ASSOCIATION
OF BAY AREA
GOVERNMENTS

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Jesse Arreguín, President
Mayor, City of Berkeley

Belia Ramos, Vice President
Supervisor, Napa County

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Karen Mitchoff
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Jesse Arreguín
Chair, Legislation Committee
Mayor, City of Berkeley

Karen Mitchoff,
Chair, Finance Committee
Supervisor, Contra Costa County

March 1, 2023

Jennifer Ott
City Manager
City of Alameda
2263 Santa Clara Avenue, Room 320
Alameda, CA 94501

RE: GRANT FUNDING AGREEMENT WITH CITY OF ALAMEDA FOR SAN LEANDRO OPERATIONAL LANDSCAPE UNIT

Dear Ms. Ott:

This letter and its attachments, effective as of March 1, 2023 ("Effective Date") are the agreement between the City of Alameda, herein referred to as ("SUBRECIPIENT"), and the Association of Bay Area Governments ("ABAG") for the performance of professional services in connection with the San Leandro Operational Landscape Unit (OLU) Adaptation Project ("Project").

WHEREAS, ABAG has received grant funds awarded by the United States Environmental Protection Agency ("EPA") Grant Agreement Number 98T45901 ("Grant Agreement"), attached hereto and incorporated herein by this reference as Attachment D. Accordingly, any applicable clauses in Attachment D are hereby imposed upon SUBRECIPIENT.

WHEREAS, this Agreement is funded in whole, or in part, with federal funds provided by the EPA, and the federally required clauses, including the general terms and conditions, in EPA General Terms and Conditions Effective October 1, 2022 attached hereto as Attachment E, and incorporated herein, apply with all provisions imposed upon SUBRECIPIENT.

WHEREAS, ABAG and the Metropolitan Transportation Commission (MTC) entered into a Contract for Services under which MTC provides administrative and program services to ABAG. Effective July 1, 2017, the staffs of ABAG and MTC were consolidated. MTC staff now serve both the Association of Bay Area Governments and the Metropolitan Transportation Commission. As such, all interactions between ABAG and SUBRECIPIENT contained within this Agreement, shall be conducted by MTC staff on behalf of ABAG.

1. It is agreed that SUBRECIPIENT will perform all the services specified in Attachment A, Scope of Work, according to the schedule in Attachment B, Project Payment Schedule, both attached hereto and incorporated herein by this reference, and in compliance with the requirements of all other attachments to this Agreement, which are also incorporated herein by this reference.

2. Work will be performed under the direction of Heidi Nutters or a designated representative (herein "Project Manager") for compliance with the terms of this agreement including the terms of Attachments B and C hereto. Eligible activities must be related to locally driven, regionally supported adaptation planning in the San Leandro Operational Landscape Unit.

3. SUBRECIPIENT will be compensated for its services in accordance with Attachment B, Project Payment Schedule, attached hereto and incorporated herein by this reference. The maximum amount payable to SUBRECIPIENT, including (as applicable) labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, subcontractors' costs (including mark-up), travel, equipment, materials and supplies, and expenses shall not exceed three hundred thousand dollars ($300,000.00) ("Maximum Payment"). ABAG shall make payments to SUBRECIPIENT in accordance with the provisions described in Attachment B.

All invoices shall be submitted electronically via email to ABAG at acctpay@bayareametro.gov or in writing and delivered or mailed to ABAG as follows:

Attention: ABAG Accounting Section
Bay Area Metro Center
375 Beale Street, Suite 800
San Francisco, CA 94105

Payment shall be made by ABAG within thirty (30) days of receipt of payment from funder after an acceptable invoice has been received and approved by the Project Manager or a designated representative.

4. To the extent requested by the ABAG Project Manager, SUBRECIPIENT, or any consultant procured by SUBRECIPIENT, shall submit communications progress reports and required documentation, including but not limited to invoices, requests for agreement modifications, and information on payments received and made to sub-subrecipients, subrecipient DBE utilization, and if applicable, certified payrolls, to the ABAG Project Manager or their designee. ABAG may withhold payment of invoices or suspend work pending receipt of such communications, progress reports and required documentation.

5. The term of the Agreement shall begin on the Effective Date and conclude on October 31, 2025, unless ABAG terminates this agreement earlier as provided below.

6. ABAG may terminate the Agreement without cause upon three (3) days' prior written notice. If ABAG terminates the Agreement without cause, SUBRECIPIENT will be entitled to payment for costs incurred for SUBRECIPIENT's or subconsultant's incomplete work up to the time of termination, plus reasonable termination costs, not to exceed the maximum amount payable under the Agreement. If SUBRECIPIENT fails to perform as specified in the Agreement, ABAG may terminate the Agreement for cause by advance 10-day written notice, providing SUBRECIPIENT with the opportunity to cure the default or present an acceptable plan for cure within the 10-day period. At the end of the 10-day period, if the default has not been cured or an acceptable plan of cure presented, ABAG may issue a notice of termination for default, effective immediately, and SUBRECIPIENT will be entitled only to costs incurred for acceptable work performed in accordance with the Agreement, not to exceed the maximum amount payable under the Agreement for such work.

7. Except for invoices submitted by SUBRECIPIENT, all notices, or other communications to either party by the other, shall be deemed given when made in writing and delivered, mailed, emailed, or faxed to such party at their respective addresses as follows:

To ABAG:	Attention: Heidi Nutters Association of Bay Area Governments 375 Beale Street, Suite 700 San Francisco, CA 94105 Email: hnutters@bayareametro.gov
To SUBRECIPIENT:	Attention: Gail Payne City of Alameda 2263 Santa Clara Avenue Alameda, CA 94501 Email: gpayne@alamedaca.gov

8. In performing services under the Agreement, SUBRECIPIENT will be acting as an independent contractor and not as an agent or employee of ABAG. SUBRECIPIENT will have no authority to contract in the name of ABAG, and SUBRECIPIENT will be responsible for its own acts and those of its agents and employees.

9. SUBRECIPIENT agrees to obtain, and maintain, at its own expense for the duration of the Agreement the types of insurance listed in Attachment C, Insurance Provisions, issued by insurers acceptable to ABAG, generally with a Best's Rating of A- or better with a Financial Size Category of

VIII or better.

10. To the maximum extent permitted by law, SUBRECIPIENT shall indemnify, keep and hold harmless MTC, ABAG, their respective board members, representatives, agents and employees (ABAG Indemnified Parties) and those entities (if any) identified as additional insureds in Attachment C, Insurance Provisions, against any and all demands, claims, suits or actions arising out of any of the following:

A. Any injury or death to persons or property or pecuniary, financial or economic losses that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by SUBRECIPIENT caused by any breach of the Agreement or negligent act or omission or willful misconduct of the SUBRECIPIENT or its officers, employees, subconsultants or agents; or

B. Any allegation that materials or services provided by SUBRECIPIENT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

SUBRECIPIENT further agrees to defend any and all such claims, actions, suits or other legal proceedings and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered against any of the ABAG Indemnified Parties, SUBRECIPIENT shall, at its expense, satisfy and discharge the same.

The provisions set forth in this Article are intended to be applied to the fullest extent allowed under the law and, if any portion of it is found to be void or unenforceable, the remainder is to be severable and enforceable. This indemnification shall survive termination or expiration of this Agreement.

11. Personally Identifiable Information - Not used.

12. All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents, or materials ("ABAG Data") made available to SUBRECIPIENT by ABAG for use by SUBRECIPIENT in the performance of its services under the Agreement shall remain the property of ABAG and shall be returned to ABAG at the completion or termination of the Agreement. ABAG grants SUBRECIPIENT, its subconsultants, and individuals listed in the Scope of Work a license to use, reproduce, display, perform, and create derivative works from the ABAG Data as may be reasonably necessary to perform the Scope of Work. No license to such ABAG Data, outside of the Scope of Work of the Project, is conferred or implied by your use or possession of such ABAG Data. Any updates, revisions, additions or enhancements to such ABAG Data made by SUBRECIPIENT in the context of the Project shall be the property of ABAG and subject to the provisions of the following paragraph.

13. ABAG may be required to make available to SUBRECIPIENT certain confidential, non-public, or proprietary information ("Confidential Information") for purposes of carrying out the Project. Confidential Information may be tangible, intangible, visual, oral, written, and/or electronic information, present or future, and includes: (i) proprietary information learned through inspection of drawings, specifications or equipment; (ii) descriptions of proprietary processes, designs, functionality or know-how; (iii) proprietary software, programming data, code or information; and (iv) other information disclosed in writing and marked as "Confidential" or with a similar notice. As between ABAG and SUBRECIPIENT, Confidential Information shall remain the sole and exclusive property of ABAG, and no license or other rights to Confidential Information or any works deriving from Confidential Information is granted or implied hereby. Confidential Information does not include information that: a) is now or subsequently becomes generally available to the public through no fault of SUBRECIPIENT; b) SUBRECIPIENT can demonstrate to have had rightfully in its possession prior to disclosure by ABAG or its contractors, vendors or licensors; c) SUBRECIPIENT rightfully obtains from a third party who has the right to transfer or disclose it; or (d) is required to be disclosed by law or applicable legal process. SUBRECIPIENT agrees to take all necessary and reasonable precautions to maintain the confidentiality of Confidential Information and agrees not to use, copy, distribute or disclose such Confidential Information except for the business purpose underlying this Agreement, except as authorized in writing by ABAG. SUBRECIPIENT further agrees to disclose Confidential Information only to its directors, officers, employees and consultants who need to know such information, and who have agreed to be bound by the terms and conditions of this Agreement and the terms and conditions in Attachment E. Promptly upon the request of ABAG, at any time and for any reason, SUBRECIPIENT shall destroy or return to ABAG, at ABAG's option, all documents, computer files and other tangible materials that contain Confidential Information. These obligations survive the termination of this Agreement, unless otherwise agreed in writing by ABAG.

14. The specific items listed as "Deliverables" in the Scope of Work and furnished to ABAG by SUBRECIPIENT or its subconsultants pursuant to the Agreement (collectively "Work Products") shall be and are the property of ABAG. ABAG shall be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of the SUBRECIPIENT upon completion or termination of the work shall be immediately delivered to ABAG. SUBRECIPIENT hereby assigns to ABAG ownership of any copyright, patent, trademark, trade secret, or other intellectual property or proprietary rights in the Work Product. SUBRECIPIENT also agrees to execute all papers necessary for ABAG to perfect its ownership of the entire copyright in the Work Product. SUBRECIPIENT shall be responsible for the preservation of any and all such Work Products prior to transmittal to ABAG and shall replace any such Work Products as are lost, destroyed, or damaged while in its possession without additional cost to ABAG. ABAG grants SUBRECIPIENT and its

subconsultants a non-exclusive, worldwide, irrevocable, royalty-free license to use, publish, distribute, reproduce, publicly display or perform, and create derivative works from the Work Products. Notwithstanding the above, Work Products are not intended to be used for profit, nor include SUBRECIPIENT's or other third parties' intellectual property existing prior to the execution of this Agreement or developed concurrently with this Agreement but not specifically for this Agreement; SUBRECIPIENT or other third parties shall retain all right, title and interest in any such pre-existing intellectual property.

15. SUBRECIPIENT agrees to retain all documents, working papers, records, accounts and other materials relating to its performance under the Agreement for four years following the fiscal year of the last expenditure under the Agreement or until completion of any litigation, claim or audit, whichever is longer, and ABAG may inspect and audit such records during that period of time.

16. No member, officer, employee, or agent of ABAG, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, *et seq*. and 87100 *et seq*., direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, SUBRECIPIENT further covenants that it has made a complete disclosure to ABAG of all facts of which it is aware upon due inquiry bearing upon any possible interest, direct or indirect, which it believes any member, officer, agent or employee of ABAG (or an immediate family member, domestic partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by ABAG.

17. SUBRECIPIENT shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to ABAG; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement. SUBRECIPIENT shall not engage the services of any subconsultant or independent contractor on any work related to this Agreement if the subconsultant or independent contractor, or any employee of the subconsultant or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement. If at any time during the term of this Agreement, SUBRECIPIENT becomes aware of an organizational conflict of interest in connection with the work performed hereunder, SUBRECIPIENT

shall immediately provide ABAG with written notice of the facts and circumstances giving rise to this organizational conflict of interest. SUBRECIPIENT's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, ABAG becomes aware of an organizational conflict of interest in connection with SUBRECIPIENT's performance of the work hereunder, ABAG shall similarly notify SUBRECIPIENT. In the event a conflict is presented, whether disclosed by SUBRECIPIENT or discovered by ABAG, MTC will consider the conflict presented and any alternatives proposed and meet with SUBRECIPIENT to determine an appropriate course of action. ABAG's determination as to the manner in which to address the conflict shall be final.

18. Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between ABAG and SUBRECIPIENT that cannot be resolved through the informal, good faith efforts of the parties may, by specific agreement of the parties, be submitted to alternative dispute resolution (that is, mediation or arbitration) with the parameters for such dispute resolution being agreed to by the parties at the time. If a dispute is not resolved through discussion or the parties do not agree to alternative dispute resolution, either party may pursue available legal remedies in a California State or Federal court of competent jurisdiction. SUBRECIPIENT must file a government claim pursuant to Government Code section 910 *et seq.* in order to initiate a civil action. The prevailing party in any dispute shall be entitled to payment of its attorneys' fees and costs. This section shall survive the termination or expiration of the Agreement.

19. All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of California applicable to agreements made and to be performed within the State.

20. SUBRECIPIENT may subcontract to consultants or contractors for performance of portions of the work required under this Agreement, without the prior written consent of ABAG, provided SUBRECIPIENT complies with any other applicable requirements of this Agreement and the applicable Attachments hereto, and applicable federal and state requirements.

21. Nothing contained in this Agreement or otherwise, shall create any contractual relationship between ABAG and any subconsultants, and no subcontract shall relieve SUBRECIPIENT of his/her responsibilities and obligations hereunder. SUBRECIPIENT agrees to be as fully responsible to ABAG for the acts and omissions of its subconsultants 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 SUBRECIPIENT. SUBRECIPIENT 's obligation to pay its subconsultants is an independent obligation from ABAG's obligation to make payments to SUBRECIPIENT.

22. Applicable provisions of this Agreement shall be included in any subcontract or subconsultant agreement entered into under of this Agreement. If the SUBRECIPIENT already has a subconsultant in place performing applicable work, then SUBRECIPIENT is responsible for communicating to its subconsultant of all applicable provisions of this Agreement.

23. Except as described in the Scope of Work, SUBRECIPIENT will not assign or subcontract any part of the Agreement without the prior written consent of ABAG, and any attempt to do so will be void and unenforceable.

24. This Agreement constitutes the complete agreement between the parties and supersedes any prior written or oral communications. Any amendment of the Agreement must be in writing, specifically identified as an amendment to the Agreement, and signed by both SUBRECIPIENT and the Executive Director of ABAG, or their designated representative. The Project Manager is not a designated representative, for purposes of approving an amendment.

If you agree, please sign this letter in the space provided below.

Very truly yours,

Andrew B. Fremier
Metropolitan Transportation Commission
Executive Director
Acting pursuant to the Contract for Services
dated May 30, 2017

Accepted and Agreed to:

_____
Jennifer Ott
City Manager
City of Alameda
Date: _____

ATTACHMENT A:
SCOPE OF WORK

This project will create a coordinated and inclusive future-looking sub-regional organizational structure and action plan with shared vision and needs assessment to accelerate sea level rise adaptation within the San Leandro Operational Landscape Unit (OLU). The work will be undertaken by the San Leandro Bay/Oakland-Alameda Estuary Adaptation Working Group, a coalition of shoreline communities, agencies and stakeholders. The project will serve as a pilot for locally driven OLU based adaptation planning with regional partnership and support.

The project will include funding for Technical Consultants, a Scientific Advisor and Community Partners to facilitate an equitable planning process among Working Group members and community engagement, resulting in an action plan with a shared vision, needs assessment, proposed organizational structure, and initial implementation efforts.

Tasks and Deliverables

Task 1: Project Coordination, Governance and Regional Agency Liaising

The City of Alameda will staff the San Leandro Bay/Oakland-Alameda Estuary Adaptation Working Group (Working Group) and the Working Group Steering Committee. The Working Group's Steering Committee is comprised of the City of Alameda, jurisdictions and agencies, California Tribes, and CBOs, and will work together to co-create a sub-regional organizational structure.

Working Group members will coordinate with regional agencies as needed. Working Group members and CBOs also may contribute to the development of the BCDC Regional Shoreline Adaptation Plan and other regional planning efforts as needed. The Working Group and consultant will co-create a shared long-term adaptation vision, goals and planning principles for long-range adaptation planning for the San Leandro OLU shoreline that aligns with the BCDC Regional Sea Level Rise Adaptation Plan process, SFEP's 2022 Estuary Blueprint, and other local and regional plans.

This task also will include coordination with SFEP, including submitting final contracts, RFPs and quarterly progress reports.

Deliverables:

- Summary document describing Working Group outcomes and needs for regional support
- Governance memo summarizing organizational findings, recommendations and key tasks
- Recommendations for best practices for regional and state support for locally-driven, regionally supported OLU-based adaptation planning
- Quarterly progress reports
- Project-related contracts and RFPs

Task 2: OLU Planning and Implementation

To develop an adaptation vision, the project team will conduct one or more workshops with Working Group members, will research best practices and will interview stakeholders including regional organizations. A vulnerability and needs assessment report will be developed to determine the range of sensitivity and exposure of key assets to the multiple hazards associated with sea level and groundwater rise, such as erosion, flooding, habitat loss, contamination, and liquefaction. It also will assess the feasibility of implementing recommended adaptation measures, particularly nature-based solutions in

highly urbanized shorelines. The needs assessment will include gaps in data, and will prioritize next steps and projects or studies to achieve the vision.

Implementation tasks may include, but are not limited to, working on organizational structure setup, writing grants for concept development for specific locations within the sub-region, developing baseline data packets for use by individual member organizations, and jointly procuring a pool of on-call consultants to assist individual members to address specific adaptation plans or projects. By jointly selecting common consultants, the San Leandro OLU will streamline the procurement process for the individual jurisdictions.

Deliverables:

- Final Adaptation Vision, including shared goals and planning principles for the entire OLU
- Vulnerability and needs assessment report for the entire OLU
- Implementation memo summarizing key implementation tasks

Task 3 Public and Stakeholder Outreach

Consultant will co-develop with CBOs a public and stakeholder outreach and engagement plan and a communications strategy. The plan will include the following components:

- Strategy: The outreach and engagement plan and toolkit will be built with equity in mind, and will seek to advance diverse strategies to reach vulnerable, traditionally underserved communities, and California Tribes. These strategies can include community meetings, focus groups and workshops, surveys, social media campaigns, multi-lingual materials, hands-on community workdays or interpretive activities along the shoreline, and hiring of community members to advance efforts where possible, etc.
- Toolkit: fact sheets, press releases, articles, social media posts, presentations and talking points for working group members including multilingual versions.

The consultants, Working Group members and partner CBOs will collect input on: 1) the draft vision, goals and planning principles, 2) proposed governance structure for the Working Group, 3) Adaptation Pathways Master Plan (Master Plan is funded separately). The Working Group will provide a forum for input and the consultant will refine the products and plans based on community input.

Deliverables:

- Final Community Outreach and Engagement Plan (approved by Working Group and Steering Committee)
- Communications toolkit materials, such as fact sheets including multilingual versions, press releases, articles or social media posts
- Staff reports and presentations for council, board, commission and other public meetings

Project Timeline

This project will run from March 1, 2023 to March 30, 2025. The project schedule by quarter and task is shown below.

Tasks and Key Milestones	Q2 2023	Q3 2023	Q4 2023	Q1 2024	Q2 2024	Q3 2024	Q4 2024	Q1 2025
1. Project Coordination, Governance and Regional Agency Liaising								
• Summary document describing Working Group outcomes and needs for regional support				X				
• Governance memo summarizing organizational findings, recommendations, and key tasks			X					
• Recommendations for best practices for regional and state support for locally-driven, regionally supported OLU-based adaptation planning.								X
• Quarterly progress reports	X	X	X	X	X	X	X	X
• Project-related contracts and RFPs		X						
2. OLU Planning and Implementation_								
• Final Adaptation Vision				X				
• Vulnerability and needs assessment report					X	X		
• Implementation memo								X
3. Public and Stakeholder Outreach								
• Final Community Outreach and Engagement Plan				X				
• Communications materials			X	X	X	X	X	
• Staff reports and presentations for council, board, commission and other public meetings					X			X

ATTACHMENT B
PROJECT PAYMENT SCHEDULE

Consultant shall submit invoices quarterly for the duration of the agreement seeking reimbursement for expenses incurred for completion of the project. CONSULTANT will be paid in arrears, based on invoices submitted for payment. ABAG will promptly review CONSULTANT's invoices; approve or disapprove them for payment; and submit approved invoices to Grantor. ABAG will pay within twenty (20) working days after receipt from Grantor.

TASK	AMOUNT
Task 1 - Project Coordination, Governance and Regional Agency Liaising	$115,000.00
Task 2 - OLU Planning and Implementation	$125,000.00
Task 3 - Public and Stakeholder Outreach	$60,000.00
Total	**$300,000.00**

Funds from the agreement will be used for a series of contracts. The City of Alameda will manage procurements for consultants to support this effort and will also arrange a series of small contracts to CBOs to support their participation in the project.

ATTACHMENT C
INSURANCE PROVISIONS

1. INSURANCE

A. Minimum Coverages. The insurance requirements specified in this section shall cover SUBRECIPIENT's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that SUBRECIPIENT authorizes to work under this Agreement (hereinafter referred to as "Agents.") SUBRECIPIENT shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

SUBRECIPIENT is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, SUBRECIPIENT shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling SUBRECIPIENT's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event SUBRECIPIENT or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that SUBRECIPIENT's insurance be primary without right of contribution from ABAG. Prior to beginning work under this contract, SUBRECIPIENT shall provide ABAG with satisfactory evidence of compliance with the insurance requirements of this section.

The insurance listed hereunder shall be considered minimum requirements and any and all insurance proceeds in excess of the requirements shall be made available to ABAG. If the SUBRECIPIENT maintains broader coverage and/or higher limits than the minimum limits shown hereunder, ABAG shall be entitled to the broader coverage and/or higher limits maintained by the SUBRECIPIENT.

1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than $1,000,000 per employee and $1,000,000 per accident, and any and all other coverage of SUBRECIPIENT's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of ABAG. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as SUBRECIPIENT is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of SUBRECIPIENT and SUBRECIPIENT's officers, agents, and employees and with limits of liability which shall not be less than $1,000,000 per occurrence with a general aggregate liability of not less than $2,000,000, a products/completed operations aggregate liability limit of not less than $2,000,000 and Personal & Advertising Injury liability with a limit of not less than $1,000,000. Such policy shall contain a Waiver of Subrogation or "Waiver of Transfer of Rights of Recovery Against Others to Us" provision included in the policy language or by endorsement in favor of ABAG.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

ABAG and those entities listed in Part 3 of this Attachment E (if any), and their commissioners, directors, officers, representatives, and employees are to be named as additional insureds for ongoing and completed operations. Such insurance shall be primary and non-contributory, and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from SUBRECIPIENT's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by SUBRECIPIENT and SUBRECIPIENT's officers, and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than $1,000,000 combined single limit per accident.

4. Excess or Umbrella Insurance in the amount of $2,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to ABAG and having minimum limits of $1,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage. Such cyber risk coverages shall include liability arising from the loss, theft or failure to protect, or unauthorized acquisition of ABAG's personally identifiable information or confidential information. [If cyber risk coverages are included, the limit should match the limit for Errors and Omissions Professional Liability.]

The policy shall provide coverage for all work performed by SUBRECIPIENT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of SUBRECIPIENT. No contract or agreement between SUBRECIPIENT and any subcontractor/consultant shall relieve SUBRECIPIENT of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by SUBRECIPIENT and any subcontractor/consultant working on behalf of SUBRECIPIENT on the project.

B. Acceptable Insurers. All policies will be issued by insurers, generally with a Best's Rating of A- or better with a Financial Size Category of VII or better, or an A rating from a comparable rating service.

C. Self-Insurance. SUBRECIPIENT's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to ABAG.

D. Deductibles and Retentions. SUBRECIPIENT shall be responsible for payment of any deductible or retention on SUBRECIPIENT's policies without right of contribution from ABAG. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that ABAG seeks coverage as an additional insured under any SUBRECIPIENT insurance policy that contains a deductible or self-insured retention, SUBRECIPIENT shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of SUBRECIPIENT, subconsultant, subcontractor, or any of their employees, officers or directors, even if SUBRECIPIENT or subconsultant is not a named defendant in the lawsuit.

E. Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, SUBRECIPIENT shall:

(1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;

(2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and

(3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, SUBRECIPIENT shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of SUBRECIPIENT's personnel, subconsultants, subcontractors, and equipment have been removed from ABAG's property, and the work or services have been formally accepted. SUBRECIPIENT must notify ABAG if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

G. Certificates of Insurance. Prior to commencement of any work hereunder, SUBRECIPIENT shall deliver to Ebix, ABAG's authorized insurance consultant, insurance documentation (including Certificates of Liability Insurance, Evidences of Property Insurance, endorsements, etc.) verifying the aforementioned coverages. Such evidence of insurance shall make reference to all provisions and endorsements referred to above and shall be signed by the authorized representative of the Insurance

Company shown on the insurance documentation. **The Project name shall be clearly stated on the face of each Certificate of Liability Insurance and/or Evidence of Property Insurance.**

SUBRECIPIENT shall submit certificates of insurance to:

Association of Bay Area Governments
Insurance Compliance
P.O. Box 100085-M8
Duluth, GA 30096
or
Email: MTC@Ebix.com
or
Fax: 1-888-617-2309

ABAG reserves the right to require copies of all required policy declarations pages or insurance policies, including endorsements, required by these specifications, at any time.

2. FINANCIAL SECURITY (BONDS) – NOT USED

3. ADDITIONAL INSUREDS

The following entities are to be named as Additional Insureds under applicable sections of this Attachment E and as ABAG Indemnified Parties, pursuant to Article 14 of the Agreement.

Metropolitan Transportation Commission (MTC)
United States Environmental Protection Agency (U.S. EPA)

ATTACHMENT D

ENVIRONMENTAL PROTECTION AGENCY GRANT AGREEMENT NUMBER 98T45901

U.S. ENVIRONMENTAL PROTECTION AGENCY

Grant Agreement

GRANT NUMBER (FAIN):	98T45901
MODIFICATION NUMBER:	0
PROGRAM CODE:	4T
DATE OF AWARD	01/05/2023
TYPE OF ACTION	New
MAILING DATE	01/10/2023
PAYMENT METHOD:	ASAP
ACH#	90017

RECIPIENT TYPE:
Intermunicipal

Send Payment Request to:
Contact EPA RTPFC at: rtpfc-grants@epa.gov

RECIPIENT:
Assoc of Bay Area Governments
P.O. Box 2050
Oakland, CA 94604
EIN: 94-2832478

PAYEE:
Assoc of Bay Area Governments
P.O. Box 2050
Oakland, CA 94604

PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST
Caitlin Sweeney	Luisa Valiela	Maria Roverso
375 Beale Street	75 Hawthorne Street, WTR-3	Grants Branch, MSD-6
Suite 800	San Francisco, CA 94105	75 Hawthorne Street
San Francisco, CA 94105-2066	**Email:** Valiela.Luisa@epa.gov	San Francisco, CA 94105
Email: caitlin.sweeney@bayareametro.gov	**Phone:** 415-972-3400	**Email:** roverso.maria@epa.gov
Phone: 415-778-6681		**Phone:** 415-972-3573

PROJECT TITLE AND DESCRIPTION

National Estuary Program - Coastal Waterways BIL

See Attachment 1 for project description.

BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST
01/01/2023 - 12/31/2025	01/01/2023 - 12/31/2025	$909,800.00	$909,800.00

NOTICE OF AWARD

Based on your Application dated 10/17/2022 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards $909,800.00. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of $909,800.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS	**ORGANIZATION / ADDRESS**
U.S. EPA, Region 9 , U.S. EPA, Region 9 Grants Branch, MSD-6 75 Hawthorne Street San Francisco, CA 94105	U.S. EPA, Region 9, Water Division, WTR-1 R9 - Region 9 75 Hawthorne Street San Francisco, CA 94105

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Digital signature applied by EPA Award Official Carolyn Truong - Grants Management Officer	**DATE** 01/05/2023

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	$0	$909,800	$909,800
EPA In-Kind Amount	$0	$0	$0
Unexpended Prior Year Balance	$0	$0	$0
Other Federal Funds	$0	$0	$0
Recipient Contribution	$0	$0	$0
State Contribution	$0	$0	$0
Local Contribution	$0	$0	$0
Other Contribution	$0	$0	$0
Allowable Project Cost	$0	$909,800	$909,800

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.456 - National Estuary Program	Clean Water Act: Sec. 320 & Infrastructure Investment and Jobs Act (IIJA) (PL 117-58)	2 CFR 200, 2 CFR 1500, 40 CFR 33 and 40 CFR 35 Subpart P

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Oganization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	2309W32004	22	BSD	09L2	000B89X76	4154	-	-	$909,800
									$909,800

Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	$133,960
2. Fringe Benefits	$113,866
3. Travel	$0
4. Equipment	$0
5. Supplies	$0
6. Contractual	$145,000
7. Construction	$0
8. Other	$400,000
9. Total Direct Charges	$792,826
10. Indirect Costs: 0.00 % Base	$116,974
11. Total (Share: Recipient 0.00 % Federal 100.00 %)	$909,800
12. Total Approved Assistance Amount	$909,800
13. Program Income	$0
14. Total EPA Amount Awarded This Action	$909,800
15. Total EPA Amount Awarded To Date	$909,800

Attachment 1 - Project Description

National Estuary Program (NEP) BIL (Bipartisan Infrastructure Law) funding will support the acceleration of environmental and community restoration goals within the Comprehensive Conservation and Management Plans (CCMPs) of the National Estuary Programs. In July 2022, the San Francisco Estuary Partnership (SFEP) updated its Comprehensive Conservation and Management Plan (CCMP), the 2022 San Francisco Estuary Blueprint.

The 2022 Estuary Blueprint recognizes the importance of managing the Estuary in conjunction with historically marginalized and vulnerable communities, and it identifies regional actions to address historic impacts of industrialization and population growth, as well as to manage and plan for a changing climate through adaptation. SFEP's long-term plan for the BIL funding is designed to meet the objectives of the BIL funds to: accelerate and more extensively implement CCMPs, ensure that benefits reach disadvantaged communities, build the adaptive capacity of ecosystems and communities, and leverage additional resources. The tasks meet the intent of CWA Section 320 and the BIL guidance. Specific tasks include support for the San Leandro Bay/Oakland-Alameda Estuary Adaptation Working Group to produce an inclusive action plan and subregional organizational structure to accelerate sea level rise adaptation and enhance critical infrastructure, natural habitat, recreational opportunities and access, and community resilience within the San Leandro Operational Landscape Unit (OLU); Advance critical research at the Oro Loma Horizontal Levee with the reconstruction of a portion of the existing site to test more efficient nutrient removal designs and treatment; and establish an internal Equity Team within SFEP.

This agreement provides full BIL (Bipartisan Infrastructure Law) federal funding in the amount of $909,800. See Terms and Conditions. Preaward costs have been approved back to January 1, 2023. Communications outputs including: regular social media posts; updated website pages; quarterly Estuary Blueprint Newsletter, and continued expansion of existing audiences and existing communications channels and materials. SFEP Equity Team; 2) Equity Implementation Plan; 3) BIL Program Equity Strategy: 2-3 reconfigured cells of the Oro Loma Horizontal Levee: 1) Needs Assessment and Action Plan for San Leandro OLU that includes a shared vision, group charter, recommended organizational structure and identified implementation steps; 2) A transferrable model for multi-jurisdictional, equitable, adaptation planning.

Outcomes include: Increased capacity for vulnerable, underserved, and marginalized communities and Tribes to engage in regional planning processes to address historical inequities and anticipated disproportionate impacts of climate change on these communities; optimize future designs for multi-benefit horizontal levees (replicability, treatment capacity, and cost-effectiveness) for other projects in the region and beyond; increased sub-regional resilience to sea level rise with the identification and implementation of shoreline adaptation strategies that prioritize equity, both within the San Leandro OLU and in other areas using this project as a model.

The beneficiaries of CCMP implementation described above are the millions of residents of

the San Francisco Bay Area and the habitats and species reliant on the health of the San Francisco Estuary. Subaward to Oro Loma Sanitary District: reconfigure 2-3 cells of the Oro Loma Horizontal Levee for treating wastewater

Subaward to CIty of Alameda: provide the administrative support and stipend funding for the San Leandro Adaptation Working group meetings so that local stakeholders can meaningfully engage throughout the process

Administrative Conditions

Administrative Conditions "A" through "C" below apply. In addition, for General Terms and Conditions please reference the paragraph below.

General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at: https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2022-or-later.

These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at: https://www.epa.gov/grants/grant-terms-and-conditions#general.

A. Federal Financial Reporting (FFR)

For awards with cumulative project and budget periods greater than 12 months, the recipient will submit an annual FFR (SF 425) covering the period from "project/budget period start date" to **September 30** of each calendar year to the EPA Finance Center in Research Triangle Park, NC. The annual FFR will be submitted electronically to rtpfc-grants@epa.gov no later than **December 30** of the same calendar year. Find additional information at https://www.epa.gov/financial/grants. (NOTE: The grantee must submit the Final FFR to rtpfc-grants@epa.gov within 120 days after the end of the project period.)

B. Procurement

The recipient will ensure all procurement transactions will be conducted in a manner providing full and open competition consistent with 2 CFR Part 200.319. In accordance with 2 CFR Part 200.324, the grantee and subgrantee(s) must perform a cost or price analysis in connection with applicable procurement actions, including contract modifications.

State recipients must follow procurement procedures as outlined in 2 CFR Part 200.317.

C. MBE/WBE Reporting, 40 CFR, Part 33, Subpart E (EPA Form 5700-52A)

The recipient agrees to submit a “MBE/WBE Utilization Under Federal Grants and Cooperative Agreements” report (EPA Form 5700-52A) annually for the duration of the project period. The current EPA Form 5700-52A with instructions is located at https://www.epa.gov/grants/epa-grantee-forms

This provision represents an approved exception from the MBE/WBE reporting requirements as described in 40 CFR Section 33.502.

Reporting is required for assistance agreements where funds are budgeted for procuring construction, equipment, services and supplies (including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the “Other” category) with a cumulative total that exceed the Simplified Acquisition Threshold (SAT) currently set at $250,000 (the dollar threshold will be automatically revised whenever the SAT is adjusted; See 2 CFR Section 200.1), including amendments and/or modifications. All procurement actions are reportable when reporting is required, not just the portion which exceeds the SAT.

Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting

period, the recipient should check the box in section 5B when completing the form.

When completing the annual report, recipients are instructed to check the box titled “annual” in section 1B of the form. For the final report, recipients are instructed to check the box indicated for the “last report” of the project in section 1B of the form. For section 2B, the Region 9 EPA DBA Coordinator is Alexandrea Perez, email: GrantsRegion9@epa.gov, phone: 415-972-3826.

The annual reports are due by October 30th of each calendar year and the final report is due within 120 days after the end of the project period, whichever comes first. The recipient will submit the MBE/WBE report(s) and/or questions to GrantsRegion9@epa.gov and the EPA Grants Specialist identified on page 1 of the award document.

Programmatic Conditions

a. PERFORMANCE REPORTING AND FINAL PERFORMANCE REPORT

In accordance with the NEP BIL Funding Implementation Memorandum dated July 26, 2022, the recipient shall submit **semi-annual progress reports** to the EPA Project Officer within 30 calendar days after the end of each six month reporting period. Six month reporting periods run from October 1 to March 31 and from April 1 to September 30 of each year that the project period is open. Progress reports for these six month reporting periods are due by April 30 and October 31, respectively. The **semi-annual report due on October 31 each year will also serve as the annual report** and should include information from the whole year.

The progress reports should include information for each project on:

- Project/activity name and location (lat./long.);
- Brief project description;
- Lead implementer, partners and their roles;
- Deliverables and completed activities; and
- BIL funds spent on project implementation.

The progress reports should also include a description of:

- Definition of underserved communities used at the NEP;
- How BIL workplan tasks support BIL priorities and implement CCMP priorities;
- If applicable, any external constraints related to any/all workplan elements and how the NEP addressed those constraints; and
- Important key environmental and programmatic accomplishments, completed workplan activities, and noteworthy lessons learned all presented in sufficient detail to fully describe what was accomplished, along with substantiating data that may be available and appropriate to provide
- a financial accounting of costs incurred during the six month or twelve month reporting period per budget category.

In addition, progress reports should identify any special EPA assistance needed, and an explanation of any cost overruns. The recipient will notify the EPA Project Officer if something materially impairs their ability to complete the tasks and deliver the products, outputs and outcomes identified in the workplan.

After the final expenditure of BIL funds (for example if FY26 funds are awarded, then within 90 days of the end of the FY26 award's expenditure), NEPs shall provide a **Final Close-Out Report** that includes information on:

- Total BIL funds received;
- All actions taken with BIL funding, specifically highlighting actions aimed at advancing equity and climate priorities;
- Outcomes of such activities for achieving specific CCMP goals;
- How activities funded with BIL funds improved (or are expected to improve) underserved communities' access to infrastructure funding, ability to influence decision making, and participation in CCMP implementation projects impacting public health and the environment; and
- How activities improved (or are expected to improve) the ability to adapt to and mitigate climate change impact through CCMP implementation.

b. Food Policy. Unless the event(s) are specified in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops, and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

- (1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
  (2) A description of the purpose, agenda, location, length and timing for the event.
  (3) An estimated number of participants in the event and a description of their roles.

Recipients may address questions about whether costs for light refreshments, and meals for events are allowable to the recipient's EPA Project Officer. However, the Agency Award Official or Grant Management Officer will make final determinations on allowability.
Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.11)

c. EPA Oversight Role. EPA may terminate the assistance agreement for failure of the recipient to make sufficient progress so as to reasonably ensure completion of the project within the project period, including any extensions. EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period, and/or the availability of funds necessary to complete the project.

d. Government Performance Results Act (GPRA) reports (Priority Actions and Habitat Acreage) are due to EPA HQ at the end of each federal fiscal year. GPRA habitat projects should provide locational data in the form of latitude/longitude points.

e. Competency of Organizations Generating Environmental Measurement Data

- Following EPA Policy Directive Number FEM-2012-02, recipient agrees to demonstrate competency of any laboratory carrying out any activities involving the generation of environmental data on its behalf. Laboratory competency shall be maintained for the duration of the project period of this agreement and documented during the annual reporting process. A copy of the Policy is available online at https://www.epa.gov/measurements

f. SUBAWARD REPORTING REQUIREMENT

The recipient must report on its subaward monitoring activities under 2 CFR 200.331(d). Examples of items that must be reported if the pass-through entity has the information available are:
1. Summaries of results of reviews of financial and programmatic reports.
2. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.
3. Environmental results the subrecipient achieved.
4. Summaries of audit findings and related pass-through entity management decisions.
5. Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.331(e), 2 CFR 200.207 and the 2 CFR Part 200.338 Remedies for Noncompliance.

g. Significant Changes

To determine if a postaward change in work plan commitments is significant and requires prior written approval for the purposes of 40 CFR §35.114(a) or 40 CFR §35.514(a), the recipient agrees to consult the EPA Project Officer (PO) before making the change. The term work plan commitments is defined at 40 CFR §35.102. If the PO determines the change is significant, the recipient cannot make the change without prior written approval by the EPA Award Official.

In addition, the recipient must provide written notice to EPA's PO and Grant Specialist (GS) of proposed transfers of funds of among direct budget categories, programs, functions and activities or transfers that change amounts budgeted for indirect costs, pursuant to the "Transfer of Funds" General Term and Condition. If the PO determines that a proposed transfer of funds significantly changes work plan commitments, the recipient must consult with the PO and obtain written approval by the EPA Award Official prior to making the transfer of funds. All transfers must be reported in required performance reports.

-- End of Document---

ATTACHMENT E

EPA GENERAL TERMS AND CONDITIONS EFFECTIVE OCTOBER 1, 2022

EPA General Terms and Conditions Effective October 1, 2022

1. Introduction

(a) The recipient and any sub-recipient must comply with the applicable EPA general terms and conditions outlined below. These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions, and restrictions reflected on the official assistance award document. Recipients **must** review their official award document for additional administrative and programmatic requirements. Failure to comply with the general terms and conditions outlined below and those directly reflected on the official assistance award document may result in enforcement actions as outlined in 2 CFR 200.339 and 200.340.

(b) If the EPA General Terms and Conditions have been revised, EPA will update the terms and conditions when it provides additional funding (incremental or supplemental) prior to the end of the period of performance of this agreement. The recipient must comply with the revised terms and conditions after the effective date of the EPA action that leads to the revision. Revised terms and conditions do not apply to the recipient's expenditures of EPA funds or activities the recipient carries out prior to the effective date of the EPA action. EPA will inform the recipient of revised terms and conditions in the action adding additional funds.

2. Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards

This award is subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards; Title 2 CFR, Parts 200 and 1500. 2 CFR 1500.2, Adoption of 2 CFR Part 200, states the Environmental Protection Agency adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR Part 200), as supplemented by 2 CFR Part 1500, as the Environmental Protection Agency (EPA) policies and procedures for financial assistance administration. 2 CFR Part 1500 satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by 2 CFR Part 1500. This award is also subject to applicable requirements contained in EPA programmatic regulations located in 40 CFR Chapter 1 Subchapter B.

2.1. Effective Date and Incremental or Supplemental Funding. Consistent with the OMB Frequently Asked Questions at https://cfo.gov/cofar on Effective Date and Incremental Funding, any new funding through an amendment (supplemental or incremental) on or after December 26, 2014, and any unobligated balances (defined at 2 CFR 200.1) remaining on the award at the time of the amendment, will be subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements (2 CFR Parts 200 and 1500).

3. Termination

Consistent with 2 CFR 200.340, EPA may unilaterally terminate this award in whole or in part:

a. if a recipient fails to comply with the terms and conditions of the award including statutory or regulatory requirements; or

b. if the award no longer effectuates the program goals or agency priorities. Situations in which EPA may terminate an award under this provision include when:

(i) EPA obtains evidence that was not considered in making the award that reveals that specific award objective(s) are ineffective at achieving program goals and EPA determines that it is in the government's interest to terminate the award;

(ii) EPA obtains evidence that was not considered in making the award that causes EPA to significantly question the feasibility of the intended objective(s) of the award and EPA determines that it is in the government's interest to terminate the award;

(iii) EPA determines that the objectives of the award are no longer consistent with funding priorities for achieving program goals.

Financial Information

4. Reimbursement Limitation

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as reflected on the award document. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk. See 2 CFR 1500.9.

5. Automated Standard Application Payments (ASAP) and Proper Payment Draw Down

Electronic Payments. Recipients must be enrolled or enroll in the Automated Standard Application for Payments (ASAP) system to receive payments under EPA financial assistance agreements unless:

- EPA grants a recipient-specific exception;
- The assistance program has received a waiver from this requirement;
- The recipient is exempt from this requirement under 31 CFR 208.4; or,
- The recipient is a fellowship recipient pursuant to 40 CFR Part 46.

EPA will not make payments to recipients until the ASAP enrollment requirement is met unless the recipients fall under one of the above categories. Recipients may request exceptions using the procedures below but only EPA programs may obtain waivers.
To enroll in ASAP, complete the ASAP Initiate Enrollment Form located at:
https://www.epa.gov/financial/forms and email it to rtpfc-grants@epa.gov or mail it to:

US Environmental Protection Agency
RTP-Finance Center (Mail Code AA216-01)
4930 Page Rd.
Durham, NC 27711

Under this payment mechanism, the recipient initiates an electronic payment request online via ASAP, which is approved or rejected based on the amount of available funds authorized by EPA in the recipient's ASAP account. Approved payments are credited to the account at the financial institution of the recipient organization set up by the recipient during the ASAP enrollment process. Additional information concerning ASAP and enrollment can be obtained by contacting the EPA Research Triangle Park Finance Center (RTPFC), at rtpfc-grants@epa.gov or 919-541-5347, or by visiting: https://www.fiscal.treasury.gov/asap/.

EPA will grant exceptions to the ASAP enrollment requirement only in situations in which the recipient demonstrates to EPA that receiving payment via ASAP places an undue administrative or financial management burden on the recipient or EPA determines that granting the waiver is in the public interest. Recipients may request an exception to the requirement by following the procedures specified in RAIN-2018-G06-R.

Proper Payment Drawdown (for recipients other than states)

a. As required by 2 CFR 200.305(b), the recipient must draw funds from ASAP only for the minimum amounts needed for actual and immediate cash requirements to pay employees, contractors, subrecipients or to satisfy other obligations for allowable costs under this assistance agreement. The timing and amounts of the drawdowns must be as close as administratively feasible to actual disbursements of EPA funds. Disbursement within 5 business days of drawdown will comply with this requirement and the recipient agrees to meet this standard when performing this award.

b. Recipients may not retain more than 5% of the amount drawn down, or $1,000 whichever is less, 5 business days after drawdown to materially comply with the standard. Any EPA funds subject to this paragraph that remain undisbursed after 5 business days must be fully disbursed within 15 business days of draw down or be returned to EPA.

c. If the recipient draws down EPA funds in excess of that allowed by paragraph b., the recipient must contact rtpfc-grants@epa.gov for instructions on whether to return the funds to EPA. Recipients must comply with the requirements at 2 CFR 200.305(b)(8) and (9) regarding depositing advances of Federal funds in interest bearing accounts.

d. Returning Funds: Pay.gov is the preferred mechanism to return funds. It is free, secure, paperless, expedient, and does not require the recipient/vendor to create an account. Contact RTPFC-Grants at rtpfc-grants@epa.gov to obtain complete instructions. Additional information is available at the Pay.gov website: (https://www.pay.gov/public/home). Information on how to repay EPA via check is available at https://www.epa.gov/financial/makepayment. Instructions on how to return funds to EPA electronically via ASAP are available at https://www.fiscal.treasury.gov/asap/.

e. Failure on the part of the recipient to materially comply with this condition may, in addition to EPA recovery of the un-disbursed portions of the drawn down funds, lead to changing the payment method from advance payment to a reimbursable basis. EPA may also take other remedies for noncompliance under 2 CFR 200.208 and/or 2 CFR 200.339.

f. If the recipient believes that there are extraordinary circumstances that prevent it from complying with the 5-business day disbursement requirement throughout the performance period of this agreement, recipients may request an exception to the requirement by following the procedures specified in RAIN-2018-G06-R. EPA will grant exceptions to the 5-business day disbursement requirement only if the recipient demonstrates that compliance places an undue administrative or financial management burden or EPA determines that granting the exception is in the public interest.

Proper Payment Drawdown for State Recipients

In accordance with 2 CFR 200.305(a), payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR Part 205, Subparts A and B and Treasury Financial Manual (TFM) 4A-2000, "Overall Disbursing Rules for All Federal Agencies" unless a program specific regulation (e.g. 40 CFR 35.3160 or 40 CFR 35.3560) provides otherwise. Pursuant to 31 CFR Part 205, Subpart A—*Rules Applicable to Federal Assistance Programs Included in a Treasury-State Agreement*, States follow their Treasury-State CMIA Agreement for major Federal programs listed in the agreement. For those programs not listed as major in the Treasury-State agreement, the State follows the default procedures in 31 CFR Part 205, Subpart B—Rules Applicable to Federal Assistance Programs Not Included in a Treasury-State Agreement**,** which directs State recipients to draw-down and disburse Federal financial assistance funds in anticipation of immediate cash needs of the State for work under the award. States must comply with 2 CFR 200.302(a) in reconciling costs incurred and charged to EPA financial assistance agreements at time of close out unless a program specific regulation provides otherwise.

Selected Items of Cost

6. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

This term and condition implements 2 CFR 200.216 and is effective for obligations and expenditures of EPA financial assistance funding on or after 8/13/2020.

As required by 2 CFR 200.216, EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Recipients, subrecipients, and borrowers also may not use EPA funds to purchase:

a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

b. Telecommunications or video surveillance services provided by such entities or using such equipment.

c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

a. Obligating or expending EPA funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:
(1) Procure or obtain, extend or renew a contract to procure or obtain;
(2) Enter into a contract (or extend or renew a contract) to procure; or
(3) Obtain the equipment, services, or systems.

Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list.

7. Consultant Cap

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, available at: https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Information on how to calculate the maximum daily rate and the daily pay limitation is available at the Office Of Personnel Management's Fact Sheet: How to Compute Rates of Pay and Fact Sheet: Expert and Consultant Pay. Specifically, to determine the maximum daily rate, follow these steps:

1. Divide the Level IV salary by 2087 to determine the hourly rate. Rates must be rounded to the nearest cent, counting one-half cent and over as the next higher cent (e.g., round $18.845 to $18.85).
2. Multiply the hourly rate by 8 hours. The product is the maximum daily rate.

Contracts and subcontracts with firms for services that are awarded using the procurement requirements in Subpart D of 2 CFR Part 200 are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 2 CFR 1500.10.

8. Establishing and Managing Subawards

If the recipient chooses to pass funds from this assistance agreement to other entities, the recipient must comply with applicable provisions of 2 CFR Part 200 and the EPA Subaward Policy, which may be found at: https://www.epa.gov/grants/grants-policy-issuance-gpi-16-01-epa-subaward-policy-epa-assistance-agreement-recipients.

As a pass-through entity, the recipient agrees to:

1. Be responsible for selecting subrecipients and as appropriate conducting subaward competitions using a system for properly differentiating between subrecipients and procurement contractors under the standards at 2 CFR 200.331 and EPA's supplemental guidance in Appendix A of the EPA Subaward Policy.

(a) For-profit organizations and individual consultants, in almost all cases, are not eligible subrecipients under EPA financial assistance programs and the pass-through entity must obtain prior written approval from EPA's Award Official for subawards to these entities unless the EPA-approved budget and work plan for this agreement contain a precise description of such subawards.

(b) Stipends and travel assistance for trainees (including interns) and similar individuals who are not are not employees of the pass-through entity must be classified as participant support costs rather than subawards as provided in 2 CFR 200.1 *Participant support costs*, 2 CFR 200.1 *Subaward*, and EPA's Guidance on Participant Support Costs.

(c) Subsidies, rebates and similar payments to participants in EPA funded programs to encourage environmental stewardship are also classified as *Participant support costs* as provided in 2 CFR 1500.1 and EPA's Guidance on Participant Support Costs.

2. Establish and follow a system that ensures all subaward agreements are in writing and contain all of the elements required by 2 CFR 200.332(a). EPA has developed a template for subaward agreements that is available in Appendix D of the EPA Subaward Policy.

3. Prior to making subawards, ensure that each subrecipient has a "Unique Entity Identifier (UEI)." The UEI is required by 2 CFR Part 25 and 2 CFR 200.332(a)(1). Subrecipients are not required to complete full System for Award Management (SAM) registration to obtain a UEI. Information regarding obtaining a UEI is available at the SAM Internet site: https://www.sam.gov/SAM/ and in EPA's General Term and Condition "**System for Award Management and Universal Identifier Requirements"** of the pass-through entity's agreement with the EPA.

4. Ensure that subrecipients are aware that they are subject to the same requirements as those that apply to the pass-through entity's EPA award as required by 2 CFR 200.332(a)(2). These requirements include, among others:

(a) Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.

(b) Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition pass-through entity's agreement with EPA entitled **"Reporting Subawards and Executive Compensation."**

(c) Limitations on individual consultant fees as set forth in 2 CFR 1500.10 and the General Condition of the pass-through entity's agreement with EPA entitled **"Consultant Fee Cap."**

(d) EPA's prohibition on paying management fees as set forth in General Condition of the pass-through entity's agreement with EPA entitled "**Management Fees**."

(e) The Procurement Standards in 2 CFR Part 200 including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants).

EPA provides general information on other statutes, regulations and Executive Orders on the Grants internet site at www.epa.gov/grants. Many Federal requirements are agreement or program specific and EPA encourages pass-through entities to review the terms of their assistance agreement carefully and consult with their EPA Project Officer for advice if necessary.

5. Ensure, for states and other public recipients, that subawards are not conditioned in a manner that would disadvantage applicants for subawards based on their religious character.

6. Establish and follow a system for evaluating subrecipient risks of noncompliance with Federal statutes, regulations and the terms and conditions of the subaward as required by 2 CFR 200.332(b) and document the evaluation. Risk factors may include:

Prior experience with same or similar subawards;

(a) Results of previous audits;

(b) Whether new or substantially changed personnel or systems, and;

(c) Extent and results of Federal awarding agency or the pass-through entity's monitoring.

7. Establish and follow a process for deciding whether to impose additional requirements on subrecipients based on risk factors as required by 2 CFR 200.332(c). Examples of additional requirements authorized by 2 CFR 200.208 include:

(a) Requiring payments as reimbursements rather than advance payments;

(b) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;

(c) Requiring additional, more detailed financial reports;

(d) Requiring additional project monitoring;

(e) Requiring the non-Federal entity to obtain technical or management assistance,and

(f) Establishing additional prior approvals.

8. Establish and follow a system for monitoring subrecipient performance that includes the elements required by 2 CFR 200.332(d) and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.

9. Establish and maintain an accounting system which ensures compliance with the $25,000 limitation at 2 CFR 200.1, *Modified Total Direct Costs*, if applicable, on including subaward costs in *Modified Total Direct Costs* for the purposes of distributing indirect costs. Recipients with Federally approved indirect cost rates that use a different basis for distributing indirect costs to subawards must comply with their Indirect Cost Rate Agreement.

10. Work with EPA's Project Officer to obtain the written consent of EPA's Office of International and Tribal Affairs (OITA), prior to awarding a subaward to a foreign or international organization, or a subaward to be performed in a foreign country even if that subaward is described in a proposed scope of work.

11. Obtain written approval from EPA's Award Official for any subawards that are not described in the approved work plan in accordance with 2 CFR 200.308.

12. Obtain the written approval of EPA's Award Official prior to awarding a subaward to an individual if the EPA-approved scope of work does not include a description of subawards to individuals.

13. Establish and follow written procedures under 2 CFR 200.302(b)(7) for determining that subaward costs are allowable in accordance with 2 CFR Part 200, Subpart E and the terms and conditions of this award. These procedures may provide for allowability determinations on a pre-award basis, through ongoing monitoring of costs that subrecipients incur, or a combination of both approaches provided the pass-through entity documents its determinations.

14. Establish and maintain a system under 2 CFR 200.332(d)(3) and 2 CFR 200.521 for issuing management decisions for audits of subrecipients that relate to Federal awards. However, the recipient remains accountable to EPA for ensuring that unallowable subaward costs initially paid by EPA are reimbursed or mitigated through offset with allowable costs whether the recipient recovers those costs from the subrecipient or not.

15. As provided in 2 CFR 200.333, pass-through entities must obtain EPA approval to make fixed amount subawards. EPA is restricting the use of fixed amount subawards to a limited number of situations that are authorized in official EPA pilot projects. Recipients should consult with theirEPA Project Officer regarding the status of these pilot projects.

By accepting this award, the recipient is certifying that it either has systems in place to comply with the requirements described in Items 1 through 14 above or will refrain from making subawards until the systems are designed and implemented.

9. **Management Fees**
Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses; unforeseen liabilities; or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

10. **Federal Employee Costs**
The recipient understands that none of the funds for this project (including funds contributed by the recipient as cost sharing) may be used to pay for the travel of Federal employees or for other costs associated with Federal participation in this project unless a Federal agency will be providing services to the recipient as authorized by a Federal statute.

11. **Foreign Travel**
EPA policy requires that all foreign travel must be approved by its Office of International and Tribal Affairs. The recipient agrees to obtain prior EPA approval before using funds available under this agreement for international travel unless the trip(s) are already described in the EPA approved budget for this agreement. Foreign travel includes trips to Mexico and Canada but does not include trips to Puerto Rico, the U.S. Territories or possessions. Recipients that request post-award approval to travel frequently to Mexico and Canada by motor vehicle (e.g. for sampling or meetings) may describe their proposed travel in general terms in their request for EPA approval. Requests for prior approval must be submitted to the Project Officer for this agreement.

12. **The Fly America Act and Foreign Travel**
The recipient understands that all foreign travel **funded under this assistance agreement** must comply with the Fly America Act. All travel must be on U.S. air carriers certified under 49 U.S.C. Section 40118, to the extent that service by such carriers is available even if foreign air carrier costs are less than the American air carrier.

Reporting and Additional Post-Award Requirements

13. System for Award Management and Universal Identifier Requirements

13.1. **Requirement for System for Award Management (SAM)** Unless exempted from this requirement under 2 CFR 25.110, the recipient must maintain current information in the SAM. This includes information on the recipient's immediate and highest level owner and subsidiaries, as well as on all the recipient's predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until the submittal of the final financial report required under this award or receipt of the final payment, whichever is later. This requires that the recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in the information or another award term.

13.2. **Requirement for Unique Entity Identifier.** If the recipient is authorized to make subawards under this award, the recipient:

a. Must notify potential subrecipients that no entity (see definition in paragraph 13.3 of this award term) may receive a subaward unless the entity has provided its Unique Entity Identifier.

b. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier. Subrecipients are not required to obtain an active SAM registration but must obtain a Unique Entity Identifier.

13.3. Definitions. For the purposes of this award term:

a. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site: https://www.sam.gov/SAM/.

b. Unique Entity Identifier means the identifier assigned by SAM to uniquely identify business entities.

c. Entity includes non-Federal entities as defined at 2 CFR 200.1 and also includes all of the following:

13.3.c.1. A foreign organization;

13.3.c.2. A foreign public entity;

13.3.c.3. A domestic for-profit organization; and

13.3.c.4. A domestic or foreign for-profit organization; and

13.3.c.5. A Federal agency.

d. Subaward is defined at 2 CFR 200.1.

e. Subrecipient is defined at 2 CFR 200.1.

14. Reporting Subawards and Executive Compensation

14.1. Reporting of first-tier subawards.

a. Applicability. Unless the recipient is exempt as provided in paragraph 14.4. of this award term, the recipient must report each action that obligates $30,000 or more in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph 14.5 of this award term).

b. Where and when to report. (1) The recipient must report each obligating action described in paragraph 14.1.a of this award term to www.fsrs.gov. (2) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on any date during the month of November of a given year, the obligation must be reported by no later than December 31 of that year.)

c. What to report. The recipient must report the information about each obligating action as described in the submission instructions available at: http://www.fsrs.gov.

14.2. Reporting Total Compensation of Recipient Executives.

a. Applicability and what to report. The recipient must report total compensation for each of their five most highly compensated executives for the preceding completed fiscal year, if:

14.2.a.1. the total Federal funding authorized to date under this award is $30,000 or more;

14.2.a.2. in the preceding fiscal year, the recipient received: (i.) 80 percent or more of their annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); (ii.) and $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

14.2.a.3. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at: http:// www.sec.gov/answers/execomp.htm.)

b. Where and when to report. The recipient must report executive total compensation described in paragraph 14.2.a of this award term: (i.) As part of the registration Central System for Award Management profile available at https://www.sam.gov/SAM/ (ii.) By the end of the month following the month in which this award is made, and annually thereafter.

14.3. Reporting of Total Compensation of Subrecipient Executives.

a. Applicability and what to report. Unless exempt as provided in paragraph 14.4. of this award term, for each first-tier non-Federal entity subrecipient under this award, the recipient shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

14.3.a.1. in the subrecipient's preceding fiscal year, the subrecipient received: (i.) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and (ii.) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

14.3.a.2. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at: http://www.sec.gov/answers/execomp.htm.)

b. Where and when to report. The recipient must report subrecipient executive total compensation described in paragraph 14.3.a. of this award term:

14.3.b.1. To the recipient.

14.3.b.2. By the end of the month following the month during which the recipient makes the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), the recipient must report any required compensation information of the subrecipient by November 30 of that year.

14.4. Exemptions

a. If, in the previous tax year, the recipient had gross income, from all sources, under $300,000, the recipient is exempt from the requirements to report:

14.4.a.1. (i) subawards, and (ii) the total compensation of the five most highly compensated executives of any subrecipient.

14.5. Definitions. For purposes of this award term:

a. **Federal agency** means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C 552(f).

b. **Non-Federal entity** means all of the following, as defined in 2 CFR Part 25: (i.) A Governmental organization, which is a State, local government, or Indian tribe; (ii.) A foreign public entity; (iii.) A domestic or foreign nonprofit organization; and (iv.) A domestic or foreign for-profit organization.

c. **Executive** means officers, managing partners, or any other employees in management positions.

d. **Subaward:**

14.5.d.1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

14.5.d.2. The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331).

14.5.d.3. A subaward may be provided through any legal agreement, including an agreement that the recipient or a subrecipient considers a contract.

e. **Subrecipient** means a non-Federal entity or Federal agency that:

14.5.e.1. Receives a subaward from the recipient under this award; and

14.5.e.2. Is accountable to the recipient for the use of the Federal funds provided by the subaward.

f. **Total compensation** means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information

see 17 CFR 229.402(c)(2)):

14.5.f.1. Salary and bonus.

14.5.f.2. Awards of stock, stock options and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

14.5.f.3. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

14.5.f.4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

14.5.f.5. Above-market earnings on deferred compensation which is not tax-qualified.

14.5.f.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

15. Recipient Integrity and Performance Matters - Reporting of Matters Related to Recipient Integrity and Performance

15.1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

15.2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

b. Reached its final disposition during the most recent five-year period; and

c. Is one of the following:

15.2.c.1. A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

15.2.c.2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;

15.2.c.3. An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or

15.2.c.4. Any other criminal, civil, or administrative proceeding if:

15.2.c.4.1. It could have led to an outcome described in paragraph 15.2.c.1, 15.2.c.2, or 15.2.c.3 of this award term and condition;

15.2.c.4.2. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

15.2.c.4.3. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

15.3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

15.4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 15.1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

15.5. Definitions

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.,* Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

15.5.c.1. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

15.5.c.2. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

16. Federal Financial Reporting (FFR)

Pursuant to 2 CFR 200.328 and 2 CFR 200.344, EPA recipients must submit the Federal Financial Report (SF-425) at least annually and no more frequently than quarterly. EPA's standard reporting frequency is annual unless an EPA Region has included an additional term and condition specifying greater reporting frequency within this award document. EPA recipients must submit the SF-425 no later than 30 calendar days after the end of each specified reporting period for quarterly and semi-annual reports and 90 calendar days for annual reports. Final reports are due no later than 120 calendar days after the end date of the period of performance of the award Extension of reporting due dates may be approved by EPA when requested and justified by the recipient. The FFR form is available on the internet at: https://www.epa.gov/financial/forms. All FFRs must be submitted to the Research Triangle Park Finance Center (RTPFC) via email at rtpfc-grants@epa.gov or mail it to:

US Environmental Protection Agency
RTP-Finance Center (Mail Code AA216-01)
4930 Page Rd.
Durham, NC 27703

The RTPFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

17. Indirect Cost Rate Agreements

This term and condition provides requirements for recipients using EPA funds for indirect costs and applies to all EPA assistance agreements unless there are statutory or regulatory limits on IDCs. See also EPA's Indirect Cost Policy for Recipients of EPA Assistance Agreements (IDC Policy).

In order for the assistance agreement recipient to use EPA funding for indirect costs, the IDC category of the recipient's assistance agreement award budget must include an amount for IDCs and at least one of the following must apply:

- With the exception of "exempt" agencies and Institutions of Higher Education as noted below, all recipients must have one of the following current (not expired) IDC rates, including IDC rates that have been extended by the cognizant agency:
  - Provisional;
  - Final;
  - Fixed rate with carry-forward;
  - Predetermined;
  - 10% *de minimis* rate authorized by 2 CFR 200.414(f)
  - EPA-approved use of an expired fixed rate with carry-forward on an exception basis, as detailed in section 6.4.a. of the IDC Policy.
- "Exempt" state or local governmental departments or agencies are agencies that receive up to and including $35,000,000 in Federal funding per the department or agency's fiscal year, and must have an IDC rate proposal developed in accordance with 2 CFR Part 200, Appendix VII, with documentation maintained and available for audit.
- Institutions of Higher Education must use the IDC rate in place at the time of award for the life of the assistance agreement (unless the rate was provisional at time of award, in which case the rate will change once it becomes final). As provided by 2 CFR Part 200, Appendix III(C)(7), the term "life of the assistance agreement", means each competitive segment of the project. Additional information is available in the regulation.

IDCs incurred during any period of the assistance agreement that are not covered by the provisions above are not allowable costs and must not be drawn down by the recipient. Recipients may budget for IDCs if they have submitted a proposed IDC rate to their cognizant Federal agency or requested an exception from EPA under subsection 6.4 of the IDC Policy. However, recipients may not draw down IDCs until their rate is approved, if applicable, or EPA grants an exception. IDC drawdowns must comply with the indirect rate corresponding to the period during which the costs were incurred.

This term and condition does not govern indirect rates for subrecipients or recipient procurement contractors under EPA assistance agreements. Pass-through entities are required to comply with 2 CFR 200.332(a)(4)(i) and (ii) when establishing indirect cost rates for subawards.

18. Audit Requirements

In accordance with 2 CFR 200.501(a), the recipient hereby agrees to obtain a single audit from an independent auditor, if their organization expends $750,000 or more in total Federal funds in their fiscal year beginning on or after December 26, 2014.

The recipient must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the recipient's fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse's Internet Data Entry System available at: https://facides.census.gov/.

For complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: https://facweb.census.gov/

19. Closeout Requirements

Reports required for closeout of the assistance agreement must be submitted in accordance with this agreement. Submission requirements and frequently asked questions can also be found at: https://www.epa.gov/grants/frequent-questions-about-closeouts

20. Suspension and Debarment

Recipient shall fully comply with Subpart C of 2 C.F.R. Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons," as implemented and supplemented by 2 C.F.R. Part 1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 C.F.R. Part 180, entitled "Covered Transactions," and 2 C.F.R. § 1532.220, includes a term or condition requiring compliance with 2 C.F.R. Part 180, Subpart C. Recipient is responsible for further requiring the inclusion of a similar term and condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 2 C.F.R. § 180.335 to the EPA office that is entering into the transaction with the recipient may result in the delay or negation of this assistance agreement, or pursuance of administrative remedies, including suspension and debarment. Recipients may access the System for Award Management (SAM) exclusion list at https://sam.gov/SAM/ to determine whether an entity or individual is presently excluded or disqualified.

21. Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.

This award is subject to the provisions contained in an appropriations act(s) which prohibits the Federal Government from entering into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to any corporation having a delinquent Federal tax liability or a felony conviction under any Federal law, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government. A "corporation" is a legal entity that is separate and distinct from the entities that own, manage, or control it. It is organized and incorporated under the jurisdictional authority of a governmental body, such as a State or the District of Columbia. A corporation may be a for-profit or non-profit organization.

As required by the appropriations act(s) prohibitions, the Government will not enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee with any corporation that — (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or (2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

By accepting this award, the recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

Alternatively, by accepting this award, the recipient represents that it disclosed unpaid Federal tax liability information and/or Federal felony conviction information to the EPA. The Recipient may accept this award if the EPA Suspension and Debarment Official has considered suspension or debarment of the corporation based on a tax liabilities and/or Federal felony convictions and determined that suspension or debarment is not necessary to protect the Government's interests.

If the recipient fails to comply with this term and condition, EPA will annul this agreement and may recover any funds the recipient has expended in violation of the appropriations act(s) prohibition(s). The EPA may also pursue other administrative remedies as outlined in 2 CFR 200.339 and 2 CFR 200.340, and may also pursue suspension and debarment.

22. Disclosing Conflict of Interests

22.1. For awards to Non-federal entities and individuals (other than states and fellowship recipients under 40 CFR Part 46).

As required by 2 CFR 200.112, EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at https://www.epa.gov/grants/epas-financial-assistance-conflict-interest-policy. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental and incremental funding) awarded on or after October 1, 2015. This COI term and condition supersedes prior COI terms and conditions for this award based on either EPA's May 22, 2015 Revised Interim COI Policy or December 26, 2014 Interim COI Policy.

For competitive awards, recipients must disclose any competition related COI described in section 4.0(a) of the COI Policy that are discovered after award to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of discovery of the COI. The Grants Specialist will respond to any such disclosure within 30 calendar days.

EPA's COI Policy requires that recipients have systems in place to address, resolve and disclose to EPA COIs described in sections 4.0(b), (c) and/or (d) of the COI Policy that affect any contract or subaward regardless of amount funded under this award. The recipient's COI Point of Contact for the award must disclose any COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of the discovery of the potential COI and their approach for resolving the COI.

EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COI's described in section 4.0(b)(c) and (d) of the COI Policy regardless of the amount of the transaction. Recipients who are pass-through entities as defined at 2 CFR 200.1 must require that subrecipients being considered for or receiving subawards disclose COI to the pass-through entities in a manner that, at a minimum, is in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. Pass-through entities must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

EPA only requires that recipients and subrecipients disclose COI's that are discovered under their systems for addressing and resolving COI. If recipients or subrecipients do not discover a COI, they do not need to advise EPA or the pass-through entity of the absence of a COI.

Upon notice from the recipient of a potential COI and the approach for resolving it, the Agency will then make a determination regarding the effectiveness of these measures within 30 days of receipt of the recipient's notice unless a longer period is necessary due to the complexity of the matter. Recipients may not request payment from EPA for costs for transactions subject to the COI pending notification of EPA's determination. Failure to disclose a COI may result in cost disallowances.

Disclosure of a potential COI will not necessarily result in EPA disallowing costs, with the exception of procurement contracts that the Agency determines violate 2 CFR 200.318(c)(1) or

(2), provided the recipient notifies EPA of measures the recipient or subrecipient has taken to eliminate, neutralize or mitigate the conflict of interest when making the disclosure.

22.2. For awards to states including state universities that are state agencies or instrumentalities

As required by 2 CFR 200.112, EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at: https://www.epa.gov/grants/epas-financial-assistance-conflict-interest-policy. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental, incremental funding) awarded on or after October 1, 2015. This COI term and condition supersedes prior COI terms and conditions for this award based on either EPA's May 22, 2015 Revised Interim COI Policy or December 26, 2014 Interim COI Policy.

For competitive awards, recipients must disclose any competition related COI described in section 4.0(a) of the COI Policy that are discovered after award to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of discovery of the COI. The Grants Specialist will respond to any such disclosure within 30 calendar days.

States including state universities that are state agencies and instrumentalities receiving funding from EPA are only required to disclose subrecipient COI as a pass-through entity as defined by 2 CFR 200.1. Any other COI are subject to state laws, regulations and policies. EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COIs described in section 4.0(b)(c) and (d) of the COI Policy that arise after EPA made the award regardless of the amount of the transaction. States who are pass-through entities as defined at 2 CFR 200.1 must require that subrecipients being considered for or receiving subawards disclose COI to the state in a manner that, as a minimum, in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. States must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

EPA only requires that subrecipients disclose COI's to state pass-through entities that are discovered under their systems for addressing, resolving, and disclosing COI. If subrecipients do not discover a COI, they do not need to advise state pass-through entities of the absence of a COI.

Upon receiving notice of a potential COI and the approach for resolving it, the Agency will make a determination regarding the effectiveness of these measures within 30 days of receipt of the state's notice of a subrecipient COI unless a longer period is necessary due to the complexity of the matter. States may not request payment from EPA for costs for transactions subject to the COI pending notification of EPA's determination. A subrecipient's failure to disclose a COI to the state and EPA may result in cost disallowances.

Disclosure of a potential subrecipient COI will not necessarily result in EPA disallowing costs, with the exception of procurement contracts that the Agency determines violate 2 CFR 200.318(c)(1) or (2), provided the subrecipient has taken measures that EPA and the state agree eliminate, neutralize or mitigate the conflict of interest.

23. Transfer of Funds and Post-Award Changes for Continuing Environmental Program Grants

Applicable to all assistance agreements other than Continuing Environmental Program Grants subject to 40 CFR 35.114 and 40 CFR 35.514 when EPA's share of the total project costs exceeds the Simplified Acquisition Threshold. Simplified Acquisition Threshold is defined at 2 CFR 200.1 and is currently set at $250,000 but the amount is subject to adjustment.

(1) As provided at 2 CFR 200.308(f), the recipient must obtain prior approval from EPA's Grants Management

Officer if the cumulative amount of funding transfers among direct budget categories or programs, functions and activities exceeds 10% of the total budget. Recipients must submit requests for prior approval to the Grant Specialist and Grants Management Officer with a copy to the Project Officer for this agreement.
(2) Recipients must notify EPA's Grant Specialist and Project Officer of cumulative funding transfers among direct budget categories or programs, functions and activities that do not exceed 10% of the total budget for the agreement. Recipients must also notify the EPA Grant Specialist and Project Officer when transferring funds from direct budget categories to the indirect cost category or from the indirect cost category to the direct cost category. Prior approval by EPA's Grant Management Officer is required if the transfer involves any of the items listed in 2 CFR 200.407 that EPA did not previously approve at time of award or in response to a previous post-award request by the recipient.

Applicable to Continuing Environmental Program Grants subject to 40 CFR 35.114 and 40 CFR 35.514 when EPA's share of the total project costs exceeds the Simplified Acquisition Threshold. Simplified Acquisition Threshold is defined at 2 CFR 200.1 and is currently set at $250,000 but the amount is subject to adjustment.

To determine if a post-award change in work plan commitments is significant and requires prior written approval for the purposes of 40 CFR §35.114(a) or 40 CFR §35.514(a), the recipient agrees to consult the EPA Project Officer (PO) before making the change. The term work plan commitments is defined at 40 CFR §35.102. If the PO determines the change is significant, the recipient cannot make the change without prior written approval by the EPA Award Official or Grants Management Officer.

The recipient must obtain written approval from the EPA Award Official prior to transferring funds from one budget category to another if the EPA Award Official determines that such transfer significantly changes work plan commitment(s). All transfers must be reported in required performance reports. In addition, unless approved with the budget at the time of award, Continuing Environmental Program (CEP) recipients must also obtain prior written approval from the EPA Award Official or Grants Management Officer to use EPA funds for directly charging compensation for administrative and clerical personnel under 2 CFR 200.413(c) and the General Provisions for Selected Items of Cost allowability at 2 CFR 200.420 through 200.476 as supplemented by EPA's Guidance on Selected Items of Cost. The recipient is not required to obtain prior written approval from the EPA Award Official for other items requiring prior EPA approval listed in 2 CFR §§ 200.407.

24. Electronic/Digital Signatures on Financial Assistance Agreement Form(s)/Document(s)

Throughout the life of this assistance agreement, the recipient agrees to ensure that any form(s)/document(s) required to be signed by the recipient and submitted to EPA through any means including but not limited to hard copy via U.S. mail or express mail, hand delivery or through electronic means such as e-mail are: (1) signed by the individual identified on the form/document, and (2) the signer has the authority to sign the form/document for the recipient. Submission of any signed form(s)/document(s) is subject to any provisions of law on making false statements (e.g., 18 U.S.C. 1001).

25. Extension of Project/Budget Period Expiration Date

EPA has not exercised the waiver option to allow automatic one-time extensions for non-research grants under 2 CFR 200.308(e)(2). Therefore, if a no-cost time extension is necessary to extend the period of availability of funds, the recipient must submit a written request to the EPA prior to the budget/project period expiration dates. **The written request must include:** a justification describing the need for additional time, an estimated date of completion, and a revised schedule for project completion including updated milestone target dates for the approved workplan activities. In addition, if there are overdue reports required by the general, administrative, and/or programmatic terms and conditions of this assistance agreement, the recipient must ensure that they are submitted along with or prior to submitting the no-cost time extension request.

26. Utilization of Disadvantaged Business Enterprises

GENERAL COMPLIANCE, 40 CFR, Part 33
The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

The following text either provides updates to 40 CFR, Part 33 based upon the associated class exception or highlights a requirement.

1. EPA MBE/WBE CERTIFICATION, 40 CFR, Part 33, Subpart B
EPA no longer certifies entities as Minority-Owned Business Entities (MBEs) or Women-Owned Business Entities (WBEs) pursuant to a class exception issued in October 2019. The class exception was authorized pursuant to the authority in 2 CFR, Section 1500.3(b).

2. SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C
Pursuant to 40 CFR Section 33.301, the recipient agrees to make good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained. The specific six good faith efforts can be found at: 40 CFR Section 33.301 (a)-(f).

However, in EPA assistance agreements that are for the benefit of Native Americans, the recipient must solicit and recruit Native American organizations and Native American-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts (40 CFR Section 33.304). If recruiting efforts are unsuccessful, the recipient must follow the six good faith efforts.

3. CONTRACT ADMINISTRATION PROVISIONS, 40 CFR Section 33.302
The recipient agrees to comply with the contract administration provisions of 40 CFR Section 33.302 (a)-(d) and (i).

4. BIDDERS LIST, 40 CFR Section 33.501(b) and (c)
Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR Section 33.501 (b) and (c) for specific requirements and exemptions.

5. FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D
In October 2019, a class exception to the entire Subpart D of 40 CFR, Part 33 has been authorized pursuant to the authority in 2 CFR Section 1500.3(b). Notwithstanding Subpart D of 40 CFR, Part 33, recipients are not required to negotiate or apply fair share objectives in procurements under assistance agreements.

6. MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E
When required, the recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants and Cooperative Agreements" report (EPA Form 5700-52A) on an annual basis. The current EPA Form 5700-52A can be found at the EPA Grantee Forms Page at https://www.epa.gov/system/files/documents/2021-08/epa_form_5700_52a.pdf .

Reporting is required for assistance agreements where funds are budgeted for procuring construction, equipment, services and supplies (including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category) with a cumulative total that exceed the

Simplified Acquisition Threshold (SAT) (currently, $250,000 however the threshold will be automatically revised whenever the SAT is adjusted; See 2 CFR Section 200.1), including amendments and/or modifications. When reporting is required, all procurement actions are reportable, not just the portion which exceeds the SAT.

Annual reports are due by October 30th of each year. Final reports are due 120 days after the end of the project period.

This provision represents an approved exception from the MBE/WBE reporting requirements as described in 40 CFR Section 33.502.

7. MBE/WBE RECORDKEEPING, 40 CFR, Part 33, Subpart E
The recipient agrees to comply with all recordkeeping requirements as stipulated in 40 CFR, Part 33, Subpart E including creating and maintaining a bidders list, when required. Any document created as a record to demonstrate compliance with any requirement of 40 CFR, Part 33 must be maintained pursuant to the requirements stated in this Subpart.

Programmatic General Terms and Conditions

27. Sufficient Progress
EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period and/or the availability of funds necessary to complete the project. EPA may terminate the assistance agreement for failure to ensure reasonable completion of the project within the project period.

28. Copyrighted Material and Data
In accordance with 2 CFR 200.315, EPA has the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for [i.e., authorized by] the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

- the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or;
- termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

29. Patents and Inventions

Rights to inventions made under this assistance agreement are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 USC Sections 200-212.

Pursuant to the Bayh-Dole Act (set forth in 35 USC 200-212), EPA retains the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the assistance agreement holder, as defined in the Act. To streamline the invention reporting process and to facilitate compliance with the Bayh-Dole Act, the recipient must utilize the Interagency Edison extramural invention reporting system at https://www.nist.gov/iedison. Annual utilization reports must be submitted through the system. The recipient is required to notify the Project Officer identified on the award document when an invention report, patent report, or utilization report is filed at https://www.nist.gov/iedison. EPA elects not to require the recipient to provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

In accordance with Executive Order 12591, as amended, government owned and operated laboratories can enter into cooperative research and development agreements with other federal laboratories, state and local governments, universities, and the private sector, and license, assign, or waive rights to intellectual property "developed by the laboratory either under such cooperative research or development agreements and from within individual laboratories."

30. Acknowledgement Requirements for Non-ORD Assistance Agreements

The recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this assistance agreement shall contain the following statement:

"This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient). The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document."

Recipients of EPA Office of Research Development (ORD) research awards must follow the acknowledgement requirements outlined in the research T&Cs available at: https://www.nsf.gov/awards/managing/rtc.jsp. A Federal-wide workgroup is currently updating the Federal-Wide Research Terms and Conditions Overlay to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards and when completed recipients of EPA ORD research must abide by the research T&Cs.

31. Electronic and Information Technology Accessibility

Recipients are subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology ("EIT"). In compliance with Section 504, EIT systems or products funded by this award must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider a recipient's websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to grant recipients, we encourage recipients to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities.

Recipients may wish to consult the latest Section 508 guidelines issued by the U.S. Access Board or W3C's Web Content Accessibility Guidelines (WCAG) 2.0 (see https://www.access-board.gov/about/policy/accessibility.html).

32. Human Subjects

Human subjects research is any activity that meets the regulatory definitions of both research AND human subject. *Research* is a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. [40 CFR 26.102 (d)(f)]

No research involving human subjects will be conducted under this agreement without prior written approval of the EPA to proceed with that research. If engaged in human subjects research as part of this agreement, the recipient agrees to comply with all applicable provisions of EPA Regulation 40 CFR 26 (Protection of Human Subjects). This includes, at Subpart A, the Basic Federal Policy for the Protection of Human Research Subjects, also known as the Common Rule. It also includes, at Subparts B, C, and D, prohibitions and additional protections for children, nursing women, pregnant women, and fetuses in research conducted or supported by EPA.

The recipient further agrees to comply with EPA's procedures for oversight of the recipient's compliance with 40 CFR 26, as given in EPA Order 1000.17 Change A1 (Policy and Procedures on Protection of Human Research Subjects in EPA Conducted or Supported Research). As per this order, no human subject may be involved in any research conducted under this assistance agreement, including recruitment, until the research has been approved or determined to be exempt by the EPA Human Subjects Research Review Official (HSRRO) after review of the approval or exemption determination of the Institutional Review Board(s) (IRB(s)) with jurisdiction over the research under 40 CFR 26.

For HSRRO approval, the recipient must forward to the Project Officer: (1) copies of all documents upon which the IRB(s) with jurisdiction based their approval(s) or exemption determination(s), (2) copies of the IRB approval or exemption determination letter(s), (3) copy of the IRB-approved consent forms and subject recruitment materials, if applicable, and (4) copies of all supplementary IRB correspondence.

Following the initial approvals indicated above, the recipient must, as part of the annual report(s), provide evidence of continuing review and approval of the research by the IRB(s) with jurisdiction, as required by 40 CFR 26.109(e). Materials submitted to the IRB(s) for their continuing review and approval are to be provided to the Project Officer upon IRB approval. During the course of the research, investigators must promptly report any unanticipated problems involving risk to subjects or others according to requirements set forth by the IRB. In addition, any event that is significant enough to result in the removal of the subject from the study should also be reported to the Project Officer, even if the event is not reportable to the IRB of record.

33. Animal Subjects

The recipient agrees to comply with the Animal Welfare Act of 1966 (P.L. 89-544), as amended, 7 USC 2131-2156. Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training." (Federal Register 50(97): 20864-20865. May 20,1985). The nine principles can be viewed at https://olaw.nih.gov/policies-laws/phs-policy.htm. For additional information about the Principles, the recipient should consult the *Guide for the Care and Use of Laboratory Animals*, prepared by the Institute of Laboratory Animal Resources, National Research Council.

34. Light Refreshments and/or Meals

APPLICABLE TO ALL AGREEMENTS EXCEPT STATE CONTINUING ENVIRONMENTAL PROGRAMS (AS DESCRIBED BELOW):

Unless the event(s) and all of its components are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

(1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
(2) A description of the purpose, agenda, location, length and timing for the event; and,
(3) An estimated number of participants in the event and a description of their roles.

Costs for light refreshments and meals for recipient staff meetings and similar day-to-day activities are not allowable under EPA assistance agreements.

Recipients may address questions about whether costs for light refreshments, and meals for events may be allowable to the recipient's EPA Project Officer; however, the Agency Award Official or Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours unless the recipient has provided a justification that has been expressly approved by EPA's Award Official or Grants Management Officer.

EPA funding for meals, light refreshments, and space rental may not be used for any portion of an event where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.7)

FOR STATE CONTINUING ENVIRONMENTAL PROGRAM GRANT RECIPIENTS EXCLUDING STATE UNIVERSITIES:
If the state maintains systems capable of complying with federal grant regulations at 2 CFR 200.432 and 200.438, EPA has waived the prior approval requirements for the use of EPA funds for light refreshments and/or meals served at meetings, conferences, and training, as described above. The state may follow its own procedures without requesting prior approval from EPA. However, notwithstanding state policies, EPA funds may not be used for (1) evening receptions, or (2) other evening events (with the exception of working meetings). Examples of working meetings include those evening events in which small groups discuss technical subjects on the basis of a structured agenda or there are presentations being conducted by experts. EPA funds for meals, light refreshments, and space rental may not be used for any portion of an event (including evening working meetings) where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

By accepting this award, the state is certifying that it has systems in place (including internal controls) to comply with the requirements described above.

35. Tangible Personal Property

35.1 Reporting Pursuant to 2 CFR 200.312 and 200.314, property reports, if applicable, are required for Federally-owned property in the custody of a non-Federal entity upon completion of the Federal award or when the property is no longer needed. Additionally, upon termination or completion of the project, residual unused supplies with a total aggregate fair market value exceeding $5,000 not needed for any other Federally-sponsored programs or projects must be reported. For Superfund awards under Subpart O, refer to 40 CFR 35.6340 and 35.6660 for property reporting requirements. Recipients should utilize the Tangible Personal Property Report form series (SF-428) to report tangible personal property.

35.2 Disposition

35.2.1 Most Recipients. Consistent with 2 CFR 200.313, unless instructed otherwise on the official award document, this award term, or at closeout, the recipient may keep the equipment and continue to use it on the project originally funded through this assistance agreement or on other federally funded projects

whether or not the project or program continues to be supported by Federal funds.

35.2.2 State Agencies. Per 2 CFR 200.313(b), state agencies may manage and dispose of equipment acquired under this assistance agreement in accordance with state laws and procedures.

35.2.3 Superfund Recipients. Equipment purchased under Superfund projects is subject to specific disposal options in accordance with 40 CFR Part 35.6345.

36. Dual Use Research of Concern (DURC)

The recipient agrees to conduct all life science research* in compliance with *EPA's Order on the Policy and Procedures for Managing Dual Use Research of Concern* (EPA DURC Order) and *United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern (iDURC Policy).* If the recipient is an institution within the United States that receives funding through this agreement, or from any other source, the recipient agrees to comply with the iDURC Policy if they conduct or sponsor research involving any of the agents or toxins identified in Section 6.2.1 of the iDURC Policy. If the institution is outside the United States and receives funding through this agreement to conduct or sponsor research involving any of those same agents or toxins, the recipient agrees to comply with the iDURC Policy. The recipient agrees to provide any additional information that may be requested by EPA regarding DURC and iDURC. The recipient agrees to immediately notify the EPA Project Officer should the project use or introduce use of any of the agents or toxins identified in the iDURC Policy. The recipient's Institution/Organization must also comply with USG iDURC policy and EPA DURC Order and will inform the appropriate government agency if funded by such agency of research with the agents or toxins identified in Section 6.2.1 of the iDURC Policy. If privately funded the recipient agrees to notify the National Institutes of Health at DURC@od.nih.gov.

* *"Life Sciences Research,"* for purposes of the EPA DURC Order, and based on the definition of research in 40 CFR §26.102(d), is a systematic investigation designed to develop or contribute to generalizable knowledge involving living organisms (e.g., microbes, human beings, animals, and plants) and their products. EPA does not consider the following activities to be research: routine product testing, quality control, mapping, collection of general-purpose statistics, routine monitoring and evaluation of an operational program, observational studies, and the training of scientific and technical personnel. [Note: This is consistent with Office of Management and Budget Circular A-11.]

37. Research Misconduct

In accordance with 2 CFR 200.329, the recipient agrees to notify the EPA Project Officer in writing about research misconduct involving research activities that are supported in whole or in part with EPA funds under this project. EPA defines research misconduct as fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results [65 FR 76262. I], or ordering, advising or suggesting that subordinates engage in research misconduct. The recipient agrees to:

(1) Immediately notify the EPA Project Officer who will then inform the EPA Office of Inspector General (OIG) if, at any time, an allegation of research misconduct falls into one of the categories listed below:
A. Public health or safety is at risk.
B. Agency resources or interests are threatened.
C. Circumstances where research activities should be suspended.
D. There is a reasonable indication of possible violations of civil or criminal law.
E. Federal action is required to protect the interests of those involved in the investigation.
F. The research entity believes that the inquiry or investigation may be made public prematurely so that appropriate steps can be taken to safeguard evidence and protect the rights of those involved.
G. Circumstances where the research community or public should be informed. [65 FR 76263.III]

(2) Report other allegations to the OIG when they have conducted an inquiry and determined that there is sufficient evidence to proceed with an investigation. [65 FR 76263. III]

38. Scientific Integrity Terms and Conditions

The recipient agrees to comply with EPA's Scientific Integrity Policy when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this award condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue. The recipient agrees to:

38.1 Scientific Products

38.1.1 Produce scientific products of the highest quality, rigor, and objectivity, by adhering to applicable EPA information quality guidelines quality policy and peer review policy.

38.1.2 Prohibit all recipient employees, contractors, and program participants, including scientists, managers, and other recipient leadership, from suppressing, altering, or otherwise impeding the timely release of scientific findings or conclusions.

38.1.3 Adhere to EPA's Peer Review Handbook, 4th Edition, for the peer review of scientific and technical work products generated through EPA grants or cooperative agreements which, by definition, are not primarily for EPA's direct use or benefit.

38.2 Scientific Findings

38.2.1 Require that reviews regarding the content of a scientific product that are conducted by the project manager and other recipient managers and the broader management chain be based only on scientific quality considerations, e.g., the methods used are clear and appropriate, the presentation of results and conclusions is impartial.

38.2.2 Ensure scientific findings are generated and disseminated in a timely and transparent manner, including scientific research performed by employees, contractors, and program participants, who assist with developing or applying the results of scientific activities.

38.2.3 Include, when communicating scientific findings, an explication of underlying assumptions, accurate contextualization of uncertainties, and a description of the probabilities associated with both optimistic and pessimistic projections, if applicable.

38.2.4 Document the use of independent validation of scientific methods.

38.2.5 Document any independent review of the recipient's scientific facilities and testing activities, as occurs with accreditation by a nationally or internationally recognized sanctioning body.

38.2.6 Make scientific information available online in open formats in a timely manner, including access to data and non-proprietary models.

38.3 Scientific Misconduct

38.3.1 Prohibit intimidation or coercion of scientists to alter scientific data, findings, or professional opinions or non-scientific influence of scientific advisory boards. In addition, recipient employees, contractors, and program participants, including scientists, managers, and other leadership, shall not knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty.

38.3.2 Prohibit retaliation or other punitive actions toward recipient employees who uncover or report allegations of scientific and research misconduct, or who express a differing scientific opinion. Employees who have allegedly engaged in scientific or research misconduct shall be afforded the due process protections provided by law, regulation, and applicable collective bargaining agreements, prior to any action. Recipients shall ensure that all employees and contractors of the recipient shall be familiar with these protections and avoid the appearance of retaliatory actions.

38.3.3 Require all recipient employees, contractors, and program participants to act honestly and refrain from acts of research misconduct, including publication or reporting, as described in EPA's Policy and Procedures for Addressing Research Misconduct, Section 9.C. Research misconduct does not include honest error or differences of opinion. While EPA

retains the ultimate oversight authority for EPA-supported research, grant recipients conducting research bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with their own institution.

38.3.4 Take the actions required on the part of the recipient described in EPA's Policy and Procedures for Addressing Research Misconduct, Sections 6 through 9, when research misconduct is suspected or found.

38.4 Additional Resources

For more information about the Scientific Integrity Policy, an introductory video can be accessed at: https://youtu.be/FQJCy8BXXq8. A training video is available at: https://youtu.be/Zc0T7fooot8.

Public Policy Requirements

39. Civil Rights Obligations

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Certifications and Representations in Sam.gov or Standard Form 424D, as applicable.

These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing federal and EPA regulations.

a. Statutory Requirements

i. In carrying out this agreement, the recipient must comply with:
   1. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
   2. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
   3. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.

ii. If the recipient is an education program or activity (e.g., school, college or university) or if the recipient is conducting an education program or activity under this agreement, it must also comply with:
   1. Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance. For further information about your compliance obligations regarding Title IX, see 40 CFR Part 5 and https://www.justice.gov/crt/title-ix

iii. If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:
   1. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

b. Regulatory Requirements

i. The recipient agrees to comply with all applicable EPA civil rights regulations, including:
   1. For Title IX obligations, 40 C.F.R. Part 5; and
   2. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 CFR Part7.
   3. For statutory and national policy requirements, including those prohibiting discrimination and those described in Executive Order 13798 promoting free speech

and religious freedom, 2 CFR 200.300.

4. As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator and providing notices of non-discrimination.

c. TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation

i. As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at: https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi

ii. If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at: https://www.govinfo.gov/content/pkg/FR-2006-03-21/pdf/06-2691.pdf

iii. In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

40. Drug-Free Workplace

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at www.ecfr.gov/.

41. Hotel-Motel Fire Safety

Pursuant to 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at https://apps.usfa.fema.gov/hotel/ to see if a property is in compliance, or to find other information about the Act.

42. Lobbying Restrictions

a) This assistance agreement is subject to lobbying restrictions as described below. Applicable to all assistance agreements:

i) The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The recipient shall abide by the Cost Principles available at 2 CFR Part 200 which generally prohibits the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities.

ii) The recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding $100,000 and require that subrecipients submit certification and disclosure forms accordingly.

iii) In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

iv) Contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

v) By accepting this award, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 as required by Section 18 of the Lobbying Disclosure Act; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act. Nonprofit organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are ineligible for EPA subawards.

b) Applicable to assistance agreements when the amount of the award is over $100,000:

i) By accepting this award, the recipient certifies, to the best of its knowledge and belief, that:

(1) No Federal appropriated funds have been or will be paid, by or on behalf of the recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or any employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the recipient shall complete and submit the linked Standard Form -- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The recipient shall require that the language of this certification be included in the award documents for all subawards exceeding $100,000 at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

ii) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.

43. Recycled Paper

When directed to provide paper documents, the recipient agrees to use recycled paper and double-sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA.

44. Resource Conservation and Recovery Act

Consistent with goals of section 6002 of RCRA (42 U.S.C. 6962), State and local institutions of higher education, hospitals and non-profit organization recipients agree to give preference in procurement programs to the purchase of specific products containing recycled materials, as identified in 40 CFR Part 247.

Consistent with section 6002 of RCRA (42 U.S.C. 6962) and 2 CFR 200.323, State agencies or agencies of a political subdivision of a State and its contractors are required to purchase certain items made from recycled materials, as identified in 40 CFR Part 247, when the purchase price exceeds $10,000 during the course of a fiscal year or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more. Pursuant to 40 CFR 247.2 (d), the recipient may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price.

45. Trafficking in Persons

a. Provisions applicable to a recipient that is a private entity.

i. The recipient, the recipient's employees, subrecipients under this award, and subrecipients' employees may not—
   1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
   2. Procure a commercial sex act during the period of time that the award is in effect; or
   3. Use forced labor in the performance of the award or subawards under the award.

ii. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if the recipient or a subrecipient that is a private entity—
   1. Is determined to have violated a prohibition in paragraph a of this award term; or
   2. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a of this award term through conduct that is either—
      a. Associated with performance under this award; or
      b. Imputed to the recipient or subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, ''OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),'' as implemented by our Agency at 2 CFR Part 1532.

b. Provision applicable to a recipient other than a private entity. EPA may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

i. Is determined to have violated an applicable prohibition in paragraph a. of this award term; or

ii. Has an employee who is determined by the agency official authorized to terminate the

award to have violated an applicable prohibition in paragraph a of this award term through conduct that is either—

1. Associated with performance under this award; or
2. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, ''OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by EPA at 2 CFR Part 1532.

c. Provisions applicable to any recipient.

i. The recipient must inform the EPA immediately of any information received from any source alleging a violation of a prohibition in paragraph a of this award term.

ii. Our right to terminate unilaterally that is described in paragraph a and b:

1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
2. Is in addition to all other remedies for noncompliance that are available to us under this award.

iii. The recipient must include the requirements of paragraph a of this award term in any subaward made to a private entity.

d. Definitions. For purposes of this award term:

i. ''Employee'' means either:

1. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
2. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

ii. ''Forced labor'' means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

iii. ''Private entity'':

1. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
2. Includes:
   a. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
   b. A for-profit organization.

iv. ''Severe forms of trafficking in persons,'' ''commercial sex act,'' and ''coercion'' have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

46. Build America, Buy America (Effective May 14, 2022 and applicable to all funding that date forward; Clarifications added October 1, 2022)

a. The recipient is subject to the Buy America Sourcing requirements under the Build America, Buy America provisions of the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58, §§70911-70917) for the types of infrastructure projects under the EPA program and activities specified in the chart, "Environmental Protection Agency's Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America Buy America Provisions of the Infrastructure Investment and Jobs Act." None of the funds provided under this award may be used for a project of infrastructure unless all iron and steel, manufactured products, and construction materials that are consumed in, incorporated into, or affixed to an infrastructure project are produced in the United States. The Buy America preference requirement applies to an entire infrastructure project, even if it is funded by

both Federal and non-Federal funds. The recipient must implement these requirements in its procurements, and these requirements must flow down to all subawards and contracts at any tier. For legal definitions and sourcing requirements, the recipient must consult EPA's Build America, Buy America website and the Office of Management and Budget's (OMB) Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

b. When supported by rationale provided in IIJA §70914, the recipient may submit a waiver request to EPA. Recipients should request guidance on the submission instructions of an EPA waiver request from the EPA Project Officer for this agreement. A list of approved EPA waivers (general applicability and project specific) is available on the EPA Build America, Buy America website.

c. For questions regarding the applicability of the Build America, Buy America Act requirements to this assistance agreement or if there is an approved waiver in place, please contact the EPA Project Officer for this agreement.

CALIFORNIA JOINT POWERS
RISK MANAGEMENT AUTHORITY

Accredited with Excellence from the California Association of Joint Powers Authorities

CERTIFICATE OF COVERAGE

Certificate Holder and Additional Covered Party: ABAG, Metropolitan Transportation Commission (MTC), and United States Environmental Protection Agency (U.S. EPA) and their commissioners, directors, officers, representatives and employees.
Association of Bay Area Governments
Insurance Compliance
P.O. Box 100085-M8
Duluth, GA 30096

This certifies that the coverage Described herein has been issued to: City of Alameda

Description of Activity: ABAG/City of Alameda; San Leandro OLU Adaptation Planning.

Date(s) of Activity: 03-01-2023 to 10-31-2025

Location of Activity: Alameda, CA

Entity Providing Coverage	Excess Coverage	Certificate Expiration Date
California Joint Powers Risk Management Authority	$3,250,000 excess of $ 750,000	June 30, 2023

The following coverage is in effect and is provided through participation in a risk sharing joint powers authority: general liability and automobile liability pooled self-insurance, as defined in the Memorandum of Coverage on file with the entity and which will be made available upon request.

The coverage being provided is limited to the activity and the time period indicated herein and is subject to all the terms, conditions and exclusions of the Memorandum of Coverage of the California Joint Powers Risk Management Authority.

Pursuant to Section II, subsection 8, relating to the definition of a covered party, the certificate holder named herein is only an additional covered party for covered claims arising out of the activity described herein and is subject to the limits stated herein.

Coverage is in effect at this time and will not be cancelled, limited or allowed to expire at a date other than that indicated herein except upon 30 days written notice to the certificate holder.

05-01-2023
Date

Authorized Signature

Tony Giles, CPCU, ARM-P, General Manager
Name and Title (Print or type)

Certificate Number: *FORM141644*

Form C