equipment) or services authorized in the Budget at Exhibit D, where the amount charged to the grant is \$5,000 or more. Grantee shall purchase such goods or services from the lowest qualified bidder or pay the difference between the low bid and the one selected, without using funds obtained pursuant to this Agreement. Grantee shall maintain documentation of the competitive bid process used. This competitive bid requirement may be waived upon Grantee certification that due to the unique nature of the goods or services a sole source purchase is justified. Failure to comply with competitive bid requirements may result in CalRecycle disallowing reimbursement of some portion or all of the related costs and/or other remedies for breach pursuant to Clause #22 above.

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26. **Conflict of Interest, Self-Dealing, and Need for Arm's Length Transactions:** Grantee shall act in accordance with the fiduciary duty attached to the receipt and expenditure of grant monies intended to benefit the public. Consistent with that fiduciary duty, Grantee shall ensure the proper expenditure of all grant monies for which reimbursement is sought pursuant to this Agreement.

All expenditures for which reimbursement pursuant to this Agreement is sought shall be the result of arm's-length transactions and not the result of, or motivated by, self-dealing on the part of the Grantee or any employee or agent of the Grantee. For purposes of this provision, "arm's-length transactions" are those in which both parties are on equal footing and fair market forces are at play, such as when multiple vendors are invited to compete for an entity's business and the entity chooses the lowest of the resulting bids. "Self-dealing" is involved where an individual or entity is obligated to act as a trustee or fiduciary, as when handling public funds, and chooses to act in a manner that will benefit the individual or entity, directly or indirectly, to the detriment of, and in conflict with, the public purpose for which all grant monies are to be expended.

27. **Record Keeping Requirements:**

- A. Grantee shall establish an official file for the project. The file shall contain documentation of all actions taken regarding this Agreement.
- B. Grantee shall establish separate ledger accounts for receipt and expenditure of grant funds and maintain expenditure detail in accordance with the approved budget detail. Separate bank accounts are not required.
- C. Grantee shall maintain financial records in accordance with generally accepted accounting principles. Grantee shall maintain adequate supporting documentation in such detail so as to provide an audit trail of receipts, expenditures and disbursements. Grantee's records will permit tracing transactions from support documentation to the accounting records to financial reports and billings. Such documentation shall include proof of all match contributions, including identification of the source of each and every such contribution, and may include, but shall not necessarily be limited to, subsidiary ledgers, payroll records, vendor invoices, canceled checks, bank or other financial account records, consultant contracts and billings, volunteer rosters and work logs, and lease or rental agreements. Such documentation shall be readily available for inspection, review and/or audit by the Grant Manager or other representatives of the State.
- D. Subcontractor(s), employed by the Grantee and paid with monies under the terms of this Agreement, shall be responsible for maintaining accounting records as specified above.

28. **Audits:** The Grantee agrees that the State and its representatives, including, but not limited to, CalRecycle, the State Controller's Office and the State Auditor, shall have an absolute right of access to, and right to review and copy, all of the Grantee's records pertaining to this Agreement and to conduct reviews and/or audits related to this grant. Grantee shall, for the purpose of any such review or audit, retain and provide access to all records related to this Agreement including, but not necessarily limited to, those records specified in the Record

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Keeping Requirements in #27 above. Grantee shall also provide access to and allow interview of any employees who might reasonably have information related to such records. Such access to employees and records shall be provided during normal business hours throughout the Agreement term and for at least three (3) years after the final payment is disbursed pursuant to this Agreement, or until completion of any action and resolution of all issues which may arise as a result of any audit or review of such records, whichever is later.

29. **Payment:** Except as otherwise provided herein, payments shall be made to Grantee no more than once every thirty (30) calendar days in arrears for actual costs authorized in the Budget at Exhibit D of this Agreement and incurred during the Agreement term. Payment will be made upon evidence of satisfactory progress, as determined by the Grant Manager. Such evidence shall consist of written status reports and other documentation evidencing performance as provided for in this Agreement.

Final payment will be made only after completion of work and activities identified at Exhibit B and Exhibit C, including receipt of the Final Report. **CalRecycle will not reimburse costs incurred after June 30, 2014.**

Only those items identified in the Budget, at Exhibit D, are eligible for reimbursement. Any change to the Budget must be approved by the Grant Manager before expenditure for that item is made. *Under no circumstances shall the Grantee seek reimbursement, pursuant to this Agreement, for a cost or activity that has been or will be paid through another funding source.*

CalRecycle may withhold payment equal to ten (10) percent of each invoice until completion of all work and other requirements to the satisfaction of CalRecycle.

30. **Reimbursement Limited to Net Costs:** All costs charged against the Agreement shall be net of all applicable credits. The term "applicable credits" refers to those receipts or reductions of expenditures that operate to offset or reduce expense items that are reimbursable under this Agreement. Applicable credits may include, but are not necessarily limited to, rebates or allowances, discounts, credits toward subsequent purchases, and refunds. Grantee shall, where possible, deduct the amount of the credit from the amount billed as reimbursement for the cost, or shall deduct the amount of the credit from the total billed under a future invoice.
31. **Invoicing:** The Grant Payment Request (CalRecycle 87) shall be the invoice form. It may be downloaded from CalRecycle's website at <http://www.calrecycle.ca.gov/Grants/Forms/default.htm#General>. The form must be submitted with an original signature to the address listed in the Grant Summary Exhibit B. One (1) copy of supporting documentation is required to be submitted for each expenditure of \$500 or more. No supporting documentation is required for expenditures of less than \$500 unless requested by CalRecycle.

Acceptable supporting documentation must include the following:

- a) Invoices, receipts or purchase orders containing the product manufacturer, supplier/vendor, and/or contractor name, phone number, address, purchase amount, date and description of goods/services.

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- b) Proof of payment (e.g., copies of cancelled checks, invoices or receipts marked paid, accounting reports if identified by a check number, date, product manufacturer, supplier/vendor, and/or contractor name and amount.

Three (3) bids or sole source justification is required for any purchase over \$5,000 and must be obtained prior to purchase. Original supporting documentation is not required but should be retained by the Grantee.

The invoice form must be signed by the person who signed the Agreement or by his/her designee. If there is a question as to the authority of the signer that cannot be resolved to the satisfaction of the State, the invoice will not be honored. Copies of or faxed Grant Payment Request forms will not be approved for payment

Note: All supporting documentation must be maintained in accordance with the Record Keeping Requirements #27 above. Each invoice is subject to approval by the Grant Manager and CalRecycle Management, and possible audit by the Accounting Office and the State Controller before payment may be disbursed. If an invoice is questioned by CalRecycle, the Grant Manager shall contact the Grantee within ten (10) to fifteen (15) days of receipt of the invoice, depending on business classification. Undisputed invoices take approximately six (6) weeks for payment.

The final invoice shall be submitted no later than the date identified in the Implementation Schedule.

- 32. Travel:** Reimbursement of travel is not permitted unless expressly provided in the approved budget at Exhibit D. If provided in the Agreement, employees or subcontractors of the Grantee traveling from another State to the State of California or within the State of California, shall be reimbursed according to the prevailing rates for State of California employees. Travel outside the State of California will not be reimbursed without prior written authorization of the Grant Manager or unless otherwise expressly so provided in the terms of this Agreement.

- A. For travel necessary to the performance of this Agreement, the Grantee shall be reimbursed as follows:
 - 1. Travel by common carrier, airline coach class or equivalent, in accordance with receipts or vouchers verifying expenditure.
 - 2. Travel by private or Grantee-owned automobile at \$0.555 per mile or an amount consistent with the state mileage rate. To obtain the current state mileage rate, see <http://www.dpa.ca.gov/personnel-policies/travel/personal-vehicle-mileage-reimbursement.htm>. However, if travel by common carrier is more economical than by automobile, the rate for the common carrier will be reimbursed.
 - 3. Travel by private car to and from the common carrier shall be reimbursed at \$0.555 per mile or an amount consistent with the state mileage rate.

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4. Travel by rental car, if less expensive than taxi service, in accordance with receipts verifying expenditure. Grantee will note that insurance coverage is not reimbursable.
- B. Per Diem rates apply to travel more than 50 miles away from the Grantee's headquarters and are reimbursable as follows:
1. Date and time of departure and return shall be indicated in order to establish appropriate per diem rates. Place where the travel originates and destination shall also be stated.
 2. For a full 24-hour period or for a shorter period immediately following a full 24-hour period, reimbursement may be made as follows with an accompanying receipt: lodging, actual lodging expense up to \$84 plus applicable taxes (up to \$110 plus applicable taxes in Los Angeles and San Diego Counties; up to \$140 plus applicable taxes in Alameda, San Francisco, San Mateo and Santa Clara Counties); breakfast, up to \$6; lunch, up to \$10; and dinner, up to \$18. Lodging is based on a standard, single-occupant room. Travel shall begin at or prior to 6 a.m. and terminate at or after 9 a.m. to qualify for breakfast reimbursement. Lunch may be claimed if travel begins at or prior to 11 a.m. and terminates at or after 2 p.m. Dinner may be claimed if travel begins at or prior to 4 p.m. and terminates at or after 7 p.m.
 3. Incidental expenses may be reimbursed without receipts up to \$6 per 24-hour period. Expenses exceeding \$6 shall be itemized with the receipts attached to the invoice. Incidental expenses include phone calls (must identify name and number called), toll charges and parking fees, reproduction, and postage.
 4. For travel consisting of a total of fewer than 24 hours, there is not reimbursement for lunch or incidentals; reimbursement for breakfast and dinner follows the above rules.

Travel expenditures not listed herein cannot be reimbursed.

33. **Documentation of Time Spent:** The Grantee shall maintain reports or other detailed records (e.g., activity logs or timesheets) documenting time spent by each employee, agent, contractor or volunteer whose work in support of this Agreement is billed under the Agreement or used as match. Records used to meet this requirement shall identify the individual performing the work, the date on which the work was performed, the specific grant-related activities or objectives to which the individual's time was devoted, and the amount of time spent. Such records shall reflect actual time spent, rather than that which was planned or budgeted.
34. **Reports:** The Grantee shall submit to the Grant Manager status reports and a final report. Reports shall include information required in the Summary at Exhibit B and shall be submitted on or before the dates specified in the Implementation Schedule at Exhibit C.

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Failure to comply with the reporting requirements specified above shall constitute a breach of this Agreement and may result in CalRecycle taking action pursuant to Clause #22 of this Agreement.