



**Agenda Item No. 12d.**

### **Staff Report**

**Date:** September 10, 2020

**To:** Mayor McMillan and Council Members

**From:** Richard Simonitch, Public Works Director/Town Engineer

**Subject:** Town Council consideration of approving a Memorandum of Understanding for the Marin County Pollution Control Infrastructure Project

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**Recommendation:**

Staff recommends that Council approve and authorize the Town Manager to sign the Memorandum of Understanding for the Marin County Pollution Control Infrastructure Project (the MOU) between the County, other participating agencies, and the Town of Ross.

**Background and discussion:**

On August 20, 2019, the County Board of Supervisors, on behalf of the Marin Countywide Stormwater Pollution Prevention Program (MCSTOPPP), accepted grant funds in the amount of \$685,000 from the San Francisco Water Quality Improvement Fund through the United States Environmental Protection Agency (EPA). This funding is intended to offset costs associated with implementation of stormwater trash control throughout the cities, towns, and unincorporated areas of Marin County.

The grant funds will be used specifically for the purchase and installation of certified full trash capture devices that will be placed in prioritized locations throughout the County in accordance with each municipality's Trash Reduction Implementation Plans. This grant's 50% match requirement will be met through implementation of existing trash reduction workplans by MCSTOPPP and its member agencies, and, in some cases, through matching capital investment by participating MCSTOPPP member agencies under the terms of the attached Memorandum Of Understanding (MOU). Parties to the MOU are expected to provide documentation of match, such as in-kind expenditures of labor, contracting or capital purchasing, in an equivalent amount to any invoices for reimbursement from these grant funds.

The goals of this project are to: 1) improve water quality the San Francisco Bay by reducing and preventing trash in stormwater discharges, 2) monitor the success of MCSTOPPP implementations of trash pollution prevention, and 3) sharing lessons learned from trash control efforts regionally and statewide.

Funded projects include:

- Implement a range of trash capture planning and pollution prevention public outreach efforts.
- Purchase of one large full capture device – A participating MCSTOPPP partner agency with the highest trash load will install one large trash capture device.
- Purchase and installation of many small trash capture devices – The participating MCSTOPPP partner agencies will identify high priority and opportune locations.

The attached MOU defines the roles and responsibilities of each participating agency and establishes reporting and match requirements for reimbursement of approved expenditures for grant-related expenses.

The Marin County Stormwater Pollution Prevention Program (MCSTOPPP) will administer the grant project through coordination and reporting of litter control planning and implementation activities by the participating agencies including the siting, design and installation of State-certified full trash capture devices in prioritized locations in each participating agency's jurisdiction. All grant funded projects will be completed by June 30, 2024.

**Fiscal, resource and timeline impacts:**

MCSTOPPP staff have provided a method of estimating the Town costs for installation, maintenance, and program management based on \$7.91/person/year which equates to approximately \$20,000 per year for 10 years (2030 compliance deadline) = \$200,000. Any grant funds received will require matching funds from the Town.

**Alternative Actions**

Council could choose not to approve the participation of the Town of Ross as a party to this MOU. The Town of Ross would then not be eligible to receive reimbursement from grant funds for expenditures related to the purchase and installation of certified full trash capture devices.

**Attachments:**

- Final MOU as provided by MCSTOPPP

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE COUNTY OF MARIN AND THE MEMBER AGENCIES OF THE  
MARIN COUNTY STORMWATER POLLUTION PREVENTION PROGRAM,  
REGARDING ENVIRONMENTAL PROTECTION AGENCY FUNDING AND MEMBER  
AGENCY MATCH FUNDING FOR IMPLEMENTATION OF STORMWATER TRASH  
CAPTURE PROJECTS**

**Project Title: Marin County Pollution Control Infrastructure Project**

**U.S. Environmental Protection Agency Agreement No.: W9 - 99T87001 - 3**

This Memorandum of Understanding ("MOU") is made and entered into this day of \_\_\_\_\_ 2020, by and between the **County of Marin**, a political subdivision of the State of California, ("COUNTY") and the participating Marin County Stormwater Pollution Program (MCSTOPPP) municipalities as represented by the signatures to this MOU, hereinafter collectively referred to as the "**Parties**".

**RECITALS**

WHEREAS, COUNTY has applied for a grant and has been determined by the U.S. Environmental Protection Agency ("EPA") to be eligible for a grant pursuant to applicable State laws and regulations; and

WHEREAS, on July 15, 2019 the EPA approved grant funding for the Project, more fully described in Exhibit A attached hereto; and

WHEREAS, the Project generally consists of trash capture planning, infrastructure purchasing, installation, maintenance, monitoring, public outreach, and knowledge sharing to prevent and/or treat trash stormwater pollution within MCSTOPPP agencies prioritized watersheds; and

WHEREAS, pursuant to the San Francisco Bay Water Quality Improvement Fund ("SFBWQIF") Grant Program Grant Agreement ("Grant Agreement") entered into between the EPA and COUNTY, Agreement No. W9 - 99T87001 - 3, dated October 29, 2019, (attached hereto), and subsequent amendments, the term of this MOU and the Project shall begin on the date this MOU is made and entered into and continue through Project completion plus thirty-five (35) years unless otherwise terminated or amended as provided in this MOU. However, all work shall be completed by October 31, 2024 unless extended through an amendment to the Grant Agreement executed by the EPA and COUNTY; and

WHEREAS, COUNTY is the grantee under the Grant Agreement and is responsible for accepting and complying with all the terms, provisions, conditions, and commitments of the Grant Agreement; and

WHEREAS, COUNTY is responsible for coordinating and developing implementation of the Project and for executing subcontract agreements for the distribution of EPA SFBWQIF grant funds to the Parties on the terms and conditions set forth in the Grant Agreement and this MOU;

WHEREAS, COUNTY is responsible for complying with and requiring its subrecipients,

contractors, and subcontractors to comply with all applicable laws, policies and regulations; and

WHEREAS, the MCSTOPPP participating agencies are subrecipients of the Grant Agreement, pursuant to this MOU, and this MOU sets out the responsibilities of the Parties with respect to the Project and to submit invoices for reimbursement of work performed under the Grant Agreement; and

WHEREAS, COUNTY and MCSTOPPP participating agencies agree pursuant to this MOU to implement the Project on land and/or easements of the Parties and to abide by the terms set forth in this MOU.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties hereto agree as follows:

1. Definitions.

(a) **County of Marin** ("COUNTY") shall mean: (i) COUNTY, including all commissions, departments, agencies, and other subdivisions of COUNTY; (ii) COUNTY's elected officials, directors, officers, employees, agents, successors, and assigns; (iii) all persons or entities acting on behalf of the foregoing.

(b) "**Losses**" shall mean any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatsoever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described) whether or not such Loss be founded or unfounded, of whatsoever kind and nature.

(c) **References to this MOU.** References to this MOU include: (i) any and all appendices, exhibits, schedules, and attachments hereto; (ii) any and all statutes, ordinances, regulations or other documents expressly incorporated by reference herein; and (iii) any and all amendments, modifications or supplements hereto. References to sections, subsections or appendices refer to sections or subsections of or appendices to this MOU, unless otherwise expressly stated. Terms such as "hereunder," "herein" or "hereto" refer to this MOU as a whole.

(d) **Reference to laws.** Any reference in this MOU to a federal or state statute, regulation, executive order, requirement, policy, guide, guideline or instruction shall mean that statute, regulation, executive order, requirement, policy, guide, guideline or instruction as is currently in effect and as may be amended, modified or supplemented from time to time.

2. Invoices and Approval.

The Parties shall comply with the invoicing, budget detail and reporting provisions set forth in Exhibit B for any work performed in which the party intends to seek reimbursement under the Grant Agreement. The Parties will not proceed with any work on the Project for which the Parties intend to seek reimbursement by grant funds until authorized in writing by COUNTY.

3. Match Funds.

The Parties agree to provide match funds up to SIX HUNDRED EIGHTY-FIVE THOUSAND DOLLARS (\$685,000) for this Project. This amount of match funds is based on work in-kind, such as labor, capital purchasing and installation costs as incurred under the tasks in the Scope of Work, set forth in Exhibit A attached hereto. Each party to this MOU understands and agrees that it is required to match funds equivalent to any and all invoices for reimbursement submitted by said party pursuant to the Grant Agreement and shall provide such information in its reports submitted pursuant to Exhibit B.

4. Liability and Security.

The Parties agree to cooperate, to the extent allowed by law, in the submission of claims pursuant to the Federal Tort Claims Act against the United States for personal injuries or property damage resulting from the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his or her employment, arising out of this MOU.

5. Compliance with the Grant Agreement.

The Parties shall comply with the Grant Agreement, including the terms and conditions and special conditions included in Exhibit C attached hereto and incorporated by reference as though fully set forth herein. The Parties shall promptly comply with all standards, specifications and formats as may from time to time exist, related to evaluation, planning and monitoring of the Grant Scope of Work, set forth in Exhibit A attached hereto, and shall cooperate in good faith with COUNTY and the EPA Project Officer, as defined in the Grant Agreement, in any evaluation, planning, implementation, monitoring, or reporting activities conducted or authorized by COUNTY or the EPA Project Officer.

6. Dispute Resolution.

If a dispute arises between the Parties concerning the interpretation or operation of this MOU, any party may request mediation by providing the other parties with written notice of such request. No party is obligated to enter mediation. Nevertheless, if the Parties mutually agree to enter mediation, the parties shall attempt to agree upon a single mediator, and the costs of mediation shall be borne equally by the Parties. Any efforts at mediation shall conclude within ninety (90) days after the written notice, unless the Parties mutually agree to extend the time period for the mediation.

7. Indemnification; Hold Harmless.

To the fullest extent permitted by law, each Party (the "Indemnifying Party") agrees to defend the other Parties, their affiliates and each of their officers, agents, employees and volunteers (each an "Indemnified Party") from and against any action, claim, losses, suit, investigation or other proceeding brought by a third party (a "Claim") to the extent such Claim results from the Indemnifying Party's breach of this MOU or the negligence, willful misconduct or fraud or violation of law on the part of the Indemnifying Party, its officers, agents, employees, or volunteers in connection with this MOU. The Indemnifying Party will indemnify and hold harmless the Indemnified Party from any

liabilities, losses, damages, judgments, awards, fines, penalties, costs and expenses (including reasonable attorneys' fees and costs of defense) incurred by or levied against such Indemnified Party as a result of such Claim, excluding, however, such liability, claims, losses, damages or expenses arising from the negligence or willful acts of the Indemnified Party.

Further, Indemnifying Party shall make Indemnified Party and/or County whole for any payment of any penalty, fine or assessment against County or any other Indemnified Party arising from the failure of Indemnifying Party or its respective officers, agents, employees, volunteers, contractors and subcontractors to comply with the Grant Agreement and all applicable regulations, including, but not limited to, any penalties, fines or assessments that may be assessed under a Federal or State False Claims Act Provision.

8. Termination.

Prior to expending any EPA Grant funding any party may withdraw from this MOU, without cause and without liability to the other parties, by providing the other parties written notice of intention to do so thirty (30) days prior to the effective date of withdrawal. After commencement of the Project, termination of this MOU shall not relieve the terminating party from any duties, assurances or Losses that may occur in connection with the Project. The term of this MOU and the Project shall begin on the date this MOU is made and entered into and continue through Project completion plus thirty-five (35) years unless otherwise terminated or amended as provided in this MOU or by mutual agreement of the Parties.

9. Notice.

All notices and other communications required or permitted to be given under this MOU, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

TO COUNTY:

Raul Rojas, Project Director  
Director of Public Works  
Marin County Department of Public Works  
3501 Civic Center Drive, Room 304  
San Rafael, CA 94913-4186  
415/499-6583  
e-mail: [rrojas@co.marin.ca.us](mailto:rrojas@co.marin.ca.us)

TO PUBLIC WORKS DIRECTORS OF MARIN CITIES AND TOWNS:

<p>Robert Zadnik          Director of Public Works,          City of Belvedere          450 San Rafael Avenue          Belvedere, CA 94920          415/435-3838          rzadnik@cityofbelvedere.com</p>	<p>R.J. Suokko,          Director of Public Works Town          of Corte Madera          300 Tamalpais Drive          Corte Madera, CA 94925.          415/927-5057          rsuokko@tcmmail.com</p>	<p>Mark Lockaby          Public Works Manager          Town of Fairfax          142 Bolinas Road          Fairfax, CA          94930          (415) 458-2370          mlockaby@townoffairfax.org</p>
<p>Julian Skinner,          Director of Public Works          City of Larkspur          325 Doherty Dr          Larkspur, CA 94939          415/927-5020          skinner@cityoflarkspur.org</p>	<p>Andrew Poster,          Director of Public Works          City of Mill Valley          26 Corte Madera Ave          Mill Valley, CA 94941          415/384-4800          publicworks@cityofmillvalley.org</p>	<p>Christopher Blunk          Public Works Director          City of Novato          922 Machin Avenue          Novato, CA 94945          415/899-8246          pw@novato.org</p>
<p>Richard Simonitch          Public Works Director/Engineer          Town of Ross          P.O. Box 320,          31 Sir Francis Drake Boulevard          Ross, California 94957 415/453-          1453rsimonitch@townofross.org</p>	<p>Kevin McGowan,          Director of Public Works &amp; City          Engineer          420 Litho Street          Sausalito, CA 94965-1933          415/289-4176          kmcgowan@sausalito.gov</p>	<p>Sean Condry          Public Works &amp; Building Director          Town of San Anselmo          525 San Anselmo Avenue          San Anselmo, CA 94960          415/258-4616          scondry@townofsananselmo.org</p>
<p>Bill Guerin,          Director of Public Works          City of San Rafael,          111 Morpew Street          San Rafael, CA 94901          415/485-3355</p>	<p>Steven Palmer          Town of Tiburon          Director of Public Works / Town          Engineer          1505 Tiburon Boulevard          Tiburon, CA 94920          415/435-7388</p>	

10. Anti-Deficiency Act.

Notwithstanding any provision to the contrary herein, nothing in this MOU shall be construed as binding the United States of America to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of compliance with the conditions for this MOU for the fiscal year, or bind the United States under any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations, and nothing in this MOU may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies.

Notwithstanding any provision to the contrary herein, nothing in this MOU shall be construed as binding the COUNTY or the Parties to expend in any one fiscal year any sum in excess of appropriations approved by the COUNTY's Board of Supervisors or, the Parties' respective Councils for the purpose of compliance with this MOU for that fiscal year, or bind the COUNTY or the Parties under any contract or other obligation for the further expenditure of money in excess of such approved appropriation.

11. Promotions.

The Parties will not publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles, manuscripts, or other publications), which states or implies United States, EPA, SFBWQIF, or United States employee endorsement of a product, service or position which the party represents. No release of information relating to this MOU may state or imply that the United States approves of the party's work product or considers the party's work product to be superior to other products or services.

12. Public Information Release.

No party will unilaterally publish a joint publication without consulting the other parties. This restriction does not apply to popular publication of previously published technical matter. Publication pursuant to this MOU may be produced independently or in collaboration with others; however, in all cases proper credit will be given to the efforts of those parties contributing to the publication. In the event no agreement is reached concerning the manner of publication or interpretation of results, any party may publish data after due notice and submission of the proposed manuscripts to the other parties. In such instances, the party publishing the data will give due credit to the cooperation but assume full responsibility for any statements on which there is a difference of opinion.

13. Civil Rights.

During the performance of this MOU, the Parties agree to abide by the terms of all applicable laws related to non-discrimination.

14. Entire Agreement and Amendment.

The terms and conditions of this MOU, all exhibits attached, and all documents expressly incorporated by reference, represent the entire MOU of the Parties with respect to the subject matter of this MOU. This written MOU shall supersede any and all prior agreements, oral or written, regarding the subject matter between the COUNTY and the Parties. The terms and conditions of this MOU shall not be altered or modified except by a written amendment to this MOU signed by the Parties.

The following Exhibits are attached and made a part of this MOU by this reference:

Exhibit A	SCOPE OF WORK AND SCHEDULE
Exhibit B	INVOICING, BUDGET DETAIL AND REPORTING PROVISIONS
Exhibit C	GRANT AGREEMENT AND EPA GENERAL TERMS AND CONDITIONS EFFECTIVE OCTOBER 1, 2019

15. Procurement.

The Parties agree to follow the EPA Best Practice Guide for Procuring Services,

Supplies and Equipment Under EPA Assistance Agreements, attached hereto as Attachment 3.

16. Assignment.

The Parties shall not assign this MOU to any third-party, either in whole or in part, without the written consent of all Parties.

17. Representations.

The Parties agree to comply with all terms, provisions, conditions, and commitments of this MOU, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments not amended by the Grant Agreement made by COUNTY, accompanying documents, and communications filed in support of the request for grant funding. The Parties shall comply with and require its contractors and subcontractors to comply with all applicable laws, policies and regulations.

IN WITNESS WHEREOF, THIS MEMORANDUM OF UNDERSTANDING HAS BEEN ENTERED INTO AS FOLLOWS:

COUNTY OF MARIN

By \_\_\_\_\_  
Katie Rice

Its President, Board of Supervisors  
\_\_\_\_\_, 2020

APPROVED AS TO FORM:

By \_\_\_\_\_  
Jenna J. Brady, Deputy County  
Counsel

CITY OF NOVATO

By \_\_\_\_\_  
Adam McGill  
City Manager,

(Inert page break)

CITY OF SAN RAFAEL

By \_\_\_\_\_  
Jim Schutz  
City Manager,

(Inert page break)

TOWN OF FAIRFAX

By \_\_\_\_\_  
GARRETT TOY  
TOWN MANAGER,

(Inert page break)

TOWN OF SAN ANSELMO

By \_\_\_\_\_  
David Donery  
Town Manager,

(Inert page break)

Town of Ross

By \_\_\_\_\_  
Joe Chinn  
City Manager,

(Inert page break)

CITY OF LARKSPUR

By \_\_\_\_\_  
Dan Schwartz  
City Manager,

(Inert page break)

TOWN OF CORTE MADERA

By \_\_\_\_\_  
Todd Cusimano  
Town Manager,

(Inert page break)

CITY OF MILL VALLEY

By \_\_\_\_\_  
James C. McCann  
City Manager,

(Inert page break)

TOWN OF TIBURON

By \_\_\_\_\_  
David Kulik  
Mayor

(Inert page break)

CITY OF BELVEDERE

By \_\_\_\_\_  
Nancy Kemnitzer  
Mayor

## Exhibit A — Scope of Work and Schedule

The Parties shall complete the following Scope of Work as indicated:

### A. GENERAL DELIVERABLES AND COMPLIANCE REQUIREMENTS

1. Identify and provide stormwater GIS information for trash capture planning, installation, and monitoring prior to payment or reimbursement of project invoices by the COUNTY. Submittal requirements for stormwater GIS data are available at:

<https://www.marinmap.org/dnn/Tools/DataDocumentUpload.aspx>.

2. Purchasing and Contracting shall follow the EPA guidance in "Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements," September 7, 2018.
3. If landowner agreements are required, signed copies must be submitted to the Grant Project Officer through COUNTY before work begins.
4. If permits are required, the permits must be obtained and signed copies submitted to the Grant Project Officer through the COUNTY before trash capture installation begins.
5. Federal Disclosure Documents – Include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this MOU:

"Funding for this project has been provided in full or in part through an agreement with the United States Environmental Protection Agency (EPA). The contents of this document do not necessarily reflect the views and policies of the EPA, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

6. The Parties shall also include in each of its contracts for work under this MOU a provision that incorporates the requirements stated within this exhibit.

B. SCHEDULE OF WORK TO BE PERFORMED BY COUNTY AND/OR MCSTOPPP PARTICIPATING AGENCIES

Task	Name	Description	Deliverables	Responsibility	Deliverable Date(s)
<b>1</b>	<b>Planning large and small full trash capture device installations</b>	<b>Marin municipalities use existing and new mapping to select optimal device installation locations</b>	<b>Installation locations and trash load reduction estimates</b>		
1.1	TMA delineation, ranking, and prioritization	Watershed and stormdrain network GIS mapping and ranking	Drainage network map data, location, and ranking	County and Parties	June 2020
1.2	Identify CalTrans partnership opportunities	Map CalTrans projects possibilities	Maps and device selections	County	June 2020
1.3	Identify public private partnerships and device retrofit opportunities	Review existing device specs with vendor for proposal to SWRCB for cortication.	Device specifications and retrofit plans	County and Parties	May 2022
1.4	Guidance tools for public private FTC	Code / Policy language pathway matrix	Agenda, minutes, and action items	County	September 2020
<b>2</b>	<b>Full Trash Capture Device Installation / Construction</b>	<b>Engineering, Design, Purchasing, and Construction</b>	<b>RFP, proposal ranking, and award documents</b>		
2.1	Technical investigations preliminary design	Staff device selection, hydraulics, investigate utility conflicts	Existing conditions plans and hydraulics calcs	Parties	May 2021
2.2	Design, Construction Plan Specs and Permitting	Plan review and permitting; Construction document development	Approvals, permits, construction plans and specs	Parties	September 2021

2.3	Purchasing and Construction	Device purchasing contracts, construction contracts, approvals, construction, and inspections	Contract awards, approvals, invoices, progress reports and photos	Parties – large devices County/Parties – Small devices	October 2023
<b>Task</b>	<b>Name</b>	<b>Description</b>	<b>Deliverables</b>	<b>Responsibility</b>	<b>Deliverable Date(s)</b>
<b>3</b>	<b>Device maintenance, trash pollution capture, and Monitoring</b>	<b>Device and streetscape monitoring and maintenance/trash removal</b>	<b>Dates, locations, quantities, and types of materials removed</b>		
3.1	Monitoring for maintenance and effectiveness assessment tools	On-Land Visual Trash Assessments (OVTA) sampling frame and device maintenance monitoring apps to document effectiveness	Applications	County	February 2020
3.2	Monitoring and maintenance data collection	Document site/device condition, locations treated, and materials removed	Monitoring data/records	County and Parties	June 2024
3.3	Trash reduction reporting and Implementation Plan Updates	Maintain and populate reporting tool	Annual trash reduction % and TRIP updates (if applicable)	County and Parties	Yearly, and October 14, 2024
<b>4</b>	<b>Trash education and outreach</b>	<b>Public education to reduce trash loading</b>	<b>Event outreach materials</b>		
4.1	Litter Prevention/Reduction Outreach Campaign	Develop public outreach campaign materials (print and electronic ads, videos)	PR campaign materials	County	October 2024
4.2	Clean Marin Coalition Coordination	County, local agency, CalTrans and local volunteer group planning meetings	Meeting agenda, minutes, and action items	County	Quarterly and October 2024
4.3	Clean Business Program	Business outreach and enrollment in litter free practice implementations	Participation counts	County	Quarterly and October 2024

4.4	Marin Clean Highways Tarp Your Load outreach	Outreach at waste transfer stations to haulers	Counts of secured vs unsecured loads	County	Quarterly and October 2024
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<b>Task</b>	<b>Name</b>	<b>Description</b>	<b>Deliverables</b>	<b>Responsibility</b>	<b>Deliverable Date(s)</b>
<b>5</b>	<b>Municipal knowledge share workshops</b>	<b>Planning, installation, and maintenance workshops</b>	<b>Agenda, minutes, presentations</b>	<b>County</b>	<b>October 2024</b>
<b>6</b>	<b>Project management</b>	<b>Task, budget, schedule, and deliverables reporting</b>	<b>Invoicing, quarterly and annual reports, meeting minutes and agenda</b>	<b>County/Parties</b>	<b>Quarterly and October 2024</b>

## **EXHIBIT B – Invoicing, Budget Detail and Reporting Provisions**

### **A. Invoicing**

1. Invoices shall be submitted to COUNTY by participating MCSTOPPP agencies on a quarterly basis. The invoice must be itemized based on the tasks specified in the scope of work.
2. Supporting documentation (e.g., contracts, receipts, labor reports, and photos) must be submitted with each invoice to request reimbursement for grant funds as well as to support matching funds. The amount claimed for Task 2 - Full Trash Capture Device Installation and Construction line item shall be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed invoice.
3. County and participating MCSTOPPP agencies shall request disbursement of grant funds for any cost only after such cost has been incurred and has been paid by or is due and payable.
4. Notwithstanding any other provision of this MOU, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the Federal Government, or any loss of tax-free status on state bonds, pursuant to any Federal statute or regulation.
5. The invoice shall contain the following information:
  - a. The date of the invoice;
  - b. The time period covered by the invoice, i.e., the term "from" and "to";
  - c. The total amount due; and
  - d. Original signature and date (in ink).
  - e. Final invoice shall be for the period ending October 31<sup>st</sup> 2024 and be clearly marked "FINAL INVOICE." The final invoice shall be NO LATER THAN November 30th, 2024.

### **B. Budget**

The maximum amount to be encumbered by COUNTY under the Grant Agreement for the grant period, June 1, 2019 to October 31, 2024, shall not exceed SIX HUNDRED EIGHTY-FIVE THOUSAND DOLLARS (\$685,000) and shall be subject to Paragraph 8 of this MOU.

### **C. Line Item Budget**

Set forth in the chart below are the estimated line item budget for each task. These amounts are subject to increase or decrease based on the process set forth in the Budget Line Item Flexibility section D below.

<b>Task / Organization</b>	<b>Task Totals</b>	<b>Match</b>	<b>Grant Funded</b>
<b>1 Large and small full trash capture device installation planning</b>	<b>\$100,779</b>	<b>\$100,779</b>	
<b>2 Full Trash Capture Device Installation / Construction</b>	<b>\$954,438</b>	<b>\$269,438</b>	<b>\$685,000</b>
<b>3 Device maintenance, trash pollution capture, and monitoring</b>	<b>\$64,481</b>	<b>\$64,481.63</b>	
<b>4 Trash education and outreach</b>	<b>\$175,847.43</b>	<b>\$175,847.43</b>	
<b>5 Municipal knowledge sharing workshops</b>	<b>\$20,546.14</b>	<b>\$20,546.14</b>	
<b>6 Project Management</b>	<b>\$53,906.96</b>	<b>\$53,906.96</b>	
<b>Total</b>	<b>\$1,370,000</b>	<b>\$685,000</b>	<b>\$685,000</b>

D. Budget Line Item Flexibility

1. Line Item Adjustment(s). Subject to the prior review and approval of the EPA's Grant Project Officer, adjustments between existing line item(s) may be used to balance unknown costs, labor charges, and in-kind match capacity.
2. Procedure to Request an Adjustment. COUNTY may submit a request for an adjustment in writing to the EPA. Such adjustment may not increase or decrease the total grant funding amount. Therefore, participating MCSTOPPP agencies must submit a request for an adjustment to the budget in this MOU in writing to COUNTY. Budget adjustments deleting a budget line item or adding a new budget line item requires a formal amendment and are not permissible under this provision.
3. Remaining Balance. In the event Parties do not submit invoices requesting all of the funds encumbered under the Grant Agreement, any remaining funds revert to the EPA. The EPA will mail a Notice of Project Completion letter to the COUNTY stating that the Project file is closed, the final invoice is being processed for payment, and any remaining balance will be disencumbered and unavailable for further use under the Grant Agreement.

E. Reports

1. PROGRESS REPORT. The Parties shall submit quarterly progress reports to COUNTY by the fifteenth (15<sup>th</sup>) of the month following the end of the calendar quarter (March, June, September, and December). The Parties shall use the template provided in Attachment 1 to this MOU.
  - a. The progress reports shall provide a brief description of the work performed, accomplishments during the quarter, milestones achieved, monitoring results (if applicable), and any problems encountered in the performance of the work under this MOU. The party shall document all contractor activities and expenditures in progress reports.
  - b. The invoice should accompany the progress report. The invoice should reflect charges for the work completed during the reporting period covered by progress report. The invoice cannot be paid prior to submission of a progress report covering the invoice reporting period.
  - c. The progress reports shall detail the work in-kind sufficient to cover the match fund requirement set forth in this MOU.
2. ANNUAL PROGRESS SUMMARIES. COUNTY shall prepare and provide to the EPA an annual progress summary by September 30, 2020, September 30 2021, September 30 2022, September 30 2023, September 30 2024. The summary must be no more than two (2) pages, and shall include pictures as appropriate. COUNTY shall upload an electronic copy of the Annual Progress Summary in pdf format to the EPA. The summary shall include the following:
  - a. A summary of the conditions the Project is meant to alleviate, the Project's objective, the scope of the Project, and a description of the approach used to achieve the Project's objective.
  - b. A summary of the progress made to date, significant milestones achieved, and the current schedule of completing the Project.
  - c. An evaluation of the effectiveness of the Project to date in preventing or reducing pollution and alleviating the Project's original conditions.
3. DRAFT PROJECT REPORT. COUNTY shall prepare and submit to the EPA Grant Project Officer, for review and comment, a draft Project Report that includes information collected by all recipients in accordance with the Scope of Work. Where necessary, participating MCSTOPPP agencies shall provide COUNTY with supporting Project-related documentation needed to complete the Draft Project Report. The draft report shall address the following narrative sections and items.
  - a. A summary of the Project, describing Project purpose, scope and goals, activities completed, techniques used, and partners involved.

b. A report of all Project related work, measures implemented, structures installed together with their corresponding locations. The report shall be in a format that enables the EPA's Grant Project Officer to find the physical location of each implemented practice or measure and/or monitoring event in a quick and efficient manner. Acceptable formats include, but are not limited to:

- Map of locations using the Marin County GIS data submission standards.
- GPS locations
- A site or structure identification name or number

F. Audit Disallowances

The Parties agree that each shall be responsible for any audit disallowances associated with the EPA's grant funding submitted by that MCSTOPPP participating agency, and shall return any audit disallowances immediately.

G. Fraud And Misuse Of Public Funds

All invoices submitted shall be accurate and signed under penalty of perjury. Any and all costs submitted pursuant to this Agreement shall only be for the tasks set forth herein. The Parties shall not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any eligible costs for which the Parties are seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is illegal and constitutes fraud. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements of grant funds and/or termination of this MOU requiring the repayment of all funds disbursed hereunder. Additionally, the EPA may request an audit pursuant to the Grant Agreement and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability. If it is determined that a party to this MOU is found liable for any such fraud or misuse of public funds, that party shall be liable for the repayment of any grant funds required to be repaid by the EPA.

**EXHIBIT C**

**Grant Agreement and** EPA General Terms and Conditions Effective October 1,  
2019

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Assistance Amendment</b>	<b>GRANT NUMBER (FAIN):</b> 99T87001 <b>MODIFICATION NUMBER:</b> 1 <b>PROGRAM CODE:</b> W9	<b>DATE OF AWARD</b> 10/29/2019
		<b>TYPE OF ACTION</b> No Cost Amendment	<b>MAILING DATE</b> 10/29/2019
		<b>PAYMENT METHOD:</b> ASAP	<b>ACH#</b> PEND
		<b>RECIPIENT TYPE:</b> County	
<b>RECIPIENT:</b> County of Marin 1600 Los Gamos Drive San Rafael, CA 94913 EIN: 94-6000519		<b>PAYEE:</b> County of Marin 1600 Los Gamos Drive San Rafael, CA 94913	
<b>PROJECT MANAGER</b> Robert Carson 1600 Los Gamos Drive San Rafael, CA 94913 E-Mail: <a href="mailto:rcarson@marincounty.org">rcarson@marincounty.org</a> Phone: 415-473-2745	<b>EPA PROJECT OFFICER</b> Erica Yelensky 75 Hawthorne Street, WTR-2-2 San Francisco, CA 94105 E-Mail: <a href="mailto:yelensky.eric@epa.gov">yelensky.eric@epa.gov</a> Phone: 415-972-3021	<b>EPA GRANT SPECIALIST</b> Danielle Carr Grants Branch, MSD-6 E-Mail: <a href="mailto:carr.danielle@epa.gov">carr.danielle@epa.gov</a> Phone: 415-972-3871	
<b>PROJECT TITLE AND EXPLANATION OF CHANGES</b> SF Bay Water Quality Improvement Fund  <p>The project is a collaboration of the member agencies of the Marin Countywide Stormwater Pollution Prevention Program (MCSTOPPP) which includes Unincorporated Marin County (Lead Agency), the cities and towns of Novato, San Rafael, Corte Madera, Mill Valley, Tiburon, Belvedere, Sausalito, San Anselmo, Ross, Fairfax. Additional partners include numerous volunteer groups, non-profits and prospective Marin Clean Business owners. The project will implement a range of strategies to reduce trash in the environment including the installation of certified full trash capture devices, knowledge-sharing workshops, volunteer cleanups, public outreach events, and the development of social media and public education campaign materials.</p> <p>This assistance agreement extends the budget and project period ending dates from 06/30/2022 to 10/31/2024. There is no change to the federal assistance amount of \$685,000.</p>			
<b>BUDGET PERIOD</b> 06/01/2019 - 10/31/2024	<b>PROJECT PERIOD</b> 06/01/2019 - 10/31/2024	<b>TOTAL BUDGET PERIOD COST</b> \$1,370,000.00	<b>TOTAL PROJECT PERIOD COST</b> \$1,370,000.00
<b>NOTICE OF AWARD</b>			
<p>Based on your Application dated 12/05/2019 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$0. EPA agrees to cost-share 50.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$685,000. 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.</p>			
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>		<b>AWARD APPROVAL OFFICE</b>	
<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9 Grants Branch, MSD-6 75 Hawthorne Street San Francisco, CA 94105		<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9 Water Division, WTR-1 75 Hawthorne Street San Francisco, CA 94105	
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>			
<b>Digital signature applied by EPA Award Official for Carolyn Truong - Grants Management Officer</b> Danielle Carr - Award Official delegate			<b>DATE</b> 10/29/2019



Budget Summary Page: San Francisco Bay water quality improvement fund

<b>Table A - Object Class Category (Non-construction)</b>	<b>Total Approved Allowable Budget Period Cost</b>
<b>1. Personnel</b>	\$225,314
<b>2. Fringe Benefits</b>	\$112,610
<b>3. Travel</b>	\$0
<b>4. Equipment</b>	\$0
<b>5. Supplies</b>	\$1,196
<b>6. Contractual</b>	\$1,026,000
<b>7. Construction</b>	\$0
<b>8. Other</b>	\$4,880
<b>9. Total Direct Charges</b>	\$1,370,000
<b>10. Indirect Costs: % Base</b>	\$0
<b>11. Total (Share: Recipient 50.00 % Federal 50.00 %.)</b>	\$1,370,000
<b>12. Total Approved Assistance Amount</b>	\$685,000
<b>13. Program Income</b>	\$0
<b>14. Total EPA Amount Awarded This Action</b>	\$0
<b>15. Total EPA Amount Awarded To Date</b>	\$685,000

### **Administrative Conditions**

All Administrative Conditions Remain the Same.

#### **General Terms and Conditions also apply**

The General Terms and Conditions of this agreement are updated in accordance with the link below. However, these updated conditions apply solely to the funds added with this amendment and any previously awarded funds not yet disbursed by the recipient as of the award date of this amendment. The General Terms and Conditions cited in the original award or prior funded amendments remain in effect for funds disbursed by the recipient prior to the award date of this amendment.

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-1-2019-or-later>  
These terms and conditions are binding for disbursements and are in addition to or modify 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>.

### **Programmatic Conditions**

All Programmatic Conditions Remain the Same.

\*\*\*\*\* END OF DOCUMENT \*\*\*\*\*

## **EPA General Terms and Conditions**

### **Effective October 1, 2019**

#### **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 or 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 200.338 and 200.339.
- (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 1500.1, Adoption of 2 CFR 200, states 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 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://efo.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 200.98) 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 200 and 1500).

### **Financial Information**

#### **3. 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 1500.8

#### **4. 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 or 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 [LVFC-grants@epa.gov](mailto:LVFC-grants@epa.gov) or mail it to:

USEPA LVFC  
4220 S. Maryland Pkwy Bldg. C, Suite 503  
Las Vegas, NV 89119

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 Las Vegas Finance Center (LVFC), at 702-798-2485, 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.

**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 [LVFC-grants@epa.gov](mailto:LVFC-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. 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 200.207 and/or 200.338.

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. 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.

## **Selected Items of Cost**

### **5. 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).

Subagreements with firms for services which are awarded using the procurement requirements in Subpart D of 2 CFR 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 1500.9.

### **6. 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://epa.gov/grants/epa-subaward-policy>.

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

- 6.1.** 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 2CFR 200.330 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 employees of the pass-through entity must be classified as participant support costs rather than subawards as required by 2 CFR 200.75 and 2 CFR 200.92.
- 6.2.** Establish and follow a system that ensures all subaward agreements are in writing and contain all of the elements required by 2 CFR 200.331(a). EPA has developed a template for subaward agreements that is available in Appendix D of the EPA Subaward Policy.

- 6.3. Prior to making subawards, ensure that each subrecipient has a “unique entity identifier.” This identifier is required for registering in the System for Award Management (SAM) and by 2 CFR Part 25 and 2 CFR 200.331(a)(1). The unique entity identifier currently is the subrecipient’s Data Universal Numbering System (DUNS) number. Information regarding obtaining a DUNS number and registering in SAM is available in the General Condition of the pass-through entity’s agreement with EPA entitled “**Central Contractor Registration/System for Award Management and Universal Identifier Requirements**” T&C of the pass-through entity’s agreement with the EPA.
- 6.4. 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 200.331(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 1500.9 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](http://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.
- 6.5. 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 200.331(b) and document the evaluation. Risk factors may include:
- a. Prior experience with same or similar subawards;
  - b. Results of previous audits;
  - c. Whether new or substantially changed personnel or systems, and;
  - d. Extent and results of Federal awarding agency or the pass-through entity’s monitoring.
- 6.6. Establish and follow a process for deciding whether to impose additional requirements on subrecipients based on risk factors as required by 2 CFR 200.331(c). Examples of additional requirements authorized by 2 CFR 200.207 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.
- 6.7. Establish and follow a system for monitoring subrecipient performance that includes the elements required by

2 CFR 200.331(d) and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.

- 6.8. Establish and maintain an accounting system which ensures compliance with the \$25,000 limitation at 2 CFR 200.68 on including subaward costs in Modified Total Direct Cost for the purposes of distributing indirect costs.
- 6.9. 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.
- 6.10. 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 Part 200.308.
- 6.11. 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.
- 6.12. 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.
- 6.13. Establish and maintain a system under 2 CFR 200.331(d)(3) and 2 CFR 200.521(c) 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.
- 6.14. As provided in 2 CFR 200.332, 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 their EPA 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 7.1 through 7.14 above or will refrain from making subawards until the systems are designed and implemented.

#### **7. 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.

#### **8. 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.

## 9. 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.

## 10. 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

### 11. Central Contractor Registration/System for Award Management and Universal Identifier Requirements

- 11.1. Requirement for System for Award Management (SAM)** Unless exempted from this requirement under 2 CFR 25.110, the recipient must maintain the currency of the organization's information in SAM 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.
- 11.2. Requirement for Data Universal Numbering System (DUNS) numbers.** If the recipient is authorized to make subawards under this award, the recipient:
- a. Must notify potential subrecipients that no entity (definition paragraph 12.3 of this award term) may receive a subaward unless the entity has provided its DUNS number.
  - b. May not make a subaward to an entity unless the entity has provided its DUNS number.
- 11.3. 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 System for Award Management (SAM) Internet site: <https://www.sam.gov/SAM/>
  - b. **Data Universal Numbering System (DUNS) number** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform/>).
  - c. **Entity**, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
    - 11.3.c.1. A Governmental organization, which is a State, local government, or Indian tribe;
    - 11.3.c.2. A foreign public entity;
    - 11.3.c.3. A domestic or foreign nonprofit organization;
    - 11.3.c.4. A domestic or foreign for-profit organization; and
    - 11.3.c.5. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
  - d. **Subaward:**

- 11.3.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 the recipient received this award and that the recipient awards to an eligible subrecipient.
- 11.3.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 Subpart D).
- 11.3.d.3. A subaward may be provided through any legal agreement, including an agreement that the recipient considers a contract.
- e. **Subrecipient** means an entity that:
  - 11.3.e.1. Receives a subaward from the recipient under this award; and
  - 11.3.e.2. Is accountable to the recipient for the use of the Federal funds provided by the subaward.

## 12. Reporting Subawards and Executive Compensation

### 12.1. Reporting of first-tier subawards.

- a. **Applicability.** Unless the recipient is exempt as provided in paragraph 12.4. of this award term, the recipient must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph 12.5 of this award term).
- b. **Where and when to report.** (1) The recipient must report each obligating action described in paragraph 12.1.a of this award term to [www.frs.gov](http://www.frs.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.frs.gov>.

### 12.2. 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:
  - 12.2.a.1. the total Federal funding authorized to date under this award is \$25,000 or more;
  - 12.2.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
  - 12.2.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/excomp.htm>.)
- b. **Where and when to report.** The recipient must report executive total compensation described in paragraph 12.2.a of this award term: (i.) As part of the registration Central System for Award Management profile available at <https://sam.gov/SAM/> (ii.) By the end of the month following the month in which this award is made, and annually thereafter.

### 12.3. Reporting of Total Compensation of Subrecipient Executives.

- a. **Applicability and what to report.** Unless exempt as provided in paragraph 12.4. of this award term, for each first-tier 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:

**12.3.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

**12.3.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 12.3.a. of this award term:

**12.3.b.1.** To the recipient.

**12.3.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.

#### **12.4. 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:

**12.4.a.1.** subawards, and the total compensation of the five most highly compensated executives of any subrecipient.

#### **12.5. Definitions.** For purposes of this award term:

**a. 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; (iv.) A domestic or foreign for-profit organization; (v.) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

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

**c. Subaward:**

**12.5.c.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 the recipient award to an eligible subrecipient.

**12.5.c.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 Subpart D).

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

**d. Subrecipient** means an entity that:

**12.5.d.1.** Receives a subaward from the recipient under this award; and

**12.5.d.2.** Is accountable to the recipient for the use of the Federal funds provided by the subaward.

**e. 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)):

**12.5.e.1.** Salary and bonus.

**12.5.e.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.

**12.5.e.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.

- 12.5.e.4.** Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- 12.5.e.5.** Above-market earnings on deferred compensation which is not tax-qualified.
- 12.5.e.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.

### **13. Recipient Integrity and Performance Matters - Reporting of Matters Related to Recipient Integrity and Performance**

#### **13.1. 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.

#### **13.2. 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:
  - 13.2.c.1.** A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
  - 13.2.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;
  - 13.2.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
  - 13.2.c.4.** Any other criminal, civil, or administrative proceeding if:
    - 13.2.c.4.1.** It could have led to an outcome described in paragraph 13.2.c.1, 13.2.c.2, or 13.2.c.3 of this award term and condition;
    - 13.2.c.4.2.** It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
    - 13.2.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.

#### **13.3. 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.

#### **13.4. Reporting Frequency**

During any period of time when you are subject to the requirement in paragraph 13.1 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.

### **13.5. 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—
  - 13.5.c.1. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
  - 13.5.c.2. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

### **14. Federal Financial Reporting (FFR)**

Pursuant to 2 CFR 200.327 and 200.343, 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 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extension of reporting due dates may be approved by EPA upon request of the recipient. The FFR form is available on the internet at: <https://www.epa.gov/financial/forms> All FFRs must be submitted to the Las Vegas Finance Center (LVFC) via email [LVFC-grants@epa.gov](mailto:LVFC-grants@epa.gov) or mail it to:

USEPA LVFC  
4220 S. Maryland Pkwy Bldg. C, Suite 503  
Las Vegas, NV 89119

The LVFC 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.

### **15. Indirect Cost Rate Agreements**

This term and condition implements EPA's Indirect Cost Policy for Recipients of EPA Assistance Agreements (IDC Policy) and applies to all EPA assistance agreements unless there are statutory or regulatory limits on IDCs.

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 one of the following on an exception basis for EPA agreements:
  - 10% *de minimis* as detailed in section 6.3 of the IDC Policy; or
  - Expired fixed rate with carry-forward 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 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 pending approval of their IDC rate by the cognizant Federal agency or an exception granted by EPA under section 6.3 or 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 200.331(a)(4) when establishing indirect cost rates for subawards.

See the Indirect Cost Guidance for Recipients of EPA Assistance Agreements for additional information.

#### **16. 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://harvester.census.gov/facides/\(S\(3wauez2yufokbe3engv0dtek\)\)/account/login.aspx](https://harvester.census.gov/facides/(S(3wauez2yufokbe3engv0dtek))/account/login.aspx).

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

#### **17. 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>

#### **18. 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.

**19. 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 200.338, and may also pursue suspension and debarment.

## **20. Disclosing Conflict of Interests**

### **20.1. 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 200.74 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.

## **20.2. 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 200.74. 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 200.74 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.

## 21. Transfer of Funds

**Applicable to all assistance agreements other than Continuing Environmental Program Grants subject to 40 CFR 35.114 and 40 CFR 35.514 when the amount of the award exceeds the 2 CFR 200.88 Simplified Acquisition Threshold.**

- (1) As provided at 2 CFR 200.308(e), 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 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 the amount of the award exceeds the 2 CFR 200.88 Simplified Acquisition Threshold.**

Recipients of continuing environmental program grants subject to 40 CFR 35.114 and 40 CFR 35.514 must notify the EPA Grant Specialist and Project Officer of funding transfers among direct budget categories,

programs, functions and activities or transfers that change amounts budgeted for indirect costs, but prior EPA approval is not required unless the transfer results in significant changes to work plan commitments. Recipients must obtain prior written approval if the transfer involves any of the items listed in 2 CFR 200.407 that EPA did not previously approve at time of award, in response to a previous post-award request by the recipient, or is subject to an EPA waiver of prior approval under 40 CFR 35.114(d) or 40 CFR 35.514(d).

## **Programmatic General Terms and Conditions**

### **22. 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.

### **23. 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 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.

### **24. 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 [iEdison.gov](http://iEdison.gov). 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 [iEdison.gov](http://iEdison.gov). 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.”

## **25. 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.

## **26. 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/guidelines-and-standards/communications-and-it/about-the-section-508-standards/guide-to-the-section-508-standards>).

## **27. 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.

## **28. 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 Care and Use of Laboratory Animals*, prepared by the Institute of Laboratory Animal Resources, National Research Council and can be accessed at: <http://www.nap.edu/readingroom/books/labrats/>.

## **29. 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.

### **30. Tangible Personal Property**

**30.1 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.

#### **30.2 Disposition**

**30.2.1 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.

**30.2.2 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.

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

### **31. 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](mailto: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.]

### **32. Research Misconduct**

In accordance with 2 CFR 200.328, 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]

### **33. 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:

#### **33.1 Scientific Products**

- 33.1.1** Produce scientific products of the highest quality, rigor, and objectivity, by adhering to applicable EPA [information quality guidelines](#), [quality policy](#), and peer review policy.
- 33.1.2** 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.
- 33.1.3** Adhere to EPA's [Peer Review Handbook, 4<sup>th</sup> 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.

### **33.2 Scientific Findings**

- 33.2.1** 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.
- 33.2.2** 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.
- 33.2.3** 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.
- 33.2.4** Document the use of independent validation of scientific methods.
- 33.2.5** 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.
- 33.2.6** Make scientific information available online in open formats in a timely manner, including access to data and non-proprietary models.

### **33.3 Scientific Misconduct**

- 33.3.1** 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.
- 33.3.2** 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.
- 33.3.3** 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.
- 33.3.4** 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.

### **33.4 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/Zc0T7foot8>.

## **Public Policy Requirements**

### **34. 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) Standard Form 424B 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 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 Part 7.
  3. 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.

### **35. 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/](http://www.ecfr.gov/).

### **36. 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.

### **37. 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 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.

**38. 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.

**39. 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 200.322, 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.

**40. 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 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 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).

## ATTACHMENT 1 SUBMIT TO COUNTY OF MARIN - Grant Progress Reporting Template

(Municipality Name)											City Reporting Period: Oct.-Dec 2019		
Position Titles (Edit Positions and Rates)	Deputy PW Director	Associate Civil Engineer - LD	Senior Associate Engineer	Senior Civil Engineer	Assistant PW Director/City Engineer	Engineering Tech II	GIS Analyst II	Junior Engineer	Operations and Maintenance Manager	Volunteer / Intern	Consultant/Contractor Services	Task Totals	Work Narrative
Rate	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 28.88			
Task												\$ -	(Examples below, revise as needed)
<b>1 Large and small full trash capture device installation planning</b>												\$ -	
1.1 TMA delineation, ranking, and prioritization												\$ -	Field GIS data validation Meetings Data requests
1.2 Identify Caltrans partnership opportunities												\$ -	
1.3 Identify public-private partnerships and device retrofit opportunities												\$ -	
1.4 Guidance tools for public-private FTC												\$ -	Municipal Code review
<b>2 Full trash capture device installation and construction</b>												\$ -	
2.1 Technical investigations preliminary design												\$ -	Hydrology/Hydraulics/SD Network studies
2.2 Design documents and permitting												\$ -	
2.3 Contractual purchasing and construction (\$685k funded)												\$ -	
2.3 Purchasing and construction match												\$ -	Reduces with increased match amounts
<b>3 Device maintenance, trash pollution capture, and monitoring</b>												\$ -	
3.1 Monitoring and maintenance effectiveness tools development (OVI A revision, sampling frame dev)												\$ -	Monitoring app testing
3.2 Monitoring and maintenance data collection												\$ -	Monitoring
3.3 Trash reduction reporting and Implementation Plan Updates												\$ -	
<b>4 Trash education and outreach</b>												\$ -	
4.1 Litter prevention/reduction												\$ -	
4.2 Clean Marin Coalition coordination and attendance												\$ -	
<b>4.3 Clean Business Program</b>												\$ -	
4.4 Tarp Your Load outreach events B												\$ -	
4.4 Downtown Streets Team Cleanups												\$ -	
<b>5 Municipal knowledge sharing workshops</b>												\$ -	
1st event												\$ -	
2nd event												\$ -	
<b>6 Project Management</b>												\$ -	
Quarterly reports (16)												\$ -	
Monthly meetings (48)												\$ -	
General Grant Management communications												\$ -	
<b>Total Hours / Charges</b>	0.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		\$ -	Total
Signature* of Agency's Authorized Representative: _____											\$0.00	Funded	
Printed Name of Agency's Authorized Representative: _____											\$0.00	Match	

**ATTACHMENT 2**

**Contractor or Subcontractor Debarment and Suspension Certification**

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The Contractor or Subcontractor, under penalty of perjury, certifies that, except as noted below, he/she or any other person including subcontractors associated therewith in the capacity of owner, partner, director, officer, manager:

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

---

Authorized Representative

\_\_\_\_\_  
Name (typed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Company

\_\_\_\_\_  
Project Name

**CONTRACTOR or SUBCONTRACTOR SHALL INCLUDE A SIGNED DEBARMENT AND SUSPENSION CERTIFICATION FOR EVERY SUBCONTRACTOR LISTED IN THE CONTRACT.**

Notes: The certification of this provision is a material representation of fact upon which reliance was place. Providing false information may result in criminal prosecution or administrative sanctions and the termination of the contract for default.

**Attachment 3**

EPA Best Practice Guide for Procuring Services, Supplies and  
Equipment Under EPA Assistance Agreements

# **Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements.**

**Issue Date: September 7, 2018**

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## Introduction.

As a recipient of EPA financial assistance agreement (grants and cooperative agreements), you will likely find it necessary to purchase or “procure” professional services, supplies or equipment, in order to complete the work under your EPA awards. EPA developed this Best Practice Guide (Guide) to help recipients other than states meet federal requirements contained in the Procurement Standards of the Uniform Grant Guidance (UGG) published at [2 CFR Part 200](#) when making such purchases.<sup>1</sup> **If you have questions regarding any of the matters addressed in this guidance EPA encourages you to contact your Grants Specialist.**

As provided in [2 CFR 200.317](#), with limited exceptions, states follow the same policies and procedures they follow for procurements financed with non-Federal funds.<sup>2</sup> This Guide should, however, be useful to state pass-through entities when monitoring subrecipient compliance with the UGG because the Procurement Standards “flow down” to subrecipients.<sup>3</sup>

## Overview:

This Guide describes the financial transactions covered by the competitive procurement requirements and other rules you must follow when awarding and administering EPA funded contracts. **With very few exceptions, recipients must follow a competitive process when using EPA funds to purchase supplies, equipment and professional services in amounts that exceed the “micro-purchase” threshold of \$10,000.**<sup>4</sup> Other rules cover purchasing systems, conflicts of interest, cost and price analyses, required contract clauses, and bonding requirements for construction. This Guide also provides guidance on unique EPA limitations regarding expenditures for consulting services.

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<sup>1</sup> As provided at 2 CFR 200.110 “. . . non-Federal entities may continue to comply with the procurement standards in previous OMB guidance [e.g. 2 CFR Part 215] for a total of three fiscal years after this part goes into effect. As such, the effective date for implementation of the procurement standards for non-Federal entities will start for fiscal years beginning on or after December 26, 2017.” Please refer to question .110-6 of OMB’s July 2017 [Frequently Asked Questions](#) for details.

<sup>2</sup> States are subject to the requirement at [2 CFR 200.322](#) for procurement of recovered materials “where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000” per unit and any contract clauses required by [2 CFR 200.326](#). All recipients, including states, must comply with EPA’s rules for disadvantaged business enterprises at [40 CFR Part 33](#).

<sup>3</sup> Pass-through entities, as defined at 2 CFR 200.74, are recipients who provide subawards to eligible subrecipients.

<sup>4</sup> The Office of Management and Budget raised the threshold for micro-purchases from \$3,500 to \$10,000 on June 20, 2018 as provided for in the National Defense Authorization Acts (NDAA) for Fiscal Years 2017 and 2018. Some institutions of higher education, their related or affiliated non-profit entities, non-profit research organizations or research institutes may have micro-purchase thresholds higher than \$10,000 with the approval of their cognizant agency for indirect cost rate negotiation. This practice is authorized by section 217(b) of the NDAA for Fiscal Year 2017 and is codified at 41 U.S.C. 1902(a)(2).

## Differences between procurement contracts and other financial transactions.

It is very important to accurately characterize financial transactions you enter into with EPA funds. There are five basic ways to transfer funds to individuals, organizations, companies and government agencies to perform your EPA assistance agreements. The rules differ depending on the type of transaction. Information to help you accurately characterize financial transactions is provided below. EPA has also published detailed Frequent Questions (FQ) to further assist you in characterizing financial transactions at <https://www.epa.gov/grants/grants-policy-issuance-gpi-16-01-epa-subaward-policy-epa-assistance-agreement-recipients>. Note that referring to a financial transaction as a “partnership” does not determine the proper characterization of the transaction or the rules that apply.

1. You may hire personnel or pay current employees to perform work under the assistance agreement.
  - a. An individual must be on your organization’s payroll (i.e., receive a W-2) for tax purposes to be considered an employee. Requirements for documenting the proper use of EPA funds to compensate employees are found at 2 CFR 200.430 (wages) and 2 CFR 200.431 (fringe benefits).
  - b. Consultants or “contract employees” such as outside experts or training instructors who typically receive IRS Form 1099s for tax records are not considered employees for the purposes of your EPA assistance agreement. They are contractors.
2. You may procure supplies, equipment or professional services from individuals or for-profit companies through procurement contracts. You must have a system in place for administering contracts, ensuring that there are no conflicts of interest, conducting cost or price analyses when required and including contract clauses required by the UGG. EPA also has unique requirements which limit the amount you may pay individual consultants in certain cases. These requirements are discussed in more detail below.
3. You may fund a program or project that carries out a public purpose through a subaward of financial assistance to an eligible organization. Subawards usually may be entered into without competition so differentiating between procurement contracts and subawards is particularly important.
  - a. A subaward may take any form. Even if you refer to it as a contract—it is the substance of the transaction that matters. The UGG provides guidance at 2 CFR 200.330 for determining whether a transaction is a subaward or procurement contract and at 2 CFR 200.331 for overseeing and managing subrecipients. EPA has supplemented the UGG guidance through EPA’s Subaward Policy and FQs which are available at <https://www.epa.gov/grants/grants-policy-issuance-gpi-16-01-epa-subaward-policy-epa-assistance-agreement-recipients>. Transactions between recipients and for-profit firms or individual consultants are procurement contracts with very few exceptions. There also

may be situations in which you enter into a procurement contract with a non-profit organization for commercially available services such as accounting.

b. EPA generally considers transactions between recipients and non-Federal units of government, institutions of higher education, and non-profit organizations to be subawards regardless of whether the instrument is referred to as a contract.<sup>5</sup> Subrecipients must comply with the UGG Procurement Standards when procuring services, supplies or equipment. Pass-through entities are responsible for ensuring that their subrecipients procure services, equipment and supplies in compliance with the UGG standards.

4. You may transfer funds between agencies of the same unit of government under interagency service agreements or intergovernmental orders provided for at 2 CFR 200.417 or between departments of an Institution of Higher Education (IHE).

a. Transfers of funds between agencies of the same unit of government (e.g. state, tribal and local governments) are typically not procurement contracts for the purposes of the UGG. EPA also does not consider intragovernmental transfers to be subawards subject to the UGG's management and monitoring requirements of 2 CFR 200.331 unless state, tribal or local law provides otherwise.

b. Transfers of funds between departments of IHEs are typically not procurement contracts or subawards but are governed by the IHE's internal accounting practices for federal funds.

c. Additional guidance on internal transfers is available in the FAQs for EPA's Subaward Policy which is available at <https://www.epa.gov/grants/grants-policy-issuance-gpi-16-01-epa-subaward-policy-epa-assistance-agreement-recipients>

5. You may support the participation of an individual in your EPA -funded program through the payment of stipends, travel allowances, and similar participant support costs under 2 CFR 200.75 and 200.456. These transactions are neither procurement contracts nor subawards.

a. Examples of participant support costs include stipends paid to interns who are not employees of your organization, registration fees for community members attending conferences, and travel support for individuals who are not employees of your organization to enable them to participate in training, work groups, and research projects. EPA also considers rebates, subsidies or similar payments to companies or individuals to encourage their participation in environmental stewardship programs to be participant support costs to the extent consistent with the terms of an EPA assistance agreement.

b. You must have prior EPA approval to pay participant support costs or to re-budget funds EPA has provided for participant support costs to other direct cost categories. EPA

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<sup>5</sup> Transfers of funds between recipients and Federal agencies are governed by the terms of the statute that authorizes the Federal agency to provide services to the recipient on a reimbursable basis.

guidance on participant support costs is available at <https://www.epa.gov/grants/grants-policy-issuance-gpi-16-01-epa-subaward-policy-epa-assistance-agreement-recipients>

## Regulations Governing Procurement Contracts.

The UGG Procurement Standards are at 2 CFR Part 200.317 through 200.326. The standards for the allowability of professional service costs are found at 2 CFR 200.459. Requirements for supplies are set forth at 2 CFR 200.314, and equipment is covered by 2 CFR 200.313. Additional information regarding the difference between equipment and supplies is provided below. What is important for the purposes of this guidance is that services, supplies and equipment must be purchased or leased in compliance with the UGG Procurement Standards. Additionally, EPA has regulations at 40 CFR Part 33 (discussed below) requiring that recipients make good faith efforts use Disadvantaged Business Enterprises (DBE).

Some other EPA regulations may establish purchasing requirements that apply to certain programs. These regulations include those for Superfund Technical Assistance Grants (TAG) (40 CFR Part 35, Subpart M) and Superfund Cooperative (40 CFR Part 35, Subpart O). If you are a recipient of a TAG or Superfund Cooperative Agreement, review the applicable rule to ensure you comply with the specific requirements for your assistance agreement.

## Basic requirements for procurement system.

The UGG's Procurement Standards are designed to ensure that purchases are made at a reasonable price in a fair and openly competitive way. You must also document your procurement decisions in a manner that will ensure that the transaction has met Federal requirements. Many organizations that receive EPA financial assistance have their own procurement systems. If you have your own system which that meets the minimum standards of the UGG, you may use that system. If your system and procurement requirements do not meet the UGG's minimum requirements you may amend the system or your procurement requirements to meet UGG requirements. In any event, **you must conduct your procurements in accordance with the minimum UGG requirements even if your own procurement system has less stringent standards (e.g. for sole-source contracts).**

The following sections of this guidance are based on and provide cross-references to the applicable regulations and can help ensure you have an adequate procurement system. These are minimum standards and your organization may establish more comprehensive procedures.

1. Your procurement procedures must be documented and comply with State, local or tribal laws and regulation as well as Federal laws and the UGG. 2 CFR 200.318(a). (Note: This regulation and the procurement standards cited below can be found here: 2 CFR 200.318 General procurement standards.)
2. You must oversee EPA-funded contracts to ensure contractors perform in accordance with the terms and conditions of the contract. 2 CFR 200.318(b)

3. You must avoid procuring unnecessary or duplicative items and procure economically by consolidating or breaking out items to obtain discounts. Leasing equipment rather than purchasing may be more economical as indicated in the discussion below on equipment. 2 CFR 200.318(d).

4. EPA encourages recipients to enter into intergovernmental or inter-entity agreements to competitively procure common goods and services. 2 CFR 200.318(e). For example, some states have contracts with environmental consultants that local governments may also use to acquire consulting services without further competition. Two or more recipients or subrecipients could also solicit offers for common services such as developing web sites or laboratory analysis and share the cost of the contract. Recipients should document how the costs are allocated, the competitive procedures used to select the contractor, and the basis for selecting the individual or firm awarded the contract.

5. Recipients should consider obtaining excess or surplus Federal personal property from the General Services Administration in lieu of purchasing new equipment. 2 CFR 200.318(f). Additional information on obtaining surplus property from GSA is available at <https://www.gsa.gov/portal/content/104591>

6. If you are carrying out a construction project, consider using “value engineering” clauses to reduce costs. 2 CFR 200.318(g) : “Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost” PART 48—VALUE ENGINEERING <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=774c132cd89f432a4396b976f68a0661&mc=true&n=pt48.1.48&r=PART&ty=HTML>

7. Evaluate potential contractors’ performance histories, integrity records, and compliance with public policies and laws. 2 CFR 200.318(f). Additional information regarding how to find out if a contractor is eligible to participate in an EPA funded project is provided below under “Suspension and Debarment”.

8. Document the history of the procurement. Minimum record -keeping requirements include the “. . . rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.” 2 CFR 200.318(i). EPA recommends that recipients develop detailed paper or electronic files for each procurement action above the micro-purchase threshold. These files should include documentation of:

- a. Selection of contract type (e.g. fixed -price or cost reimbursement);
- b. Independent estimate of the cost for the contract;
- c. Solicitation of bids or offers and responses from potential contractors or sole-source justification;
- d. Determination that the price is reasonable;
- e. Final contract including any clauses required by Appendix II of the UGG;

- f. Amendments to the contract and contract administration actions; and,
- g. Good faith efforts to use DBEs.

More information on these basic procurement requirements is provided below. Additionally, as required by 2 CFR 200.302(b)(7) and 200.403 recipients must have written procedures for determining that costs are necessary, reasonable and allocable to the EPA assistance agreement. Recipients should, for example, be able to document why an EPA -funded contract is necessary to carry out a particular provision of the scope of work for the agreement. Recipients must also have internal controls as required by 2 CFR 200.302(b)(4), including procedures to document that contracts were successfully performed (i.e., goods and services delivered and accepted) and charges to the agreement for contractual services are accurate and documented.

9. EPA is not a party to recipients' contracts. The recipient alone is responsible for exercising sound business judgment in administering contracts and settling protests, disputes and contractor claims. Recipients must, however, refer violations of law to the appropriate local, state or Federal authority. 2 CFR 200.318(k).

## **Conflicts of Interest in Procurement.**

1. Financial Conflicts of Interest. As provided at 2 CFR 200.318(c)(1):

No employee, officer, or agent [of a recipient] may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

You must have written standards of conduct to implement these requirements. These standards may include exceptions when financial interests are not substantial / or unsolicited gifts are of nominal value (e.g. coffee mugs, baseball caps, pens and refrigerator magnets). However, recipients' codes of conduct must include disciplinary actions for violations.

Note: EPA takes financial conflict of interest violations seriously as reflected in EPA's Recipient Conflict of Interest Policy. The Agency may disallow costs for contracts tainted by conflicts of interest whether the recipient has adopted a code of conduct or not.

2. Organizational Conflicts of Interest. Recipients other than state, tribal or local governments must also maintain written standards of conduct addressing organizational conflicts of interest. "Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization." 2 CFR 200.318(c)(2). An example of an organizational conflict of interest is a situation in which a

nonprofit recipient procures services from a for-profit affiliate with EPA funds. Guidance on relationships that make two organizations affiliated is available at 2 CFR 180.905.

## **Disadvantaged Business Enterprise (DBE) opportunity.**

Under 40 CFR 33.301, a recipient must make good faith efforts to contract with DBEs whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement. The good faith efforts are required methods to be used by all EPA recipients to ensure DBEs have the opportunity to compete for procurements funded by EPA financial assistance. The regulations at 40 CFR 33.501(a) require a recipient to document its methods used to adhere to the good faith efforts and retain the documentation in the recipient's records. Recipient's failure to retain proper documentation may constitute noncompliance and result in remedial action as described in 40 CFR 33.105. Examples of proper documentation include, but are not limited to, email logs, phone logs, electronic searches and communication, handouts at conferences, flyers sent to DBEs or similar records. In addition, if one or more of the good faith efforts cannot be performed, EPA recommends that the circumstances that have precluded the efforts be documented and retained in the recipient's records.

In addition, Appendix A to 40 CFR Part 33 requires that each procurement contract signed by an EPA financial assistance agreement recipient include the following term and condition:

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

**EPA's Office of Small and Disadvantaged Business Utilization (OSDBU) provides DBE resources and Training at <https://www.epa.gov/resources-small-businesses>.** The competition requirements discussed below must take into consideration the recipient's obligations under 40 CFR Part 33.

## **Competition.**

**1. You must, to the maximum extent practicable, ensure open and free competition** in your purchasing. 2 CFR 200.319. Some situations that are indicators of unnecessarily restricted competition specified in the regulation include:

- Imposing unreasonable requirements on firms in order for them to compete for your business.
- Requiring unnecessary experience and excessive bonding.
- Allowing noncompetitive pricing practices between firms or between affiliated companies.
- Making noncompetitive awards to consultants that are on retainer contracts.

- Permitting organizational conflicts of interest.
- Specifying only a **brand name** product instead of allowing an **equal product** to be offered and describing the performance of other relevant requirements of the procurement.
- Taking arbitrary actions that favor one firm over others.

a. Recipients may not use geographic preferences in conducting procurements even if those preferences are authorized by state, tribal or local law. A Federal statute must authorize the use of geographic preferences. However, for architectural and engineering (A/E) services, location may be a selection factor provided there are an adequate number of firms to compete for the contract. 2 CFR 200.319(b).

b. Under the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended, 25 U.S.C 450-458ddd-2 tribal recipients may give preference to Indian organizations and to Indian-owned economic enterprises when awarding procurement contracts under EPA assistance agreements.<sup>6</sup> EPA does not interpret the ISDEAA to, in and of itself, authorize sole source procurements with Indian organizations and Indian-owned economic enterprises. However, tribal recipients may give preference to these entities when developing lists for soliciting bids and proposals.

c. Your written procedures for competitive procurements must ensure that solicitations clearly and accurately describe technical requirements, qualitative factors, and minimum standards while avoiding detailed product specifications that restrict competition. You may use “brand name or equivalent” for supplies and equipment only if it is impractical or too costly to develop clear and accurate technical specifications. Recipients must disclose evaluation factors to offerors. 2 CFR 200.319(c).

d. Recipients may use pre-qualified bidders lists only if the lists are periodically updated, take DBE considerations into account, and include enough sources (at least 3) to ensure maximum open and free competition and sources may qualify during the solicitation period. 2 CFR 200.319(d).

## 2. Competition Thresholds.

a. As authorized by 2 CFR 200.320(a), recipients may purchase goods and services that do not cost more than the 2 CFR 200.67 Micro-purchase threshold (currently set at \$10,000 for most recipients) without competition provided purchases are equitably distributed among suppliers to the extent practicable, taking DBE considerations into account, and the price is reasonable.<sup>7</sup>

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<sup>6</sup> Indian Organizations and Indian-owned economic organizations are defined at 25 U.S.C. 1452.

<sup>7</sup> The Office of Management and Budget raised the threshold for micro-purchases from \$3,500 to \$10,000 on June 20, 2018 as provided for in the National Defense Authorization Acts (NDAA) for Fiscal Years 2017 and 2018. Some institutions of higher education, their related or affiliated non-profit entities, non-profit research organizations or research institutes may have micro-purchase thresholds higher than \$10,000 with the approval of their cognizant

(1) The 2 CFR 200.67 micro-purchase threshold is periodically adjusted for inflation or statutory changes and the most current threshold can generally be found at Federal Acquisition Regulation (FAR) at 48 CFR 2.101.<sup>8</sup>

(2) Micro-purchases are appropriate where market forces ensure that prices are competitive (e.g. supplies).

(3) Recipients may not make a series of purchases in a relatively short time frame from the same source (particularly for professional services) in amounts at or less than the micro-purchase threshold or less to avoid competition as that practice would not lead to equitable distribution of purchases from qualified sources. Auditors may properly question compliance with the UGG Procurement Standards in these circumstances. Recipients should make a good faith estimate of the amount of contractual services or products necessary to perform a particular activity over the life of the assistance agreement and estimate the amount of the contract accordingly.

b. For purchases that cost more than the micro-purchase threshold but less than the 2 CFR 200.88 Simplified Acquisition Threshold (currently set at \$250,000), recipients may use 2 CFR 200.320(b) small purchase procedures and solicit offers from an adequate number of sources, taking DBE considerations into account, without formally advertising or otherwise publicizing the contracting opportunity.<sup>9</sup>

(1) The 2 CFR 200.88 Simplified Acquisition Threshold is generally found in the FAR at 48 CFR 2.101, and is periodically adjusted for inflation and statutory changes.<sup>10</sup>

(2) EPA's position is that recipients must obtain documented prices or quotes (e.g. by email or price list searches) from at least 3 three qualified sources to meet this requirement although recipients may establish procurement procedures that require solicitations from more sources.

(3) You need not select the lowest priced item or service if it does not meet your requirements or you can otherwise demonstrate that the goods or services available at a higher price offer the best value. You must, however, justify a decision to purchase at the higher price and ensure that the vendor charges

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agency for indirect cost rate negotiation. This practice is authorized by section 217(b) of the NDAA for Fiscal Year 2017 and is codified at 41 U.S.C. 1902(a)(2).

<sup>8</sup> As of the date of EPA issued this version of the Guide, 48 CFR 2.101 had not been updated to reflect either the \$10,000 micro-purchase threshold.

<sup>9</sup> The Office of Management and Budget raised the Simplified Acquisition Threshold to \$250,000 on June 20, 2018 as provided for in the NDAA for Fiscal Year 2018.

<sup>10</sup> As of the date of EPA issued this version of the Guide, 48 CFR 2.101 had not been updated to reflect either the \$250,000 micro-purchase threshold.

similarly situated customers the same price as it is offering to you and document that decision in the procurement file.

(4) You do not need to obtain bid or performance bonds for purchases in amounts less than the Simplified Acquisition Threshold.

c. Procurements in excess of the Simplified Acquisition Threshold are subject to the formal competitive requirements of 2 CFR 200.319 and 2 CFR 200.320(c) or (d). There are two types of formal procurements—sealed bids and competitive proposals.

(1) Sealed bidding is appropriate when precise specifications can be developed and a firm fixed -priced contract will be awarded to the responsive bidder based principally on price. The sealed bid approach to competitive procurements is typically only used for construction projects, purchases of equipment widely available in the commercial market-place, and procurement of supplies in bulk.

(a) Recipients must solicit bids from an adequate number of potential contractors, taking DBE considerations into account.

(b) Tribal and local government recipients must publicly advertise the contracting opportunity. Other recipients may use web site announcements, pre-qualified or general bidders lists that comply with 2 CFR 200.319(d), or similar means to solicit bids.

(c) The solicitation would need to remain open at least 30 days as provided in 40 CFR 33.301(b) and the recipient should make the U.S. Small Business administration and the U.S. Minority Business Development Agency aware of the solicitation per 40 CFR 33.301(d).

(d) Detailed requirements for sealed bidding are set forth at 2 CFR 200.320(c). If you do not intend to award the contract to the lowest bidder, contact EPA's Grant Specialist to determine if EPA approval is required under 2 CFR 200.324(b).

(2) Procurement by competitive proposals is appropriate when conditions for sealed bidding are not met and the recipient will award either a firm fixed -price or cost -reimbursement contract. This technique is typically used for acquisition of services where the offerors' qualifications or technical approaches may be more important than price considerations.

(a) Requests for proposals (RFP) must be publicized and identify evaluation factors. Publication techniques include website announcements, pre-qualified or general offeror lists that comply with 2 CFR 200.319(d), or similar transparent means to solicit proposals.

(b) The RFP would need to remain open at least 30 days as provided in 40 CFR 33.301(b) and the recipient should make the U.S. Small Business

administration and the U.S. Minority Business Development Agency aware of the solicitation per 40 CFR 33.301(d).

(c) Recipients must have a written method for conducting technical evaluations.

(d) Detailed requirements for procurement by competitive proposals are set forth at 2 CFR 200.320(d).

(e) Note that as authorized by 2 CFR 200.320(d)(5) recipients may use qualification based competitive selection techniques for Architecture and Engineering services where price is not a selection factor provided the recipient negotiates fair and reasonable compensation with the A/E firm.

d. Recipients may request that the EPA review their procurement systems for compliance with the UGG Procurement Standards and thus obtain an exemption from pre-procurement reviews by EPA. 2 CFR 200.324(c). Otherwise, EPA may require that you submit procurement documents for purchases in excess of the Simplified Acquisition Threshold to EPA for clearance prior to or after conducting a competition. 2 CFR 200.324(b).

### 3. Long-term contracts.

a. Recipients may enter into competitively-awarded long-term (generally not to exceed five years) contracts for professional services or equipment leases that include options for periodic renewals. If the long-term contract precedes the EPA assistance agreement, recipients may use that contract if it was procured competitively consistent with Federal financial assistance regulations (including DBE considerations) in effect at the time. The use of such contracts in EPA assistance agreements does not constitute sole source procurement since the original contract was competed.

b. Long-term contracts that were awarded without competition may not meet EPA's minimum requirements for compliance with the UGG Procurement Standards. Additionally, out of scope modifications to contracts in amounts that exceed the Simplified Acquisition Threshold are subject to EPA approval as provided at 2 CFR 200.324(b)(5).

### 4. Sole -Source Contracts.

a. Sole-source contracts in excess of the micro-purchase threshold should be rare. Potential justifications include 200.320(f)(1), only one source has the goods or is able to perform the service, 200.320(f)(2), an emergency, 200.320(f)(3) EPA approval, or 200.320(f)(4) after soliciting a number of sources the recipient reasonably decided competition was inadequate.

b. EPA's general policy is to require competition in accordance with the Procurement Standards in the UGG for commercially available items (including consulting services). EPA recommends that recipients consult with EPA prior to making sole source procurements. Situations in which EPA may approve sole source contracts are generally limited to those in which a patent, copyright, or equipment maintenance agreement with the manufacturer are in place; the service or product demonstrates that an item is available from only one firm; or there is an emergency (e.g. a natural disaster) that precludes competitive contracting. Recipients who procure sole source contracts without EPA approval do so at their own risk.

c. EPA staff may not suggest, recommend or direct recipients to hire particular firms or individuals.

d. EPA does not require recipients to identify contractors in proposals. The fact that a recipient has named a contractor in its proposal as a "partner" or otherwise does not in and of itself justify a sole-source award. If, at any time, EPA finds that a sole-source contract does not comply with EPA's interpretation of the UGG, EPA may disallow all or part of the cost of the contract as provided at 2 CFR 200.338.

## Contract types.

**You must decide which type of contract is appropriate** given the circumstances of each purchase. You may use your standard contract types for contracts under your EPA assistance. Contract types include:

**1. Fixed-price contracts.** Fixed-price contracts are used when there will likely be effective competition based on a complete product description and clear plans and specifications. As provided at 2 CFR 200.320(c), recipients must use fixed price contracts in sealed bid situations. Recipients may use fixed priced contracts in other situations as well.

- a. There should not be any significant technical or engineering unknowns.
- b. The contractor furnishes the goods or services for the fixed -price, and so assumes significant risk. Profit is not typically stated or negotiated separately.

**2. Cost -reimbursable contracts.** You should use a cost -reimbursement contract when it is not feasible to award a fixed price contract.

- a. The contractor's cost and profit are typically negotiated separately. The contractor satisfactorily completes only the amount of work equivalent to the estimated cost to qualify for the negotiated profit; the contractor may not complete the entire project.
- b. The contractor assumes less risk than under a fixed price contract. Alternatively, you may negotiate a cost -reimbursable contract that includes a ceiling that may not be exceeded but requires completion of the work. In this situation, the risk to the contractor is increased.

**4. Time and Materials Contracts.** Recipients may use “time and materials” contracts only in circumstances in which no other contracting instrument is available, and there is a cap on the amount of the contract that the contractor exceeds at its own risk. 2 CFR 200.318(j). A time -and -materials contract is one in which the contract price is the sum of the cost of materials plus fixed labor hours that are “loaded” with wages, overhead, and profit such that the contractor has no incentive to control costs. Additional information on time and materials contract rules is available at 2 CFR 200.318(j)(2).

**5. “Cost Plus” Contracts Prohibited.** Percentage of construction cost and cost plus a percentage cost contracts provide an incentive for the contractor to increase costs in order to increase profit. The UGG Procurement Standards prohibit this type of contract. 2 CFR 200.323(d).

#### **6. Additional resources.**

EPA has posted answers to Frequent Questions on competitive procurement requirements at <https://www.epa.gov/grants/grants-policy-issuance-gpi-16-01-epa-subaward-policy-epa-assistance-agreement-recipients>. Recipients may also consult with their Project Officers and Grant Specialists for advice.

## **Cost or price analysis.**

1. Under 2 CFR 200.323(a), recipients must perform a cost or price analysis in connection with every procurement action other than micro-purchases and simplified acquisitions, including contract modifications.<sup>11</sup> Price analysis includes the comparison of price quotations submitted, market prices, bid prices for firm fixed-price contracts or similar information. Cost analysis is the review and evaluation of each element of cost to determine reasonableness.

2. Recipients must make and document independent estimates before receiving bids or proposals. Additional guidance is available at <https://www.usaid.gov/sites/default/files/documents/1868/300maa.pdf>

3. Under 2 CFR 200.323(b), recipients must negotiate profit as a separate element of cost for procurements other than micro-purchases, including sole -source contracts under the Simplified Acquisition Threshold.

4. You must determine the method and depth of review based on the facts surrounding your particular situation. Factors to consider include the amount of the contract, the extent of competition, the types of goods or services, and your experience in acquiring comparable items. When competition yields pricing within a reasonable range no further review may be necessary.

a. Even though the UGG does not require formal cost or price analyses for purchases in amounts lower than the Simplified Acquisition Threshold recipients must ensure that the

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<sup>11</sup> For procurements subject to 40 CFR Part 35, Subpart O, recipients must conduct a cost or price analysis in connection with every procurement as required by 40 CFR 35.6585.

costs for these transactions are reasonable. 2 CFR 200.403. Factors for determining reasonableness include arms-length bargaining and market prices for comparable goods and services. 2 CFR 200.404. EPA encourages recipients to document efforts taken to compare prices and other means of ensuring that reasonableness of contracts in amounts under the Simplified Acquisition Threshold. Your procurement records must document the basis for the contract price. 2 CFR 200.318(i).

b. When competition yields pricing within a reasonable range, no further review may be necessary. In other situations, recipients may conduct internet searches to find catalogue prices or service rates.

5. Additional information on cost or price analysis is available at Appendix A to this Guide.

## **Limitations on consultant compensation.**

1. By statute, EPA may not reimburse recipients for compensation they pay to individual consultants on an hourly, daily or other basis that has the effect of exceeding the amount paid to Federal employees at Level IV of the Executive Schedule. The amount of allowable consultant compensation is revised at the beginning of each calendar year when Office of Personnel Management (OPM) changes the compensation for Level IV of the Executive Schedule. The 2017 Rate can be found here: Salary Table No. 2017-EX.

a. EPA has implemented the consultant fee limit at 2 CFR 1500.9 and in the most current Consultant Fee Term and Condition in EPA assistance agreements. The term “individual consultant” is defined in section 3 of Grants Policy Issuance 04-04 which was published in the Federal Register at 69 Fed. Reg. 18380 (April 7, 2004).

b. All contracts with individual consultants are subject to the Procurement Standards in Subpart D of 2 CFR Part 200. Contracts or subcontracts with multi-employee firms for services are not affected by the consultant compensation limitation provided the contractor or subcontractor rather than the recipient selects, directs and controls individual employees providing consulting services. Recipients may refer to Grants Policy Issuance 04-04 at Federal Register at 69 Fed. Reg. 18380 (April 7, 2004) for additional information.

c. When the consultant fee applies often involves complex issues. EPA encourages recipients to contact their Grant Specialist if there are any questions.

## **Software and other intellectual property**

You may copyright any software or written material that is subject to copyright and was developed, or for which ownership was purchased, under an award. EPA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so as provided at 2 CFR 200.315.

## Debarment and Suspension

1. You must ensure you do not award a contract to any person (organization or individual) debarred or suspended or otherwise excluded (excluded) from or ineligible for participation in Federal assistance programs, unless you have obtained an exception from EPA under 2 CFR [180.135](#). Excluded individuals are also precluded from acting as principals on contracts that EPA funds. EPA's definition of **principal** is found at [2 CFR 1532.995](#).
2. To verify that the person with whom you intend to do business is not excluded you can:
  - a. Check the [System for Award Management \(SAM\)](#);
  - b. Collect a certification from that person documenting that the person is not excluded; or
  - c. Add a clause or condition to the covered transaction with that person indicating that not being excluded is a condition of the agreement.

### **EPA strongly recommends that recipients check SAM.**

3. When searching SAM, search by the name of the contractor, not by agency, to ensure all debarred, suspended or otherwise excluded contractors are found. EPA recommends that you search using the multiple names search function.
  - a. Some debarred contractors are ineligible under only certain programs. You must check the cause and treatment code to determine the circumstances related to each contractor.
  - b. If your search query provides possible matches, EPA recommends that you contact the agency that imposed the suspension, debarment or exclusion to determine the effect of the action and to ensure a match.
4. You must also ensure your subrecipient or contractor complies with 2 CFR Parts 180 and 1532, when using EPA funds and informs each person with whom they do business with at the next lower tier ([2 CFR Section 180.330](#)) of these requirements. To pass down these requirements, you must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of 2 CFR Parts 180 and 1532 ([2 CFR Section 1532.332](#)). Additional information regarding recipient and subrecipient responsibilities to ensure that excluded entities do not participate in EPA financial assistance programs may be found in the General Terms and Conditions (T&C) "Suspension and Debarment" in the pass-through entity's agreement with EPA.

### Required Contract Clauses.

[Appendix II of the UGG](#) and [Appendix A to 40 CFR Part 33](#) specify the clauses that must be included in your EPA-funded contracts. The requirements vary based on the amount of the contract and the type of activities you will carry out under the EPA -funded agreements.

## Supplies.

Supplies are tangible personal property other than equipment with a per -item acquisition cost of \$5000 or less as provided at 2 CFR 200.94.

1. Electronic devices including laptops, personal computers, tablets, and cell phones with a per -item acquisition cost of less than \$5,000 may be classified as supplies unless the recipient's property management systems classify these items differently. Recipients may define such items as equipment to ensure they are tracked in their inventory systems.

2. You must follow the UGG Procurement Standards when purchasing supplies. Micro-purchases in amounts of \$3500 or less without competition are permissible since competition in the commercial market-place is likely to yield reasonable prices, and recipients must equitably distribute purchases among sources by rotating vendors. Recipients, however, should consider using small purchase procedures to obtain bulk purchase discounts for supplies that will be used in large quantities.

## Equipment.

1. Equipment is defined at 2 CFR 200.33 as tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit, although the recipient may establish a lower dollar amount threshold, through its written policies and procedures. This category includes only equipment the recipient proposes to purchase as a direct cost.

(a) Equipment also includes accessories and services included with the purchase price necessary for the equipment to be operational.

(b) Pursuant to 2 CFR 200.439(b)(2), recipients must have prior EPA approval for equipment purchases.

2. You must follow the UGG Procurement Standards when purchasing equipment. Equipment service or maintenance contracts (not included in the purchase price) that are procured separately may be subject to competition unless the terms of the equipment warranty require that the original equipment manufacturer service or maintain the equipment for the warranty to be effective.

3. Short- or long -term leases of equipment may be more cost-effective than purchases of equipment. UGG requirements for equipment rentals are found at 2 CFR 200.465.

**Even though EPA practice is to budget equipment leasing costs in the "Other" category, equipment rental contracts are also subject to the UGG Procurement Standards.**

## Unique Requirements for Construction Contracts.

1. Some EPA programs that fund construction, alteration and repair of facilities such as Brownfields, Superfund, and State Clean Water and Drinking Water Revolving Funds are subject to prevailing wage requirements relating to the Davis Bacon Act. Recipients should carefully

review the terms and conditions of their assistance agreements for information regarding compliance with this important requirement.

2. Construction and facility improvement contracts in amounts exceeding the Simplified Acquisition Threshold must ensure that EPA's interest is protected through bonding. 2 CFR 200.325.

3. You may request that EPA accept your bonding policies by submitting the bonding policies to your Grant Specialist to obtain approval by an authorized EPA official. If EPA has not approved your policies, bonding must meet the following standards as provided at 2 CFR 200.325(a),(b) and (c).

(a) Bidders must provide a bid guarantee equivalent to five percent of the bid price. The bid guarantee may be a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure the bidder will accept award of a contract if you accept the bidder's bid.

(b) Successful bidders must provide a performance bond for 100 percent of the contract price to ensure fulfillment of the contractors' obligations under the contract.

(c) Successful bidders to provide a payment bond for 100 percent of the contract price. A payment bond ensures payment as required by statute to all persons supplying labor and material under the contract.

## **Single and EPA audit.**

If you spend \$750,000 or more in a year in Federal funds, you must obtain a single or program-specific audit in accordance with the requirements of 2 CFR Part 200, Subpart F Audit Requirements.

1. If you receive only one federal grant and elect to do a program specific audit, it is likely your auditor will review your purchasing practices under EPA's grant. If you elect to have your auditor conduct a single audit, the auditor may review your EPA grant purchases.

2. EPA's Office of Inspector General or the Government Accountability Office (GAO) may conduct an audit of your EPA grants. EPA and GAO auditors are likely to review your purchasing system as well as your purchases. These audits will be planned and performed in such a way as to build upon work performed by your auditors.

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## Appendix A: Conducting a price and or cost analysis

### Price Analysis

A **price analysis** is an evaluation of a proposed price, without regard to the contractor's separate cost elements and proposed profit, to determine the price is reasonable. Although the UGG does not require price analyses for contracts less than the simplified acquisition threshold, a price analyses may be useful in documenting the reasonableness of contract costs. The following guide will assist you in completing price analyses.

**Cost Estimate** – An independent cost estimate for the supplies, equipment, or service you will be purchasing. This estimate may be based on such things as you and your staff's experience with similar purchases, a review of catalog or off-the-shelf prices available on the internet, prices or costs for similar services, or other relevant information. If detailed plans and specifications for a fixed price contract are developed for bidders, the person or firm developing those plans should develop a detailed independent price estimate. Additional guidance is available at <https://www.usaid.gov/sites/default/files/documents/1868/300maa.pdf>

**Comparison of Prices** – Compare prices obtained from catalogues, suppliers, or bidders to your independent estimate.

### Price Reasonableness –

A. If the offeror or bidder's price appears reasonable based on your independent estimate, and other appropriate information, purchase the supply, equipment, or service.

B. If the offeror or bidder's price is significantly higher than your independent estimate, review your requirements to determine whether unnecessary, overly restrictive, or complex requirements caused the higher than expected price. (Even if the price is significantly lower than expected, you should review the stated requirement or plans and specifications to ensure they are complete and will result in the supply, equipment, or service you need.) It may help, in making your determination, to talk to those providing quotes or bids.

1. If, after this evaluation, you determine the price is reasonable, considering the circumstances, purchase the supply, equipment, or service.

2. If you determine inappropriate requirements for the supply, equipment, or service resulted in an unreasonable price or the price is unreasonable, make adjustments and obtain new offers or bids.

C. You should ensure that the contractor is charging you the same prices as other similarly situated customers particularly in sole -source situations. Agreeing to pay an excessive price for

a good or service that you purchase with EPA funds may lead to disallowance of the cost for the item even if you are able to justify sole source procurement.

## Cost Analysis

A **cost analysis** is the evaluation of each major contract cost category to determine reasonableness of each category and of the total cost of a contract or change order. A cost review may be done under negotiated cost type contracts, not fixed-priced contracts. Cost categories include personnel, fringe benefits, travel, subcontracting, indirect costs, profit and the like.

To obtain the information you need to conduct a cost analysis, you must require your offerors to provide cost data with their offers. EPA does not provide a form for this price data, so unless you prescribe a form, offerors may submit their cost data in any appropriate format. The offeror should certify that the information reflects complete, current, and accurate data.

The following is a general list of cost categories under which contractors may submit cost information and guidance on how you should evaluate each category:

**Personnel Costs** – Costs for labor directly related to the contract.

**For Example** the offeror will likely provide information that looks like this:

Category	Estimated Hours	x	Hourly Rate	=	Personnel Cost
Professional	300	x	\$30.00=		\$ 9,000
Nonprofessional	2000	x	25.00=		50,000
Clerical	800	x	15.00=		12,000
<b>Total Direct Personnel Cost</b>					<b>\$71,000</b>

### Consider:

- A. Whether the level of effort or the total amount of time proposed is consistent with the effort required to complete the contract.
- B. The labor mix or the labor categories proposed to ensure they are consistent with the difficulty and technical nature of the work - professional versus nonprofessional versus clerical.
- C. The proposed salaries, including reasonable escalation factors to ensure they are consistent with the offerors' actual pay scales. Generally, the conversion of annual salaries into hourly rates is accomplished by dividing the annual salary by 2,087 hours (assuming an 8-hour work day).

**Fringe Benefits** – Personnel costs other than employees' direct salary or pay (i.e., employer's portion of FICA insurance, retirement, sick leave, holiday pay, and vacation cost. While these costs are normally accumulated in a pool and allocated using percentages as shown below, offerors may calculate actual fringe benefit costs for each employee who will work on your job. Either method is acceptable if applied consistently.

**Example:**

Category	Estimated Fringe Benefit Rate	x	Total Hourly Pay	=Fringe Benefit Amount
Professional	10%	x	\$9,000=	\$ 900
Nonprofessional	10%	x	50,000=	5,000
Clerical	10%	x	12,000=	1,200
<b>Total Fringe Benefit Cost</b>				<b>\$7,100</b>

**Consider:**

A. Whether the fringe benefit rate applied to the direct labor base corresponds to fringe benefits available to each of the proposed labor categories and are consistent with the offeror's established benefits package.

B. Whether the offeror's FICA and unemployment insurance are applied only up to the maximum salary limits established by statute, if any.

**Indirect Costs** – Indirect costs are costs which cannot be charged to a project specific activity. Some contractors may have federally approved indirect cost rates from a cognizant federal audit agency. You may allow the contractor to charge the approved rate if it covers cost-reimbursement contracts.

Indirect costs often include office space, equipment depreciation, and personnel costs for clerical pools, executive salaries, and administrative support. Each organization determines the costs it will include in its indirect cost pool, and the organization must treat the costs the same if the circumstances are alike. Indirect costs are allocated to the particular contracts based on a fair method of approximation, generally a percentage of a specific set of direct costs under the contract. Indirect costs are also referred to as overhead or burden costs.

Indirect costs should be logically grouped and compared to some part or all of the organization's direct costs (the base). The most popular base is direct labor; however, there are instances where an equitable allocation cannot be made using this base.

**Example:**

Category	Rate x	Direct Labor Base	= Cost
Indirect Cost	50% x	\$71,000	= \$35,000
<b>Total Indirect Cost</b>			<b>\$35,000</b>

**Consider if the vendor does not have a federally approved rate:**

A. Whether the allocation base is an equitable basis for distribution.

B. Whether the proposed overhead rate is the same as that used for the contractor's other contracts.

**Travel and per Diem Costs** – Travel costs include transportation, per diem or subsistence, and other reasonable travel related items directly related to the contract.

**Example:**

<b>Transportation</b>	<b>Number of Miles</b>	<b>x</b>	<b>Rate per Mile</b>	<b>=</b>	<b>Amount</b>
POV Office to job site and return	50	x	\$ .30	=	\$15.00
POV Office to EPA and return	20	x	.30	=	\$6.00
<b>Transportation</b>	<b>Origin</b>		<b>Dest</b>		
Flight to attend contract related meeting	Dallas		Waco		\$210.00
<b>Per Diem</b>	<b>Number of Days</b>		<b>Rate per Day</b>		
	10	x	\$75.00	=	\$750.00
<b>Total Travel and Per Diem Cost</b>					<b>\$991.00</b>

**Consider:**

- A. Whether the proposed travel is necessary to complete the contact.
- B. Whether all people traveling on a trip are necessary.
- C. The cost per trip.
- D. Whether the per diem or subsistence allowance is the same for other travel by the offeror's personnel.

You may use federal per diem rates for comparison purposes.

**Supply, Material and Equipment Costs** – Offerors will often have costs for supplies, material, and equipment (items with an acquisition cost of \$5,000 or more), material, and supplies directly related to the contract.

**Example:**

<b>Item</b>	<b>Quantity</b>	<b>x</b>	<b>Cost per Item</b>	<b>=</b>	<b>Cost</b>
Recording Barometers	5	x	\$ 455	=	\$ 2,275
Wind Turbine Generator	1	x	6,370	=	6,370
Incremental Water Quality Samplers	5	x	1,600	=	8,000
Aluminum Tubing	1500 ft.	x	.70 ft.	=	1,050

Item	Quantity x	Cost per Item =	Cost
Miscellaneous Supplies		2105	
<b>Total Equipment, Materials, Supply Cost</b>			\$19,800

Consider:

- A. Whether the proposed equipment (items with a unit acquisition cost of \$5,000 or more) is needed to complete the contract.
- B. Whether it would be better to lease or rent the equipment as opposed to purchasing it.
- C. Whether proposed materials and supplies are needed and the cost appears reasonable.

**Subcontract Costs** – Subcontracts are contracts awarded by your contractor.

**Example:**

Cost Type	Price
<b>Total Contract Costs</b>	\$150,000
<b>Profit</b>	\$15,000
<b>Total Cost</b>	\$165,000

**Consider:**

- A. The procedures for cost review of contracts in excess of the simplified acquisition threshold are the same as for a prime contract, so you will need detailed cost information.
- B. For contracts less than the simplified acquisition threshold, you are not required to conduct a cost analysis but such an analysis may be useful in documenting the reasonableness of the cost for the subcontract. (Profit for offerors and subcontractors should be evaluated based on the profit section below).

**Profit** – Profit is the amount paid to a contractor above the total cost of the contract.

You should ensure that contractors of negotiated contracts are paid only fair and reasonable profits, as required by 2 CFR 200.323(b) profit must be a separate element of price when there is no price competition. EPA does not interpret this requirement to apply to micro-purchases made on a fixed priced basis. As provided in 2 CFR 200.323(b):

To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

**Example:**

<b>Cost Type</b>	<b>Price</b>
<b>Total Direct &amp; Indirect Costs</b>	\$150,000
<b>Profit</b>	\$10,000
<b>Total Cost</b>	\$165,000

**Consider:**

A. The offeror's risk. Generally, the greater the risk the contractor assumes, the higher the rate of profit. Contractors assume greater risks on fixed-price contracts involving complex or difficult tasks as opposed to cost reimbursement contracts.

B. Profits may also be higher if the contractor incurs significant capital costs, exercises considerable ingenuity, or does independent developmental work.

C. Percentage of construction cost and cost plus a percentage cost contracts provide an incentive for the contractor to increase costs in order to increase profit. These contract types must not be used.

**Cost Review Findings**

After you complete a required cost review, you must determine whether the proposed contract cost is reasonable. If the individual items are reasonable, the total cost is reasonable.

A. If you find an individual cost is not reasonable, you should discuss the cost with the contractor. If, based on the contractor's justification, you and the contractor reach agreement that the cost is reasonable, accept the cost. If you and the contractor agree the cost is excessive, negotiate a reduction to a reasonable amount and accept the cost.

B. If you cannot agree with the contractor concerning the reasonableness of proposed costs, reject that contractor's offer. If the next best offer meets your requirements, you should review proposed cost information for that contractor. Follow the same review and negotiation process as above for the new contractor's proposed costs.

**Documentation**

Document all actions in conducting each price or cost analysis. Ensure all price and cost reviews are described and retained in your records in accordance with your record retention requirements or EPA's.