



# FAIRFIELD-SUISUN SEWER DISTRICT

1010 Chadbourne Road • Fairfield, California 94534 • (707) 429-8930 • [www.fssd.com](http://www.fssd.com)

## Board of Director Meeting Agenda

### Board of Directors

Rick Vaccaro, President  
Alma Hernandez, Vice President  
Doug Carr  
Jenalee Dawson  
Catherine Moy  
Marlon Osum  
Amit Pal  
Doriss Panduro  
Scott Tonnesen  
Princess Washington  
Pam Bertani, First Alternate  
K. Patrice Williams, Second Alternate

**Meeting Date:** Monday, September 25, 2023

**Meeting Place:** 1010 Chadbourne Road, Fairfield, CA

**Meeting Time:** 6:00 p.m.

#### Teleconference Notice:

Alternate Board Director K. Patrice Williams will be participating from a teleconference location at: 258 SE Diggs Road, Trenton, SC 29847

1. Roll Call
2. Pledge of Allegiance
3. Public Comments
4. Director Comments/CASA Reports
5. General Manager Report

#### 6. **Consent Calendar:**

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- (a) Subaward Agreement with the Association of Bay Area Governments to Conduct Community Treatment Wetland Co-Design Using Grant Money from EPA Water Quality Improvement Fund .....2
- (b) Award Professional Services Contract for Suisun Force Main Reliability Project .....67
- (c) Approve Board Special Meeting Minutes of July 24, 2023 .....91
- (d) Approve Board Meeting Minutes of July 24, 2023 ..... 92

#### 7. **Discussion Items:**

- (a) Solano County's Request to Provide Sewer Service to Woodcreek 60 .....94  
Subdivision

#### 8. **Information Items:**

- (a) Board Calendar .....99

-- End of Agenda --

The Fairfield-Suisun Sewer District will provide reasonable disability-related modification or accommodation to a person with a disability who requires a modification or accommodation in order to participate in the meeting of the Board of Directors. Please contact the District at (707) 429-8930 at least 48 hours before the meeting if you require such modification or accommodation.

Documents that are disclosable public records required to be made available under California Government Code Section 54957.5 (b) (1) and (2) are available to the public for inspection at no charge during business hours at our administrative offices located at the above address.

Members of the public may speak on any matter within the jurisdiction of the Fairfield-Suisun Sewer District by identifying themselves at the beginning of the meeting. Comments not listed on the agenda will be taken under Public Comments. Comments on matters appearing on the agenda will be taken during consideration of the item.



# FAIRFIELD-SUISUN SEWER DISTRICT

1010 Chadbourne Road • Fairfield, California 94534 • (707) 429-8930 • [www.fssd.com](http://www.fssd.com)

September 20, 2023

## AGENDA REPORT

TO: Board of Directors

FROM: Emily Corwin, Senior Environmental Engineer

SUBJECT: EPA Grant Funding for Community Treatment Wetland and Climate Resiliency Project Concept Design

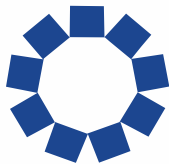
**Recommendations:** (1) Authorize the General Manager to execute a Funding Agreement for a Community Treatment Wetland and Climate Resiliency Project under EPA Grant #98T55001 with the Association of Bay Area Governments (ABAG) in the amount of \$300,000; and (2) approve a budget adjustment increasing revenue and expense in the amount of \$300,000 to fund the Community Treatment Wetland project.

**Background:** The District successfully partnered with the San Francisco Estuary Partnership, an ABAG entity, on a 2022 EPA Water Quality Improvement Fund (WQIF) grant application titled *Breaking Ground: Implementing Nature-based Solutions, Engaging Communities, and Advancing Innovative Projects*. The grant will fund the planning (first phase) of the [Community Treatment Wetland and Climate Resiliency](#) project identified in the District's [Resilient and Green Master Plan](#). This project is a proposed nature-based solution on the District's Plant to reduce nitrogen discharge from wastewater flows; enhance natural habitat quality; and incorporate public access for recreation and educational opportunities.

**Discussion:** The District must enter a funding agreement with ABAG before fund disbursement. The attached funding agreement has been negotiated with ABAG and reviewed by District legal counsel.

**Fiscal Impact:** The planning phase of the Community Treatment Wetland project will be fully funded by this grant award. Additional funding opportunities are being explored for future phases of the project.

**Attachments:** Funding Agreement for Community Treatment Wetland and Climate Resiliency Project Under EPA Grant #98T55001



ASSOCIATION  
OF BAY AREA  
GOVERNMENTS

Bay Area Metro Center  
375 Beale Street, Suite 700  
San Francisco, CA 94105  
415.820.7900  
[www.abag.ca.gov](http://www.abag.ca.gov)

June 12, 2023

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Mayor, City of Berkeley

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*Jesse Arreguin*  
*Chair, Legislation Committee*  
Mayor, City of Berkeley

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

Mr. Talyon Sortor  
General Manager  
Fairfield-Suisun Sewer District  
1010 Chadbourne Rd.  
Fairfield, CA 94534

RE: FUNDING AGREEMENT FOR COMMUNITY TREATMENT WETLAND AND CLIMATE RESILIENCY PROJECT UNDER EPA GRANT #98T55001

Dear Mr. Sortor:

This letter and its attachments, effective as of June 12, 2023 (“Effective Date”) is the agreement between Fairfield-Suisun Sewer District, herein referred to as (“Recipient”), and the Association of Bay Area Governments (“ABAG”) for the performance of professional services in connection with the Community Treatment Wetland and Climate Resiliency Project at the Fairfield-Suisun Sewer District (“Project”) to support the Breaking Ground: Implementing Nature-based Solutions (“NBS”), Engaging Communities, and Advancing Innovative Projects Water Quality Improvement Fund Agreement.

WHEREAS, ABAG has received grant funds awarded by the United States Environmental Protection Agency (“EPA”) Grant Agreement Number 98T55001 (“Grant Agreement”), attached hereto and incorporated herein by this reference as Attachment E. Accordingly, any applicable clauses in Attachment E are hereby imposed upon Recipient.

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

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

1. It is agreed that Recipient will perform all the services specified in Attachment A, Scope of Work, according to the schedule in Attachment B, Project Payment Schedule, both attached hereto and incorporated herein by this reference.
2. Work will be performed under the direction of Darcie Luce or a designated representative (herein "ABAG Project Manager") who will approve a work plan prior to beginning work.
3. Recipient will be compensated for its services in accordance with Attachment B, Project Payment Schedule, attached hereto and incorporated herein by this reference. The maximum amount payable to Recipient, including (as applicable) labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, subcontractors' costs (including mark-up), travel, equipment, materials and supplies, and expenses shall not exceed three hundred thousand dollars (\$300,000) ("Maximum Payment"). ABAG shall make payments to Recipient in accordance with the provisions described in Attachment B.

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

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

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

4. To the extent requested by the ABAG Project Manager, Recipient shall submit communications and required documentation, including but not limited to invoices, requests for contract modifications, and information on payments received and made to subrecipients, subrecipient utilization, and if applicable, certified payrolls, to the ABAG Project Manager or his or her designee via one or more web-based systems designated by ABAG to which ABAG will provide Recipient with system access. ABAG may withhold payment of invoices pending receipt of such communications and required documentation via the applicable web-based system.
5. The term of the Agreement shall begin on the Effective Date and conclude on October 30, 2026, unless ABAG terminates this agreement earlier as provided below.

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

Recipient may not terminate this agreement without cause. If Recipient believes there is cause for termination, Recipient shall provide notice by advance 10-day written notice, providing the opportunity to cure the default. If no plan of cure is presented after the 10-day period Recipient may be entitled to reimbursement only for costs incurred, to be paid upon submission of proof of work performed. Proof of work submitted by Recipient may include any drafts, notes, partially completed deliverables, or other such materials.

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

To ABAG:	Attention: Darcie Luce Association of Bay Area Governments 375 Beale Street, Suite 700 San Francisco, CA 94105 Email: darcie.luce@sfestuary.org
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To RECIPIENT:	Attention: Emily Corwin Fairfield-Suisun Sewer District 1010 Chadbourne Rd. Fairfield, CA 94534 Email: ecorwin@fssd.com
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8. In performing services under the Agreement, Recipient will be acting as an independent contractor and not as an agent or employee of ABAG. Recipient will have no authority to contract in the name of ABAG, and Recipient will be responsible for its own acts and those of its agents and employees.

9. Recipient agrees to obtain, and maintain, at its own expense for the duration of the Agreement the types of insurance listed in Attachment C, Insurance Provisions, against claims, damages or losses due to injuries to persons or damage to property or other losses arising in connection with the performance of the Agreement, issued by insurers acceptable to ABAG, generally with a Best's Rating of A- or better with a Financial Size Category of VIII or better.

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

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

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

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

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

11. Personally Identifiable Information - Not used.

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

Any updates, revisions, additions, or enhancements to such ABAG Data made by Recipient in the context of the Project shall be the property of ABAG and subject to the provisions of the following paragraph.

13. A. Recipient may contract with consultants or contractors for performance of portions of the work required under this Agreement without the prior written consent of ABAG, provided Recipient complies with other applicable requirements of this Agreement, the applicable Attachments hereto, and applicable federal and state requirements.

B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between MTC and any subrecipient, and no subcontract shall relieve Recipient of its responsibilities and obligations hereunder. Recipient agrees to be as fully responsible to MTC for the acts and omissions of its subrecipient and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Recipient. Recipient's obligation to pay its subrecipient is an independent obligation from MTC's obligation to make payments to Recipient.

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

survive the termination of this Agreement, unless otherwise agreed in writing by ABAG.

If Recipient receives a public records request for records labeled “Confidential Information” Recipient will notify ABAG of the request and delay access to the material until 7 working days after notification to ABAG. If ABAG does not act in protection of its labeled material within that time delay, Recipient may release the requested information.

15. The specific items listed as “Deliverables” in the Scope of Work and furnished to ABAG by Recipient or its subconsultants pursuant to the Agreement (collectively “Work Products”) shall be and are the property of ABAG. ABAG shall be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of the Recipient upon completion or termination of the work shall be immediately delivered to ABAG. Recipient hereby assigns to ABAG ownership of any copyright, patent, trademark, trade secret, or other intellectual property or proprietary rights in the Work Product. Recipient also agrees to execute all papers necessary for ABAG to perfect its ownership of the entire copyright in the Work Product. Recipient shall be responsible for the preservation of any and all such Work Products prior to transmittal to ABAG and shall replace any such Work Products as are lost, destroyed, or damaged while in its possession without additional cost to ABAG. ABAG grants Recipient and its subconsultants a non-exclusive, worldwide, irrevocable, royalty-free license to use, publish, distribute, reproduce, publicly display or perform, and create derivative works from the Work Products. Notwithstanding the above, Work Products are not intended to be used for profit, nor include Recipient’s or other third parties’ intellectual property existing prior to the execution of this Agreement or developed concurrently with this Agreement but not specifically for this Agreement; Recipient or other third parties shall retain all right, title and interest in any such pre-existing intellectual property.

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

17. No member, officer, employee, or agent of ABAG, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, *et seq.* and 87100 *et seq.*, direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, Recipient further covenants that it has made a complete disclosure to ABAG of all facts of which it is aware upon due inquiry bearing upon any possible interest, direct or indirect, which it believes any member, officer, agent or employee of ABAG (or an immediate family member, domestic



partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by ABAG.

18. Recipient shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to ABAG; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement. Recipient shall not engage the services of any subconsultant or independent contractor on any work related to this Agreement if the subconsultant or independent contractor, or any employee of the subconsultant or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement. If at any time during the term of this Agreement, Recipient becomes aware of an organizational conflict of interest in connection with the work performed hereunder, Recipient shall immediately provide ABAG with written notice of the facts and circumstances giving rise to this organizational conflict of interest. Recipient's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, ABAG becomes aware of an organizational conflict of interest in connection with Recipient's performance of the work hereunder, ABAG shall similarly notify Recipient. In the event a conflict is presented, whether disclosed by Recipient or discovered by ABAG, MTC will consider the conflict presented and any alternatives proposed and meet with Recipient to determine an appropriate course of action. ABAG's determination as to the manner in which to address the conflict shall be final.

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

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

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

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

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

Very truly yours,

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

Accepted and Agreed to:

\_\_\_\_\_  
Talyon Sortor  
General Manager  
Fairfield-Suisun Sewer District  
Date: \_\_\_\_\_

## **ATTACHMENT A** **SCOPE OF WORK**

The Fairfield-Suisun Sewer District (FSSD) Community Treatment Wetland and Climate Resiliency Project will create a nature-based solution that integrates a freshwater treatment wetland and horizontal levee within an approximately 100-acre area, located in central Solano County. This project will: 1) develop initial design documents for a nature-based solution to reduce nitrogen discharge from a community of 150,000 residents, enhance native habitat in the Suisun Marsh, and address future conditions to model a scalable solution for the city, county, and Bay Area; and 2) benefit thousands of residents and businesses in Solano County by integrating public access with walking trails and educational opportunities. Project proponents will collaborate with adjacent landowners and stakeholders to develop a project that equitably engages and benefits a disadvantaged community.

### **Task 1: Site Evaluation**

FSSD will identify, gather, and review existing information to evaluate the project site. Information will include but will not be limited to photos, reports, maps, and GIS shapefiles.

#### **Task 1 Deliverables:**

1.1 – Digital folder with an organized file structure of all background information identified.

### **Task 2: Alternative Concept Designs**

FSSD will develop three (3) concept design fact sheets developed to a 5% design development level using existing data only. The three alternative design options will be presented in the form of 11x17 fact sheets with annotated engineering sketches including rough dimensions and materials, and a brief description/ narrative of the designs with estimated treatment capacity and nitrogen removal rates. Alternatives can consist of different nature-based approaches and variations of the same general approach (e.g., differences in materials, in nitrogen removal, in geometry/layout, in the balance between green and gray elements, in project timeframes, or in the needed investment). These deliverables will be shared by FSSD with community stakeholders during a community design charrette and workshop. Draft concept design fact sheets will be a basis of discussion for the community design charrette and the final concept design fact sheets will be a basis of discussion for the partner design workshop.

#### **Task 2 Deliverables:**

- 2.1 – Draft fact sheets representing concept designs
- 2.2 – Final fact sheets representing three alternative concept designs
- 2.3 – Meeting agenda, materials, and summary of community charrette and

### **Task 3: 30% Design Development Package**

FSSD will develop a draft and final 30% engineering design package in electronic format, with a Basis of Design report summarizing permitting and approval descriptions and processes; assumptions or communications that were made to inform the permit strategy; and application, permit, and related fee cost estimates. FSSD will also develop a research plan consisting of a technical memorandum with a (1) field investigation plan to address data requirements for future project phases (e.g., hydrologic & hydraulic study, geotechnical data, biological assessment report, cultural resources survey report) and (2) field work outcomes including the wetland delineation and topographic survey.

Task 3 Deliverables:

- 3.1 – Research Plan Technical Memorandum
- 3.2 – Draft 30% Engineering Design Package
- 3.3 – Final 30% Engineering Design Package

**Task 4: Resilient and Green Master Plan Coordination**

FSSD will use staff time and non-federal matching funds to coordinate and implement the Fairfield-Suisun Sewer District's Resilient and Green Master Plan to develop a flexible and cohesive plant-wide plan with a diversity of multi-benefit projects that promote sustainability, equity, and climate resilience. For example, planning for the Suisun Force Main Retrofit will support design of the freshwater wetland influent source water and community access and design of improvements at the wastewater treatment plant Aeration Basins for Nitrogen Removal will inform the nitrogen removal capacity of the proposed treatment wetland.

Task 4 Deliverables:

- 4.1 – Power point summarizing status of Resilient & Green Master Plan projects

**Task 5: Invoices and Quarterly Progress Reporting**

FSSD staff will provide general project administration including project workflow, contract management, invoicing, and project coordination. FSSD staff will submit progress reports to the SFEP Project Manager as described in Exhibit X.

FSSD staff will also produce a brief summary report at the close of the project. The report will include expected achievement of short-term outcomes, and any expected long-term multi-benefit outcomes.

Task 5 Deliverables:

- 5.1 – Invoices and Quarterly Progress Reports
- 5.2 – Brief Summary Report

## **ATTACHMENT B** **PROJECT PAYMENT SCHEDULE**

In accordance with the EPA funding agreement, ABAG will reimburse Recipient for eligible expenses incurred after March 1, 2023, deemed reasonable and necessary by ABAG incurred by Recipient in the performance of this Agreement. Recipient shall submit invoices for:

Task	Deliverable #	Deliverable	Due Date	Amount
1	1.1	Digital folder with an organized file structure of all background information identified	3/1/24	\$15,000
2	2.1	Draft fact sheets representing concept designs	3/1/24	\$110,000
	2.2	Final fact sheets representing three alternative concept designs	7/1/24	
	2.3	Meeting agenda, materials, and summary of community charette and workshop	7/1/24	
3	3.1	Research Plan Technical Memorandum	10/1/24	\$135,000
	3.2	Draft 30% Engineering Design Package	8/1/24	
	3.3	Final 30% Engineering Design Package	10/1/24	
4	4.1	Power point summarizing status of Resilient & Green Master Plan projects	10/1/24	\$0
5	5.1	Invoices and Quarterly Progress Reports	10 <sup>th</sup> of month following end of the quarter	\$40,000
	5.2	Brief Summary Report	11/1/24	

**Funding Source:** Work under Task 4 will be paid via matching funds provided by FSSD Sewer Fees.

Task	Description	EPA Pass-through (ABAG)	Match	Source of Matching Funds	Total
1	Site Evaluation	\$15,000	\$0		\$15,000
2	Alternative Conceptual Designs	\$110,000	\$0		\$110,000
3	30% Design Development Package	\$135,000	\$0		\$135,000
4	Resilient and Green Master Plan Coordination	\$0	\$300,000	FSSD Sewer Fees	\$300,000
5	Invoicing and Reporting	\$40,000	\$0		\$40,000
<b>TOTAL</b>		<b>\$300,000</b>	<b>\$300,000</b>		<b>\$600,000</b>

## **ATTACHMENT C**

### **INSURANCE PROVISIONS**

#### **PART 1**

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

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

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

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

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of Recipient and Recipient's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, a products/completed operations aggregate liability limit of not less than \$2,000,000 and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of ABAG.

Products and completed operations insurance shall be maintained for three (3) years

following termination of this Agreement.

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

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

4. Excess or Umbrella Insurance in the amount of \$1,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

B. Acceptable Insurers. All policies will be issued by insurers acceptable to ABAG, generally with a Best's Rating of A- or better with a Financial Size Category of VIII or better.

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

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

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

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

- (1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Recipient shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

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

G. Certificates of Insurance. Prior to commencement of any work hereunder, Recipient shall deliver to Ebix, ABAG's authorized insurance Recipient, insurance documentation (including Certificates of Liability Insurance, Evidences of Property Insurance, endorsements, etc.) verifying the aforementioned coverages. Such evidence of insurance shall make reference to all provisions and endorsements referred to above and shall be signed by the authorized representative of the Insurance Company shown on the insurance documentation. **The Project name shall be clearly stated on the face of each Certificate of Liability Insurance and/or Evidence of Property Insurance.**

**RECIPIENT shall submit certificates of insurance to:**

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

H. Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Recipient are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Recipient pursuant hereto, including, but not limited to, liability assumed pursuant to Section 9 of this Agreement.


## PART 2

The following entities are to be named as Additional Insureds under applicable sections of this Attachment C and as ABAG Indemnified Parties, pursuant to Section 9 of the Agreement.

**Metropolitan Transportation Commission (MTC)  
United States Environmental Protection Agency (EPA)**



**ATTACHMENT D**  
**ENVIRONMENTAL PROTECTION AGENCY GRANT AGREEMENT NUMBER 98T55001**

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b> <b>Grant Agreement</b>		<b>GRANT NUMBER (FAIN):</b> 98T55001 <b>MODIFICATION NUMBER:</b> 0 <b>PROGRAM CODE:</b> W9		<b>DATE OF AWARD</b> 05/08/2023
			<b>TYPE OF ACTION</b> New		<b>MAILING DATE</b> 05/11/2023
			<b>PAYMENT METHOD:</b> ASAP		<b>ACH#</b> 90017
			<b>RECIPIENT TYPE:</b> Intermunicipal		
<b>RECIPIENT:</b> Assoc of Bay Area Governments P.O. Box 2050 Oakland, CA 94604 <b>EIN:</b> 94-2832478			<b>PAYEE:</b> Assoc of Bay Area Governments P.O. Box 2050 Oakland, CA 94604		
<b>PROJECT MANAGER</b>		<b>EPA PROJECT OFFICER</b>		<b>EPA GRANT SPECIALIST</b>	
Caitlin Sweeney 375 Beale Street, Ste. 800 San Francisco, CA 94105-2066 <b>Email:</b> caitlin.sweeney@sfestuary.org <b>Phone:</b> 415-778-6681		Suzanne Marr 75 Hawthorne Street, WTR-2-2 San Francisco, CA 94105 <b>Email:</b> marr.suzanne@epa.gov <b>Phone:</b> 415-972-3468		Danielle Carr Grants Branch, MSD-6 75 Hawthorne Street San Francisco, CA 94105 <b>Email:</b> carr.danielle@epa.gov <b>Phone:</b> 415-972-3871	
<b>PROJECT TITLE AND DESCRIPTION</b> San Francisco Bay Water Quality Improvement Fund See Attachment 1 for project description.					
<b>BUDGET PERIOD</b> 03/01/2023 - 12/31/2026		<b>PROJECT PERIOD</b> 03/01/2023 - 12/31/2026		<b>TOTAL BUDGET PERIOD COST</b> \$8,658,918.00	
				<b>TOTAL PROJECT PERIOD COST</b> \$8,658,918.00	
<b>NOTICE OF AWARD</b> <p>Based on your Application dated 09/16/2022 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$4,329,459.00. EPA agrees to cost-share 50.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$4,329,459.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.</p>					
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>			<b>AWARD APPROVAL OFFICE</b>		
<b>ORGANIZATION / ADDRESS</b>			<b>ORGANIZATION / ADDRESS</b>		
U.S. EPA, Region 9 , U.S. EPA, Region 9 Grants Branch, MSD-6 75 Hawthorne Street San Francisco, CA 94105			U.S. EPA, Region 9, Water Division, WTR-1 R9 - Region 9 75 Hawthorne Street San Francisco, CA 94105		
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>					
<b>Digital signature applied by EPA Award Official for</b> Carolyn Truong <b>Digital signature applied by EPA Award Official</b> Angela Mendiola					<b>DATE</b> 05/08/2023

## EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$0	\$4,329,459	\$4,329,459
EPA In-Kind Amount	\$0	\$0	\$0
Unexpended Prior Year Balance	\$0	\$0	\$0
Other Federal Funds	\$0	\$0	\$0
Recipient Contribution	\$0	\$0	\$0
State Contribution	\$0	\$0	\$0
Local Contribution	\$0	\$4,329,459	\$4,329,459
Other Contribution	\$0	\$0	\$0
Allowable Project Cost	\$0	\$8,658,918	\$8,658,918

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.126 - Geographic Programs - San Francisco Bay Water Quality Improvement Fund	Clean Water Act: Sec. 320	2 CFR 200, 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	2309W32012	2223	B	09L2	000BK4	4158	-	-	\$4,329,459
									\$4,329,459

## Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$453,956
2. Fringe Benefits	\$279,612
3. Travel	\$7,000
4. Equipment	\$0
5. Supplies	\$5,000
6. Contractual	\$6,359,002
7. Construction	\$0
8. Other	\$1,258,280
9. Total Direct Charges	\$8,362,850
10. Indirect Costs: 0.00 % Base See Terms and Conditions	\$296,068
11. Total (Share: Recipient <u>50.00</u> % Federal <u>50.00</u> %)	\$8,658,918
12. Total Approved Assistance Amount	\$4,329,459
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$4,329,459
15. Total EPA Amount Awarded To Date	\$4,329,459

### **Attachment 1 - Project Description**

The purpose of this award is to fund the Association of Bay Area Governments' Breaking Ground Project (Project) to implement levee improvements for the Palo Alto Horizontal Levee Pilot Project; develop and deliver science information and curriculum with the local community (including community-centered monitoring for microplastics, education strategy development for Harbor Marsh, and two public stewardship outreach meetings at Harbor Marsh); and evaluate, study and plan two additional horizontal levee projects at the Fairfield-Suisun Sewer District Treatment Wetland and Climate Resilience Project and the Hayward Treatment Ponds.

This assistance agreement provides federal funding in the amount of \$4,329,459. Pre-award costs are approved back to 03/01/2023. To implement the San Francisco Estuary Partnership Comprehensive Conservation and Management Plan (CCMP), the Association of Bay Area Governments will accomplish the following activities: implement levee improvements for the Palo Alto Horizontal Levee through evaluation, Pilot Project; collaborate with the local community to develop and deliver science curriculum, skills and an educational strategy; and further evaluate and plan two San Francisco Bay horizontal levee projects in Fairfield-Suisun and Hayward. Anticipated horizontal levee deliverables for the Palo Alto Horizontal Levee Pilot Project includes: upgrade of effluent pump, wastewater line, culvert and headwalls. Community-based education and monitoring deliverables include: a report on community-centered monitoring program on microplastics and metals, educational strategy memo for Harbor Marsh, and public stewardship events for the Palo Alto Horizontal Levee Pilot Project. Support for future horizontal levee projects include site evaluation, design and plan for the Fairfield-Suisun Sewer District Community Treatment Wetland and Climate Resiliency Project; and operation & maintenance and permitting studies, options analysis and engineering services for the Hayward Treatment Ponds. Activities to be implemented through subawards include for Task 3, writing of project design and development studies for the Hayward horizontal levee, and development of a climate resiliency study for Fairfield; and for Task 2, development and delivery of community-based monitoring and education, and development of a microplastics study.

## **Administrative Conditions**

### **General Terms and Conditions**

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

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

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

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

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

### **B. Procurement**

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

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

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

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

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

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

exceeds the SAT.

Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

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

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

#### **D. Non-Federal Third-Party Contributions**

This award includes non-federal third party contributions. Third party contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantees. As applicable, these records must reflect how the value is placed on third party contributions. The value of third party contributions must be applicable to the period to which the cost sharing or matching requirement apply (2 CFR Part 200.306).

### **Programmatic Conditions**

#### **a. Reporting**

The recipient shall submit quarterly progress reports to the EPA Project Officer within 30 calendar days after the end of each Federal fiscal quarter (January 31, April 30, July 31, and October 31). The progress reports should include:

- a discussion of the activities conducted during the previous two quarters (including a comparison of actual accomplishments with the anticipated outputs and outcomes specified in the workplan),
- progress towards milestones,
- problems encountered with achieving outputs and outcomes, and their resolution,
- activities planned for the next two quarters,
- a financial accounting of costs incurred during the reporting period,
- cumulative project costs (EPA and match amounts) since the beginning of the project, by task, and
- identification of any special EPA assistance needed, and an explanation of any cost overruns.

The recipient will notify the EPA Project Officer if something materially impairs their ability to complete the tasks and deliver the products, outputs and outcomes identified in the workplan.

Within 120 days of the end of the project period documenting project activities over the entire project period and the recipient's achievements with respect to the project's purposes and objectives. The final

report must be emailed to the EPA Project Officer.

#### **b. Grant Source Recognition**

The recipient should publicly acknowledge the US EPA San Francisco Bay Water Quality Improvement Fund as the funding vehicle for the projects when the grantee is asked by public entities, federal agencies or state and local agencies about the projects and on-going results.

#### **c. Quality Assurance Plan**

This grant includes the performance of environmental measurements. The QA Plan must be approved by the EPA Project Officer, the Region 9 Quality Assurance Manager, and the recipient's Quality Assurance Officer before the new measurement activities are undertaken. Emergency measurements may be taken without a QA Plan being prepared if the Region 9 Quality Assurance Manager agrees that the nature of the data collection activity required due to the emergency warrants an exemption. Contact the QA Office at 415-972-3411. Additional information on these requirements can be found at the EPA Office of Grants and Debarment Web Site: <https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>

#### **d. Competency of Organizations Generating Environmental Measurement Data**

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

#### **e. Subaward Reporting Requirement**

The recipient must report on its subaward monitoring activities under [2 CFR 200.331](#)(d). Examples of items that must be reported if the pass-through entity has the information available are:

- a. Summaries of results of reviews of financial and programmatic reports.
- b. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.
- c. Environmental results the subrecipient achieved.
- d. Summaries of audit findings and related pass-through entity management decisions.
- e. Actions the pass-through entity has taken to correct deficiencies such as those specified at [2 CFR 200.331](#)(e), [2 CFR 200.207](#) and the [2 CFR Part 200.338](#) Remedies for Noncompliance.

#### **f. Cybersecurity Grant Condition for Other Recipients, Including Intertribal Consortia**

**(a)** The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State or Tribal law cybersecurity requirements.

**(b)(1)** EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of



this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) no later than 90 days after the date of this award and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

**(b)(2)** The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.332(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

#### **g. Geospatial Data Standards**

All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at <https://www.fgdc.gov/>.

#### **h. San Francisco Bay Water Quality Improvement Fund Grant Davis-Bacon term and condition (final 03.30.23)**

##### (a) Applicability of the Davis-Bacon (DB) Prevailing Wage Requirements.

The recipient agrees to include in all procurement contracts over \$2,000 for the construction, alteration, and repair of treatment works carried out in whole or in part with funds made available by the San Francisco Water Quality Improvement Fund (SFBWQIF) awarded under section 320 of the Clean Water Act (CWA), a term and condition requiring compliance with section 513 of the CWA (labor standards).

The recipient must also require that its subrecipients include this term and condition in any contracts issued by the subrecipients over \$2,000 for the construction, alteration, and repair of treatment works if carried out in whole or in part with funds under the SFBWQIF.

*The term and condition can be found below in Sections (b) through (e) below.*

If the recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the recipient must discuss the situation with EPA before authorizing work on that site.

##### (b) Obtaining Wage Determinations.

(1) Unless otherwise instructed by EPA on a project specific basis, the recipients shall use DOL

General Wage Classifications for the locality in which the construction activity subject to DB will take place. Recipients must obtain proposed wage determinations for specific localities at [SAM.gov](https://sam.gov). If the recipient is a non-governmental entity, after the recipient obtains its proposed wage determination, it must submit the wage determination to **Regional Davis Bacon Coordinator [Alexandrea Perez, [perez.alexandrea@epa.gov](mailto:perez.alexandrea@epa.gov)]**, for approval prior to inserting the wage determination into a solicitation, contract or before issuing task orders, work assignments, or similar instruments to existing contractors (ordering instruments) unless subsequently directed otherwise by EPA's Award Official.

Note: Recipients must discuss unique situations that may not be covered by the DOL General Wage Classifications with EPA. If, based on discussions with a recipient, EPA determines that DB applies to a unique situation (e.g., unusually extensive excavation) the Agency will advise the recipient which General Wage Classification to use based on the nature of the construction activity at the site.

(2) Recipients shall obtain the wage determination for the locality in which a San Francisco Bay Water Quality Improvement Fund grant activity subject to DB will take place *prior* to issuing requests for bids, proposals, quotes, or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the recipient shall monitor [SAM.gov](https://sam.gov) on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The recipient shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e., bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the recipient may request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency's finding to the recipient.

(ii) If the recipient does not award the contract within 90 days of the closure of the solicitation, any modifications DOL makes to the wage determination contained in the solicitation shall be effective unless EPA, at the request of the recipient, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The recipient shall monitor [SAM.gov](https://sam.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(iii) If the recipient carries out a San Francisco Bay Water Quality Improvement grant activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the recipient shall insert the appropriate DOL wage determination from [SAM.gov](https://sam.gov) into the ordering instrument.

(3) Recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(4) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

(c) Contract and Subcontract Provisions

(1) The recipient shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of treatment works, and construction projects that would be [eligible under the San Francisco Bay Water Quality Improvement Fund](#), and which is subject to the labor standards provision of section 513 of the CWA (Labor Standards), 33 U.S.C. § 1372, the following labor standards provisions.

(i) Minimum wages.

(I) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor which the recipient obtained under the procedures specified in Item(b) Obtaining Wage Requirements, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(i)(IV) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (1)(i)(II) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. Recipients shall require that the contractor and subcontractors include the name of the recipient employee or official responsible for

monitoring compliance with DB on the poster. Recipients may obtain wage determinations from <https://sam.gov/content/wage-determinations>.

(II)(A) The recipient, on behalf of EPA, shall require that contracts and subcontracts entered into under this agreement provide that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(II)(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the recipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the recipient to the EPA Award Official. The Award Official will transmit the report, to the Administrator of the Wage and Hour Division (WHD) at [whd-cbaconformance\\_incoming@dol.gov](mailto:whd-cbaconformance_incoming@dol.gov). The WHD Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Award Official or will notify the Award Official within the 30-day period that additional time is necessary.

(II)(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the recipient do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the Award Official, to the WHD Administrator for determination. The WHD Administrator, or an authorized representative, at [whd-cbaconformance\\_incoming@dol.gov](mailto:whd-cbaconformance_incoming@dol.gov) will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the Award Official within the 30-day period that additional time is necessary.

(II)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(i)(II)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(III) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(IV) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program.

(ii) Withholding. The recipient, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from the contractor under this contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, EPA may, after written notice to the contractor, or recipient take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(iii) Payrolls and basic records.

(I) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(II)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the recipient who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers

and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/whd/forms/wh347.pdf> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the recipient for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the recipient.

(II)(B) Each payroll submitted to the recipient shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(II)(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (1)(iii)(II)(B) of this section.

(II)(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(III) The contractor or subcontractor shall make the records required under paragraph (1)(iii)(I) of this section available for inspection, copying, or transcription by authorized representatives of the EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, EPA may, after written notice to the



contractor, recipient, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(iv) Apprentices and Trainees.

(I) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the WHD Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(II) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at

not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(III) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(v) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(vi) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this term and condition.

(vii) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(viii) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(ix) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors), the recipient, borrower or subrecipient and EPA, the U.S. Department of Labor, or the employees or their representatives.



## (x) Certification of eligibility.

(I) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(II) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(III) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(d) Contract Provisions for Contracts in Excess of \$100,000.

(1) Contract Work Hours and Safety Standards Act. The recipient shall insert the following clauses set forth in paragraphs (1)(i), (ii), (iii), and (iv) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item (c) Contract and Subcontract Provisions, above, or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(i) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(ii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1)(i) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1)(i) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1)(i) of this section.

(iii) Withholding for unpaid wages and liquidated damages. The recipient, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and

liquidated damages as provided in the clause set forth in paragraph (1)(ii) of this section.

(iv) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1)(i) through (iv) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1)(i) through (iv) of this section.

(2) In addition to the clauses contained in Item (c) Contract and Subcontract Provisions, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in [29 CFR 5.1](#), the recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(e) Compliance Verification.

(1) The recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The recipient must use [Standard Form \(SF\) 1445](#) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(2) The recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the recipient must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Recipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(3) The recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the recipient must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. recipients must conduct more frequent spot checks if the

initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations, the recipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(4) The recipient shall periodically review contractor and subcontractor use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(5) Recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <https://www.dol.gov/whd/america2.htm>.

**END-OF-DOCUMENT**

**ATTACHMENT E**  
**EPA GENERAL TERMS AND CONDITIONS EFFECTIVE OCTOBER 1, 2022**

# **EPA General Terms and Conditions Effective October 1, 2022**

## **1. Introduction**

- (a) The recipient and any sub-recipient must comply with the applicable EPA general terms and conditions outlined below. These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions, and restrictions reflected on the official assistance award document. Recipients **must** review their official award document for additional administrative and programmatic requirements. Failure to comply with the general terms and conditions outlined below and those directly reflected on the official assistance award document may result in enforcement actions as outlined in 2 CFR 200.339 and 200.340.
- (b) If the EPA General Terms and Conditions have been revised, EPA will update the terms and conditions when it provides additional funding (incremental or supplemental) prior to the end of the period of performance of this agreement. The recipient must comply with the revised terms and conditions after the effective date of the EPA action that leads to the revision. Revised terms and conditions do not apply to the recipient's expenditures of EPA funds or activities the recipient carries out prior to the effective date of the EPA action. EPA will inform the recipient of revised terms and conditions in the action adding additional funds.

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

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

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

## **3. Termination**

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

- a. if a recipient fails to comply with the terms and conditions of the award including statutory or regulatory requirements; or
- b. if the award no longer effectuates the program goals or agency priorities. Situations in which EPA may terminate an award under this provision include when:
  - (i) EPA obtains evidence that was not considered in making the award that reveals that specific award objective(s) are ineffective at achieving program goals and EPA determines that it is in the government's interest to terminate the award;

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

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

## Financial Information

### 4. Reimbursement Limitation

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

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

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

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

EPA will not make payments to recipients until the ASAP enrollment requirement is met unless the recipients fall under one of the above categories. Recipients may request exceptions using the procedures below but only EPA programs may obtain waivers.

To enroll in ASAP, complete the ASAP Initiate Enrollment Form located at:

<https://www.epa.gov/financial/forms> and email it to [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) or mail it to:

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

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

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

## Proper Payment Drawdown (for recipients other than states)

- a. As required by [2 CFR 200.305\(b\)](#), the recipient must draw funds from ASAP only for the minimum amounts needed for actual and immediate cash requirements to pay employees, contractors, subrecipients or to satisfy other obligations for allowable costs under this assistance agreement. The timing and amounts of the drawdowns must be as close as administratively feasible to actual disbursements of EPA funds. Disbursement within 5 business days of drawdown will comply with this requirement and the recipient agrees to meet this standard when performing this award.
- b. Recipients may not retain more than 5% of the amount drawn down, or \$1,000 whichever is less, 5 business days after drawdown to materially comply with the standard. Any EPA funds subject to this paragraph that remain undisbursed after 5 business days must be fully disbursed within 15 business days of draw down or be returned to EPA.
- c. If the recipient draws down EPA funds in excess of that allowed by paragraph b., the recipient must contact [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) for instructions on whether to return the funds to EPA. Recipients must comply with the requirements at [2 CFR 200.305\(b\)\(8\) and \(9\)](#) regarding depositing advances of Federal funds in interest bearing accounts.
- d. Returning Funds: [Pay.gov](#) is the preferred mechanism to return funds. It is free, secure, paperless, expedient, and does not require the recipient/vendor to create an account. Contact RTPFC-Grants at [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) to obtain complete instructions. Additional information is available at the [Pay.gov website](#): (<https://www.pay.gov/public/home>). Information on how to repay EPA via check is available at <https://www.epa.gov/financial/makepayment>. Instructions on how to return funds to EPA electronically via ASAP are available at <https://www.fiscal.treasury.gov/asap/>.
- e. Failure on the part of the recipient to materially comply with this condition may, in addition to EPA recovery of the un-disbursed portions of the drawn down funds, lead to changing the payment method from advance payment to a reimbursable basis. EPA may also take other remedies for noncompliance under 2 CFR 200.208 and/or 2 CFR 200.339.
- f. If the recipient believes that there are extraordinary circumstances that prevent it from complying with the 5-business day disbursement requirement throughout the performance period of this agreement, recipients may request an exception to the requirement by following the procedures specified in [RAIN-2018-G06-R](#). EPA will grant exceptions to the 5-business day disbursement requirement only if the recipient demonstrates that compliance places an undue administrative or financial management burden or EPA determines that granting the exception is in the public interest.

## Proper Payment Drawdown for State Recipients

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

## Selected Items of Cost

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

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

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

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

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

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

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

### 7. Consultant Cap

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

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



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

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

## 8. Establishing and Managing Subawards

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

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

1. Be responsible for selecting subrecipients and as appropriate conducting subaward competitions using a system for properly differentiating between subrecipients and procurement contractors under the standards at 2 CFR 200.331 and EPA's supplemental guidance in [Appendix A](#) of the [EPA Subaward Policy](#).
  - (a) For-profit organizations and individual consultants, in almost all cases, are not eligible subrecipients under EPA financial assistance programs and the pass-through entity must obtain prior written approval from EPA's Award Official for subawards to these entities unless the EPA-approved budget and work plan for this agreement contain a precise description of such subawards.
  - (b) Stipends and travel assistance for trainees (including interns) and similar individuals who are not are not employees of the pass-through entity must be classified as participant support costs rather than subawards as provided in [2 CFR 200.1 Participant support costs](#), [2 CFR 200.1 Subaward](#), and EPA's [Guidance on Participant Support Costs](#).
  - (c) Subsidies, rebates and similar payments to participants in EPA funded programs to encourage environmental stewardship are also classified as *Participant support costs* as provided in 2 CFR 1500.1 and EPA's [Guidance on Participant Support Costs](#).
2. Establish and follow a system that ensures all subaward agreements are in writing and contain all of the elements required by 2 CFR 200.332(a). EPA has developed a template for subaward agreements that is available in [Appendix D](#) of the [EPA Subaward Policy](#).
3. Prior to making subawards, ensure that each subrecipient has a "Unique Entity Identifier (UEI)." The UEI is required by [2 CFR Part 25](#) and [2 CFR 200.332\(a\)\(1\)](#). Subrecipients are not required to complete full System for Award Management (SAM) registration to obtain a UEI. Information regarding obtaining a UEI is available at the SAM Internet site: <https://www.sam.gov/SAM/> and in EPA's General Term and Condition "System for Award Management and Universal Identifier Requirements" of the pass-through entity's agreement with the EPA.
4. Ensure that subrecipients are aware that they are subject to the same requirements as those that apply to the pass-through entity's EPA award as required by 2 CFR 200.332(a)(2). These requirements include, among others:

- (a) Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.
- (b) Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition pass-through entity's agreement with EPA entitled **"Reporting Subawards and Executive Compensation."**
- (c) Limitations on individual consultant fees as set forth in 2 CFR 1500.10 and the General Condition of the pass-through entity's agreement with EPA entitled **"Consultant Fee Cap."**
- (d) EPA's prohibition on paying management fees as set forth in General Condition of the pass-through entity's agreement with EPA entitled **"Management Fees."**
- (e) The Procurement Standards in [2 CFR Part 200](#) including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants).

EPA provides general information on other statutes, regulations and Executive Orders on the [Grants internet site](#) at [www.epa.gov/grants](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.

5. Ensure, for states and other public recipients, that subawards are not conditioned in a manner that would disadvantage applicants for subawards based on their religious character.
6. Establish and follow a system for evaluating subrecipient risks of noncompliance with Federal statutes, regulations and the terms and conditions of the subaward as required by 2 CFR 200.332(b) and document the evaluation. Risk factors may include:

Prior experience with same or similar subawards;

- (a) Results of previous audits;
- (b) Whether new or substantially changed personnel or systems, and;
- (c) Extent and results of Federal awarding agency or the pass-through entity's monitoring.

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

- (a) Requiring payments as reimbursements rather than advance payments;
- (b) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- (c) Requiring additional, more detailed financial reports;
- (d) Requiring additional project monitoring;

- (e) Requiring the non-Federal entity to obtain technical or management assistance, and
- (f) Establishing additional prior approvals.

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

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

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

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

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

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

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

15. As provided in 2 CFR 200.333, pass-through entities must obtain EPA approval to make fixed amount subawards. EPA is restricting the use of fixed amount subawards to a limited number of situations that are authorized in official EPA pilot projects. Recipients should consult with 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 1 through 14 above or will refrain from making subawards until the systems are designed and implemented.

## 9. Management Fees

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

## 10. Federal Employee Costs

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

## 11. Foreign Travel

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

## 12. The Fly America Act and Foreign Travel

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

# Reporting and Additional Post-Award Requirements

## 13. System for Award Management and Universal Identifier Requirements

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

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

- a. Must notify potential subrecipients that no entity (see definition in paragraph 13.3 of this award term) may receive a subaward unless the entity has provided its Unique Entity Identifier.
- b. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier. Subrecipients are not required to obtain an active SAM registration but must obtain a Unique Entity Identifier.

- 13.3. Definitions.** For the purposes of this award term:
- a. **System for Award Management (SAM)** means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site: <https://www.sam.gov/SAM/>.
  - b. **Unique Entity Identifier** means the identifier assigned by SAM to uniquely identify business entities.
  - c. **Entity** includes non-Federal entities as defined at 2 CFR 200.1 and also includes all of the following:
    - 13.3.c.1. A foreign organization;
    - 13.3.c.2. A foreign public entity;
    - 13.3.c.3. A domestic for-profit organization; and
    - 13.3.c.4. A domestic or foreign for-profit organization; and
    - 13.3.c.5. A Federal agency.
  - d. **Subaward** is defined at 2 CFR 200.1.
  - e. **Subrecipient** is defined at 2 CFR 200.1.

## **14. Reporting Subawards and Executive Compensation**

### **14.1. Reporting of first-tier subawards.**

- a. **Applicability.** Unless the recipient is exempt as provided in paragraph 14.4. of this award term, the recipient must report each action that obligates \$30,000 or more in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph 14.5 of this award term).
- b. **Where and when to report.** (1) The recipient must report each obligating action described in paragraph 14.1.a of this award term to [www.fsrc.gov](http://www.fsrc.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.fsrc.gov>.

### **14.2. Reporting Total Compensation of Recipient Executives.**

- a. **Applicability and what to report.** The recipient must report total compensation for each of their five most highly compensated executives for the preceding completed fiscal year, if:
  - 14.2.a.1. the total Federal funding authorized to date under this award is \$30,000 or more;
  - 14.2.a.2. in the preceding fiscal year, the recipient received: (i.) 80 percent or more of their annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); (ii.) and \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
  - 14.2.a.3. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at: <http://www.sec.gov/answers/execomp.htm>.)
- b. **Where and when to report.** The recipient must report executive total compensation described in paragraph 14.2.a of this award term: (i.) As part of the registration Central System for Award Management profile available at <https://www.sam.gov/SAM/> (ii.) By the end of the month following the month in which this award is made, and annually thereafter.

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

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

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

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

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

14.3.b.1. To the recipient.

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

### 14.4. Exemptions

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

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

### 14.5. Definitions. For purposes of this award term:

- a. **Federal agency** means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C 552(f).
- b. **Non-Federal entity** means all of the following, as defined in 2 CFR Part 25: (i.) A Governmental organization, which is a State, local government, or Indian tribe; (ii.) A foreign public entity; (iii.) A domestic or foreign nonprofit organization; and (iv.) A domestic or foreign for-profit organization.
- c. **Executive** means officers, managing partners, or any other employees in management positions.
- d. **Subaward:**
- 14.5.d.1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- 14.5.d.2. The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331).
- 14.5.d.3. A subaward may be provided through any legal agreement, including an agreement that the recipient or a subrecipient considers a contract.
- e. **Subrecipient** means a non-Federal entity or Federal agency that:
- 14.5.e.1. Receives a subaward from the recipient under this award; and
- 14.5.e.2. Is accountable to the recipient for the use of the Federal funds provided by the subaward.
- f. **Total compensation** means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information



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

**14.5.f.1.** Salary and bonus.

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

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

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

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

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

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

### **15.1. General Reporting Requirement**

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

### **15.2. Proceedings About Which You Must Report**

Submit the information required about each proceeding that:

- a.** Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b.** Reached its final disposition during the most recent five-year period; and
- c.** Is one of the following:

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

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

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

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

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

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

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

### **15.3. Reporting Procedures**

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

### **15.4. Reporting Frequency**

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

### **15.5. Definitions**

For purposes of this award term and condition:

- a.** Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b.** Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.
- c.** Total value of currently active grants, cooperative agreements, and procurement contracts includes—
  - 15.5.c.1.** Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
  - 15.5.c.2.** The value of all expected funding increments under a Federal award and options, even if not yet exercised.

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

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

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

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



## 17. Indirect Cost Rate Agreements

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

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

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

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

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

## 18. Audit Requirements

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

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

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

## **19. Closeout Requirements**

Reports required for closeout of the assistance agreement must be submitted in accordance with this agreement. Submission requirements and frequently asked questions can also be found at:

<https://www.epa.gov/grants/frequent-questions-about-closeouts>

## **20. Suspension and Debarment**

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

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

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

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

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

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

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

## **22. Disclosing Conflict of Interests**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Officer if the cumulative amount of funding transfers among direct budget categories or programs, functions and activities exceeds 10% of the total budget. Recipients must submit requests for prior approval to the Grant Specialist and Grants Management Officer with a copy to the Project Officer for this agreement.

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

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

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

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

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

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

#### **25. Extension of Project/Budget Period Expiration Date**

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



## 26. Utilization of Disadvantaged Business Enterprises

### **GENERAL COMPLIANCE, 40 CFR, Part 33**

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

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

#### **1. EPA MBE/WBE CERTIFICATION, 40 CFR, Part 33, Subpart B**

EPA no longer certifies entities as Minority-Owned Business Entities (MBEs) or Women-Owned Business Entities (WBEs) pursuant to a class exception issued in October 2019. The class exception was authorized pursuant to the authority in 2 CFR, Section 1500.3(b).

#### **2. SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C**

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

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

#### **3. CONTRACT ADMINISTRATION PROVISIONS, 40 CFR Section 33.302**

The recipient agrees to comply with the contract administration provisions of [40 CFR Section 33.302](#) (a)-(d) and (i).

#### **4. BIDDERS LIST, 40 CFR Section 33.501(b) and (c)**

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

#### **5. FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D**

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

#### **6. MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E**

When required, the recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants and Cooperative Agreements" report (EPA Form 5700-52A) on an annual basis. The current EPA Form 5700-52A can be found at the EPA Grantee Forms Page at [https://www.epa.gov/system/files/documents/2021-08/epa\\_form\\_5700\\_52a.pdf](https://www.epa.gov/system/files/documents/2021-08/epa_form_5700_52a.pdf).

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

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

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

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

#### **7. MBE/WBE RECORDKEEPING, 40 CFR, Part 33, Subpart E**

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

## **Programmatic General Terms and Conditions**

### **27. Sufficient Progress**

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

### **28. Copyrighted Material and Data**

In accordance with [2 CFR 200.315](#), EPA has the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement for Federal purposes.

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

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

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

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

## 29. Patents and Inventions

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

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

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

## 30. Acknowledgement Requirements for Non-ORD Assistance Agreements

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

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

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

## 31. Electronic and Information Technology Accessibility

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

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



### 32. Human Subjects

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

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

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

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

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

### 33. Animal Subjects

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

### 34. Light Refreshments and/or Meals

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

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

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

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

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

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

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

#### **FOR STATE CONTINUING ENVIRONMENTAL PROGRAM GRANT RECIPIENTS EXCLUDING STATE UNIVERSITIES:**

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

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

### **35. Tangible Personal Property**

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

#### **35.2 Disposition**

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

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

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

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

### **36. Dual Use Research of Concern (DURC)**

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

### **37. Research Misconduct**

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

(1) Immediately notify the EPA Project Officer who will then inform the EPA Office of Inspector General (OIG) if, at any time, an allegation of research misconduct falls into one of the categories listed below:

- A. Public health or safety is at risk.
- B. Agency resources or interests are threatened.
- C. Circumstances where research activities should be suspended.
- D. There is a reasonable indication of possible violations of civil or criminal law.
- E. Federal action is required to protect the interests of those involved in the investigation.
- F. The research entity believes that the inquiry or investigation may be made public prematurely so that appropriate steps can be taken to safeguard evidence and protect the rights of those involved.
- G. Circumstances where the research community or public should be informed. [65 FR 76263.III]

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

### **38. Scientific Integrity Terms and Conditions**

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

#### **38.1 Scientific Products**

- 38.1.1** Produce scientific products of the highest quality, rigor, and objectivity, by adhering to applicable EPA [information quality guidelines](#) [quality policy](#) and peer review policy.
- 38.1.2** Prohibit all recipient employees, contractors, and program participants, including scientists, managers, and other recipient leadership, from suppressing, altering, or otherwise impeding the timely release of scientific findings or conclusions.
- 38.1.3** Adhere to [EPA's Peer Review Handbook, 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.

#### **38.2 Scientific Findings**

- 38.2.1** Require that reviews regarding the content of a scientific product that are conducted by the project manager and other recipient managers and the broader management chain be based only on scientific quality considerations, e.g., the methods used are clear and appropriate, the presentation of results and conclusions is impartial.
- 38.2.2** Ensure scientific findings are generated and disseminated in a timely and transparent manner, including scientific research performed by employees, contractors, and program participants, who assist with developing or applying the results of scientific activities.
- 38.2.3** Include, when communicating scientific findings, an explication of underlying assumptions, accurate contextualization of uncertainties, and a description of the probabilities associated with both optimistic and pessimistic projections, if applicable.
- 38.2.4** Document the use of independent validation of scientific methods.
- 38.2.5** Document any independent review of the recipient's scientific facilities and testing activities, as occurs with accreditation by a nationally or internationally recognized sanctioning body.
- 38.2.6** Make scientific information available online in open formats in a timely manner, including access to data and non-proprietary models.

#### **38.3 Scientific Misconduct**

- 38.3.1** Prohibit intimidation or coercion of scientists to alter scientific data, findings, or professional opinions or non-scientific influence of scientific advisory boards. In addition, recipient employees, contractors, and program participants, including scientists, managers, and other leadership, shall not knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty.
- 38.3.2** Prohibit retaliation or other punitive actions toward recipient employees who uncover or report allegations of scientific and research misconduct, or who express a differing scientific opinion. Employees who have allegedly engaged in scientific or research misconduct shall be afforded the due process protections provided by law, regulation, and applicable collective bargaining agreements, prior to any action. Recipients shall ensure that all employees and contractors of the recipient shall be familiar with these protections and avoid the appearance of retaliatory actions.
- 38.3.3** Require all recipient employees, contractors, and program participants to act honestly and refrain from acts of research misconduct, including publication or reporting, as described in [EPA's Policy and Procedures for Addressing Research Misconduct](#), Section 9.C. Research misconduct does not include honest error or differences of opinion. While EPA

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

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

### **38.4 Additional Resources**

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

## **Public Policy Requirements**

### **39. Civil Rights Obligations**

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

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

#### **a. Statutory Requirements**

- i. In carrying out this agreement, the recipient must comply with:
  1. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
  2. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
  3. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.
- ii. If the recipient is an education program or activity (e.g., school, college or university) or if the recipient is conducting an education program or activity under this agreement, it must also comply with:
  1. Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance. For further information about your compliance obligations regarding Title IX, see 40 CFR Part 5 and <https://www.justice.gov/crt/title-ix>
- iii. If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:
  1. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

#### **b. Regulatory Requirements**

- i. The recipient agrees to comply with all applicable EPA civil rights regulations, including:
  1. For Title IX obligations, 40 C.F.R. Part 5; and
  2. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 CFR Part 7.
  3. For statutory and national policy requirements, including those prohibiting discrimination and those described in Executive Order 13798 promoting free speech

and religious freedom, 2 CFR 200.300.

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

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

- i. As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at:  
<https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>
- ii. If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at: <https://www.govinfo.gov/content/pkg/FR-2006-03-21/pdf/06-2691.pdf>
- iii. In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

**40. Drug-Free Workplace**

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

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

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

**41. Hotel-Motel Fire Safety**

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

**42. Lobbying Restrictions**

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



- i) The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The recipient shall abide by the Cost Principles available at 2 CFR Part 200 which generally prohibits the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities.
- ii) The recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000 and require that subrecipients submit certification and disclosure forms accordingly.
- iii) In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- iv) Contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
- v) By accepting this award, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 as required by Section 18 of the Lobbying Disclosure Act; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act. Nonprofit organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are ineligible for EPA subawards.

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

- i) By accepting this award, the recipient certifies, to the best of its knowledge and belief, that:
  - (1) No Federal appropriated funds have been or will be paid, by or on behalf of the recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or any employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the recipient shall complete and submit the linked [Standard Form -- LLL, "Disclosure Form to Report Lobbying,"](#) in accordance with its instructions.
  - (3) The recipient shall require that the language of this certification be included in the award documents for all subawards exceeding \$100,000 at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

#### **43. Recycled Paper**

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

#### **44. Resource Conservation and Recovery Act**

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

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

#### **45. Trafficking in Persons**

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

- i. The recipient, the recipient's employees, subrecipients under this award, and subrecipients' employees may not—
  - 1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
  - 2. Procure a commercial sex act during the period of time that the award is in effect; or
  - 3. Use forced labor in the performance of the award or subawards under the award.
- ii. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if the recipient or a subrecipient that is a private entity—
  - 1. Is determined to have violated a prohibition in paragraph a of this award term; or
  - 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a of this award term through conduct that is either—
    - a. Associated with performance under this award; or
    - b. Imputed to the recipient or subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our Agency at 2 CFR Part 1532.

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

- i. Is determined to have violated an applicable prohibition in paragraph a. of this award term;  
or
- ii. Has an employee who is determined by the agency official authorized to terminate the



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

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

**c. Provisions applicable to any recipient.**

- i. The recipient must inform the EPA immediately of any information received from any source alleging a violation of a prohibition in paragraph a of this award term.
- ii. Our right to terminate unilaterally that is described in paragraph a and b:
  1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
  2. Is in addition to all other remedies for noncompliance that are available to us under this award.
- iii. The recipient must include the requirements of paragraph a of this award term in any subaward made to a private entity.

**d. Definitions.** For purposes of this award term:

- i. “Employee” means either:
  1. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
  2. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- ii. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- iii. “Private entity”:
  1. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
  2. Includes:
    - a. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
    - b. A for-profit organization.
- iv. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

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

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

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

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

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



# FAIRFIELD-SUISUN SEWER DISTRICT

1010 Chadbourne Road • Fairfield, California 94534 • (707) 429-8930 • [www.fssd.com](http://www.fssd.com)

September 20, 2023

PE-9011

## AGENDA REPORT

TO: Board of Directors

FROM: Irene O'Sullivan, Engineering Manager

SUBJECT: Award Design Services Contract for Suisun Force Main Reliability Project

**Recommendation:** Award the Phase 2 Basis of Design and Final Design Contract for the Suisun Force Main Reliability Project (Project) to Carollo Engineers, Inc. (Carollo) for up to \$2,535,500 and authorize the Assistant General Manager/District Engineer to execute the Consulting Services Agreement.

**Background:** The Project involves the design, construction, and intra-agency and community coordination of a new major force main pipeline between Suisun Pump Station and Central Pump Station. This critical pipeline will convey raw wastewater away from Suisun City, Travis Air Force Base, and parts of the City of Fairfield towards the District's Treatment Plant via redundant pipelines at Central Pump Station. Currently, there is a single pipeline that conveys wastewater flows to the Treatment Plant from Suisun Pump Station. This pipeline is nearing its expected useful life and is nearing its hydraulic (service) capacity. The overall goal of this Project is to improve the service to the community and address the reliability, redundancy, serviceability, and age-impacts to this pipeline.

The Project was organized into phases due to its impact on the community and to the District's treatment operations. Phase 1 (completed in July 2023) focused on existing pipeline condition assessment and evaluation of rehabilitation versus replacement, development of new pipeline routing alternatives, evaluation of community impacts, permitting and environmental mitigations planning, cost estimating, and coordination with the Cities. The result of Phase 1 is a plan that the District and Cities support, coordinates with City-led projects, and will be used to guide detailed design.

**Discussion:** Phase 2 of the Project involves Basis of Design/Final Design, permit applications preparation and coordination, environmental documentation preparation,

external funding programs support, and public works bid support. The scope of work also includes: design work for a new stormwater bioretention area near Ohio St. and Union Ave. for the City of Fairfield and predesign for a new bike path on Lotz Way between Civic Center Blvd. and Main St. for the City of Suisun City. Finally, the scope of work includes design of pump station replacements at Suisun Pump Station (as an optional task, depending on the hydraulics of the final design).

Staff issued a competitive Request for Proposals (RFP) for the Phase 1 planning work and selected Carollo as the highest qualified, and most cost-effective designer of the three proposals received. For Phase 2, staff recommends contracting directly with Carollo because of the detailed knowledge and project specific experience Carollo developed in Phase 1. A new consultant would otherwise require revisiting the Phase 1 work extensively and recreating past planning work to bring new personnel up to speed. This would result in loss of time and increased project costs.

**Fiscal Impact:** The total project budget is \$23,800,000 over FY 23/24 – FY 26/27. The not-to-exceed Agreement cost is \$2,535,500. There are sufficient funds to complete this work. Staff will be seeking external funding, including State Revolving Fund (SRF) monies and grant funding, to fund the construction costs for the pipeline project and pump replacements.

Attachment: Consulting Services Agreement with Carollo Engineers, Inc.

## AGREEMENT FOR CONSULTING SERVICES

THIS Agreement (“Agreement”) is made as of September 26, 2023, between the FAIRFIELD-SUISUN SEWER DISTRICT, hereinafter referred to as “DISTRICT” and CAROLLO ENGINEERS, INC., hereinafter referred to as “CONSULTANT.”

### WITNESSETH:

WHEREAS, DISTRICT desires to contract for SUISUN FORCE MAIN RELIABILITY PROJECT 9011 – PHASE 2 which for the purposes of this Agreement shall be called “PROJECT,” and,

WHEREAS, CONSULTANT is willing and qualified to do said consulting work;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements set forth in this Agreement, the sufficiency of which is acknowledged, the parties agree as follows:

#### I. DUTIES OF CONSULTANT

- A. The CONSULTANT shall provide services required for the PROJECT as described in the Scope of Work, Exhibit “A,” which is incorporated in by reference.
- B. CONSULTANT agrees that CONSULTANT and all of said CONSULTANT’s employees and subcontractors hold, have obtained, and shall continue to maintain during the course of this Agreement, all licenses or other statutorily mandated certifications requisite to the performance of the work set forth in the Scope of Work, Exhibit “A,” as may be required in the State of California, if any. Failure of CONSULTANT, its employees and subcontractors to obtain and/or maintain in good standing such licenses or certification shall constitute a breach of this Agreement and shall provide grounds for immediate termination thereof.
- C. CONSULTANT shall perform the PROJECT work in such a manner as to fully comply with typical professional standards of care, including professional quality, technical accuracy, timely completion, and the coordination of designs, drawings, specifications, reports, and other services furnished and/or work undertaken by CONSULTANT pursuant to this Agreement.
- D. The DISTRICT’s approval of drawings, designs, specifications, reports, and incidental engineering work or other services or materials furnished hereunder shall not relieve CONSULTANT of responsibility for the technical adequacy of its work. Neither the DISTRICT’s review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- E. CONSULTANT shall not be relieved of any of the obligations or covenants contained in this Agreement until the tasks as set forth in Exhibit “A” have been completed. It is agreed between CONSULTANT and DISTRICT that those provisions of this Agreement which by their nature continue beyond termination of the Agreement, including but not limited to Sections VIII, IX, X, and XI, shall continue beyond such termination.

#### II. DUTIES OF DISTRICT

The DISTRICT, without cost to CONSULTANT, will provide pertinent information reasonably available to it, which is necessary for performance by CONSULTANT under this Agreement, including previous reports and data relative to the PROJECT. The DISTRICT does not guarantee or ensure the accuracy of any reports, information, and/or data so provided. CONSULTANT will use its professional judgment in the review and use of data so provided. However, CONSULTANT will not be liable for any error or omission in any data furnished by DISTRICT and used by CONSULTANT which could not reasonably be discovered by CONSULTANT. To this extent CONSULTANT is entitled to rely on data provided by DISTRICT.

### III. MISCELLANEOUS PROVISIONS

- A. CONSULTANT shall not assign any rights or duties under this Agreement to a third party without the prior written consent of DISTRICT.
- B. It is understood by the parties that CONSULTANT, in the performance of this Agreement, shall act as, and be, an independent contractor and not an agent or employee of DISTRICT.
- C. The DISTRICT does not authorize the impermissible use of any patent or the impermissible reproduction of any copyrighted material by CONSULTANT in the performance of this Agreement. CONSULTANT is solely responsible for any such use.

### IV. COMPENSATION OF CONSULTANT

- A. Basis of Compensation: For and in consideration of the professional services to be provided by CONSULTANT hereunder, DISTRICT agrees to pay CONSULTANT, and CONSULTANT agrees to accept from DISTRICT compensation for said services on a time and material basis with a maximum fee not to exceed TWO MILLION, SIXTY-THREE THOUSAND, THREE HUNDRED DOLLARS (\$2,063,300.00) in accordance with the Fee Schedule, attached as Exhibit "B," which is incorporated herein by reference. When compensation is determined using hourly rates of CONSULTANT'S personnel and equipment assigned to the work, CONSULTANT rates may be adjusted annually if proposed by CONSULTANT and approved by the DISTRICT. Such rate adjustments shall not exceed five percent (5%) annually."
- B. Change in Scope of Work: Adjustment in compensation for changes in scope of work authorized in writing by the General Manager of the DISTRICT shall be based on the Fee Schedule attached as Exhibit "B." Changes in scope of work so authorized shall not exceed twenty percent of the total maximum fee. No payment shall be made for changes unless authorized in writing by the DISTRICT.
- C. Monthly Payment to CONSULTANT: Payment will be made by the DISTRICT within thirty (30) calendar days after receipt of an invoice from CONSULTANT, provided that all invoices are accompanied by cost documentation determined to be sufficient by the DISTRICT to allow the determination of the reasonableness and accuracy of said invoice. In the event that a payment dispute arises between the parties, CONSULTANT shall provide to the DISTRICT full and complete access to CONSULTANT's project labor cost records and other direct project related cost data, and copies thereof if requested by the DISTRICT.
- D. Notification at 75% of Maximum Fee: CONSULTANT is to notify the DISTRICT when the costs incurred for the PROJECT work total approximately seventy-five percent (75%) of the maximum fee. With the notification, CONSULTANT shall indicate whether the sum of the current costs incurred plus the estimated total cost to complete the task or tasks set forth in the Scope of Work, Exhibit "A," shall be greater or less than the maximum fee. Receipt by the DISTRICT of said notification that the cost for completion of all tasks shall exceed the established maximum fee, will not constitute an approval or authorization to increase the established maximum fee or a waiver of any rights which the District may have under this Agreement.
- E. Cost of Rework: CONSULTANT shall, at no cost to the DISTRICT, prepare any necessary rework occasioned by CONSULTANT's failure to provide services required for the PROJECT as described in Exhibit "A" in a satisfactory manner, due to any act or omission attributable to the CONSULTANT, or its agents, including subcontractors. Nothing in this paragraph is intended to limit the liability of the CONSULTANT for damages which might arise from the CONSULTANT's negligence, willful misconduct, or breach of the covenants set forth in this Agreement.

### V. TIME OF COMPLETION

- A. Work described in Section I shall be completed in accordance with Project Schedule, described in Exhibit "A" which is incorporated in by reference.

- B. Failure of the CONSULTANT to perform any of the required services in a timely manner, or to meet any completion schedule made a part of this Agreement, including any interim milestone set forth, shall constitute a basis for termination for cause as set forth in subsection VII.A. The parties agree to immediately and diligently proceed with their respective duties to the end that the PROJECT will be completed satisfactorily within the prescribed time.

## VI. CONSULTANT'S ASSIGNED PERSONNEL

CONSULTANT designates Jon Marshall, PE to act as Project Manager for the performance of the work and for all matters relating to performance under this Agreement.

Substitution of these assigned personnel will require the prior written approval of the DISTRICT. If the DISTRICT determines that a proposed substitution is not acceptable, then, at the request of the DISTRICT, CONSULTANT shall substitute with a person acceptable to the DISTRICT.

No subcontract shall be awarded, or an outside consultant engaged, by the CONSULTANT, unless the CONSULTANT has made written request to use such subcontractor or outside consultant and its request has been approved in writing by the DISTRICT. No additional approval shall be required for subcontracting with or engagement of an outside consultant identified in Exhibit "A." The written approval of the DISTRICT resulting in the use of or engagement of a subcontractor or outside consultant does not relieve the CONSULTANT of the obligations or covenants set forth in this Agreement.

## VII. TERMINATION

- A. Either party may terminate this Agreement for cause, in whole or in part, if the other party fails to fulfill its obligations under this Agreement through no fault of the terminating party. However, no such termination for cause may be effected unless the other party is given: (1) not less than ten (10) calendar days' written notice (delivered by Certified Mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party before termination.
- B. If the DISTRICT terminates this Agreement pursuant to subsection VII.A., above, nothing set forth in this Agreement is intended to require the District to compensate CONSULTANT for any services which may be claimed to have been provided or be in progress, if the DISTRICT reasonably concludes that further compensation is unwarranted.
- C. The DISTRICT may terminate this Agreement, in whole or in part, whether or not CONSULTANT has failed to fulfill its obligations, if the DISTRICT has a reasonable basis for termination. CONSULTANT will be given: (1) not less than ten (10) calendar days' written notice (delivered by Certified Mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the District before termination.
- D. Upon receipt of a termination notice, CONSULTANT shall: (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the DISTRICT all data, information, and materials as CONSULTANT may have prepared or developed in performing this Agreement, whether completed or in process, including, but not limited to, drawings, specifications, reports, estimates, summaries, software, and electronic files of all deliverables.
- E. Upon termination under subsection VII.C., the sole right and remedy of CONSULTANT shall be to receive payment for all amounts due and not previously paid to CONSULTANT for services completed or in progress in accordance with the Agreement prior to the date of receipt of notice of termination and for services thereafter completed at the request of the DISTRICT and any other reasonable cost incidental to such termination of services. Such payments available to CONSULTANT under this paragraph shall not include costs related to lost profit associated with the expected completion of the work or other such payments relating to the benefit of the bargain.

## VIII. INDEMNITY

CONSULTANT shall indemnify, hold harmless and defend, in any actions at law or in equity, the DISTRICT, its officers, employees, agents, and elective and appointive boards, from all claims, losses, damage, including property damage, personal injury, including death, and liability of every kind, nature and description, including attorneys' fees to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of CONSULTANT related to the provision of any professional services provided hereunder, but not including claims, losses, damage, injury, death, or other liabilities caused by the active negligence, or the willful misconduct of the DISTRICT. Notwithstanding anything in this Agreement to the contrary, this indemnification shall extend to such claims, losses, damage, injury, death, or other liabilities occurring after the completion of the CONSULTANT's operations, arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of CONSULTANT.

Submission of insurance certificates or submission of other proof of compliance with the insurance requirements does not relieve CONSULTANT from liability under this indemnification Section. The obligations of this indemnification Section shall apply whether or not such insurance policies have been determined to be applicable to any of such damages or claims for damages.

## IX. INSURANCE

CONSULTANT shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise out of or in connection with the performance of the work hereunder by the CONSULTANT, his agents, representatives, or employees.

### A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (Form CG 00 01 on an "occurrence" basis). Coverage is to be endorsed to include contractual liability.
2. Insurance Services Office form number CA 00 01 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to the CONSULTANT's profession.

### B. MINIMUM LIMITS OF INSURANCE

CONSULTANT, throughout shall maintain limits no less than:

1. General Liability: \$2,000,000 per occurrence for bodily injury, personal and advertising injury, and property damage, including products and completed operations. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions): \$1,000,000 per claim, \$1,000,000 aggregate.



If CONSULTANT maintains higher limits than the minimums shown above, DISTRICT is entitled to coverage for the higher limits maintained by CONSULTANT.

#### C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retentions must not exceed \$50,000, unless authorized in writing by the DISTRICT.

#### D. OTHER INSURANCE PROVISIONS

1. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions: The DISTRICT, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT, including materials, parts, equipment furnished in connection with such work or operations; or automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT.
2. For any claims related to the Agreement, the CONSULTANT's insurance coverage shall be primary insurance as respects the DISTRICT, its officers, officials, employees and volunteers, but only to the extent the claims arise out of CONSULTANT's acts or omissions. Any insurance or self-insurance maintained by the DISTRICT, its officers, officials, employees and volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.
3. Should any of the above described policies be cancelled prior to the policies' expiration date, CONSULTANT agrees that notice of cancellation will be delivered in accordance with the policy provisions.
4. CONSULTANT hereby grants to the DISTRICT a waiver of any right to subrogation which any insurer of CONSULTANT may acquire against the DISTRICT by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the DISTRICT has received a waiver of subrogation endorsement from the insurer.
5. CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that District is an additional insured on insurance required from subcontractors.

#### E. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the DISTRICT.

#### F. VERIFICATION OF COVERAGE

CONSULTANT shall furnish the DISTRICT with original certificates and amendatory endorsements effecting coverage required by this Section. All certificates and endorsements are to be received and approved by the DISTRICT before any work commences. The DISTRICT reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Section at any time.

#### X. OWNERSHIP OF DOCUMENTS

All rights, title, royalties and interest to all work product of CONSULTANT resulting from its performance under this Agreement, including, but not limited to, drawings, specifications, data, reports, estimates, software, summaries, electronic files of all deliverables, and any other such information and materials as may be prepared or developed by CONSULTANT in performing work under this Agreement, whether complete or in

progress, shall be vested in the DISTRICT, upon payment of amounts owing pursuant to this Agreement, and none shall be revealed, disseminated, or made available by CONSULTANT to others without prior consent of the DISTRICT. If this Agreement is terminated in accordance with Section VII, CONSULTANT shall deliver such documents within two weeks of receipt of a termination notice.

It is understood that CONSULTANT's work product is prepared for this specific project. Any use of such work product by DISTRICT for a different project without CONSULTANT's written approval shall be at the DISTRICT's risk. Any use by DISTRICT of an incomplete work product without CONSULTANT's written approval shall be at DISTRICT's risk.

#### XI. EXAMINATION OF RECORDS

CONSULTANT agrees that the DISTRICT will have access to and the right to examine any directly pertinent books, documents, papers, and records of any and all transactions relating to this Agreement at any time after the inception of the Agreement upon reasonable notice.

#### XII. SCOPE OF AGREEMENT

This writing constitutes the entire Agreement between the parties relative to CONSULTANT's services on the PROJECT, and no modification hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this Agreement.

#### XIII. NOTICES

All notices from one Party to the other shall be in writing and delivered or mailed to such party at its designated address as follows, or sent via facsimile transmission to such telephone number indicated as follows. Such notices shall be deemed to have been made: (1) when hand delivered; (2) as indicated by certified mail receipt; (3) five days after mailing by first class mail; or (4) as indicated on facsimile transmission receipt, if facsimile transmission is followed by prompt certified or first class mailing or hand delivery.

To DISTRICT:                Fairfield-Suisun Sewer District  
                                     1010 Chadbourne Road  
                                     Fairfield, CA 94534-9700  
                                     Phone (707) 429-8930  
                                     Fax (707) 429-1280

To CONSULTANT:        Carollo Engineers, Inc.  
                                     2795 Mitchell Drive  
                                     Walnut Creek CA 94598  
                                     Phone (925) 932-1710  
                                     Fax

#### XIV. APPLICABLE LAWS

CONSULTANT shall perform this Agreement in accordance with all applicable federal, state, and local laws and regulations. This Agreement shall be construed in accordance with California law. Venue concerning any dispute shall be in Solano County.

As set forth in California Labor Code Section 1770, et seq., not less than the prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work, shall be paid to all workers on this project. Copies of the prevailing rate of per diem wages are available to the public from the DIR. The Contractor shall post a copy of the determination of the Director of the DIR regarding per diem wages at each job site.

## XV. EXECUTION IN COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument, it being understood that all parties need not sign the same counterpart. In the event that any signature is delivered by facsimile or electronic transmission (e.g., by e-mail delivery of a ".pdf" format data file), such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or electronic signature page were an original signature.

IN WITNESS the parties have executed this Agreement on the day first above-written.

### **FAIRFIELD-SUISUN SEWER DISTRICT:**

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Signature

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Title

### **CAROLLO ENGINEERS, INC.:**

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Signature

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Title

AGREEMENT FOR CONSULTING SERVICES  
FOR  
SUISUN FORCE MAIN RELIABILITY PROJECT 9011 – PHASE 2  
EXHIBIT A  
SCOPE OF WORK

Exhibit A contains the scope of work details for the Basis of Design/ Final Design and the detailed work schedule.

## **Fairfield-Suisun Sewer District**

### **Suisun Force Main Reliability Project**

#### **Basis of Design and Final Design Scope of Work**

The purpose of this scope of work is to document the basis of design, develop final design documents with cost estimates, coordinate necessary permits and governing agency approvals, prepare environmental documentation, and provide bid period support for Phase 2 of the Suisun Force Main Reliability Project (Project). This scope of work builds upon the alternatives analysis technical memoranda previously completed for the Project under Phase 1. This scope of work also includes an evaluation of pump replacement at the Suisun Pump Station optional tasks for final design of the pump replacement and preliminary design of a bike path in the project alignment.

#### **Task 1 – Basis of Design Report**

The purpose of this task is to establish and document the design criteria used for the final design of the new force main pipelines and basis of design for pump replacement at the Suisun Pump Station. As part of this task, Carollo will:

1. Finalize the pipeline alignment with District from the Phase 1, Alternative 1 sub-alternatives.
  - a) Perform existing utility research and mapping.
  - b) Develop CAD topographic mapping with existing utility information and biological/wetland restrictions for the sub-alternatives (see Figure 1 below of planned survey area). Generally, the survey will include:
    - i. Establishing survey control based on based on CCS Zone III, NAD83, with NAVD 88 elevations.
    - ii. Aerial topographic survey with planimetric mapping at 1-ft contours and orthorectified aerial imagery of the alignment.
    - iii. Ground level survey of the alignment to locate above ground utility structures and “dipping” sewer and storm drain structures to obtain invert elevations, pipe sizes and directions.
    - iv. Obtaining County record maps, monument locating, and developing right-of-way mapping along the alignment.
  - c) Develop a high-level comparison of the sub-alternatives based on available space for the pipelines, environmental and public impacts, and cost to assist in the decision-making process. Carollo will work with the District to identify the preferred alternative.
  - d) Facilitate a workshop with the District to review the sub-alternatives, compare pros and cons of each, and assist the District in confirming the preferred sub-alternative.

- e) Facilitate a workshop with the Project Partners to confirm the final alignment, discuss opportunities for joint projects to include in the final design, and discuss community impacts.
2. Perform a site visit of the pump station interior and exterior to confirm existing conditions, as-built conditions, and available space for modifications
3. Perform a geotechnical investigation including:
  - a) Nine to ten test borings to depths approximately 20 ft below existing grade at open cut trenching locations and up to 60 ft below existing grade in trenchless locations. The deeper borings will be reserved for the trenchless crossing pits on either side of the railroad tracks. Up to three borings will be converted into groundwater elevation monitoring wells and water depths measured for up to 24 months.
  - b) Three to four infiltration rate tests within the proposed bioretention area
  - c) Four to six direct push borings to collect groundwater samples
4. Evaluate force main material options and work with the District to select a preferred material.
5. Evaluate force main hydraulics with the existing Suisun Pump Station pumps and new Suisun Pump Station pumps.
  - a) Develop design level hydraulic analysis of the existing pump station with the new pipelines and confirm pipeline sizes.
  - b) Perform a surge analysis with the existing pumps and the new pipeline. The surge analysis will evaluate up to 6 different operating conditions and confirm the sizing of surge tanks.
  - c) Develop design level hydraulic analysis of new pumps and new pipelines to identify the most efficient sizes of each when designed together.
  - d) Perform a surge analysis with the new pumps and the new pipeline. The surge analysis will evaluate up to 6 different operating conditions and confirm the sizing of surge tanks.
6. Evaluate replacement of the Suisun Pump Station pumps and equipment associated with the pump replacement including:
  - a) Identify replacement pump types and available manufacturers.
  - b) Identify mechanical, structural, and electrical improvements associated with pump replacement, including potential replacement of the existing surge tanks and air release valves.
  - c) Develop preliminary sketches for the pump replacement.
7. Evaluate permanent modification of Suisun Pump Station wet well and/or pig launch facilities for bypass pumping.
8. Evaluate the drainage area for the bioretention basin and develop preliminary sizing of the bioretention area.
9. Develop a summary of key construction constraints, construction sequencing, needed approvals, and construction schedule.
10. Develop a construction cost estimate
11. Provide updated summary of environmental and permitting impacts based on work completed in Phase 1.
12. 30% Design

- a) 30% Design Drawings that include a plan view of the alignment and the following key details:
    - i. Trench section
    - ii. Trenchless crossing section
    - iii. Connection details to the Suisun Pump Station and Central Pump Station
    - iv. Plan view of bio-retention area stormwater quality improvements
  - b) List of proposed specifications
13. Facilitate a workshop with the District to review the Basis of design.

**Deliverables:**

- Kickoff meeting agenda and minutes
- Workshop meeting agenda and minutes
- Draft and final geotechnical report
- Draft and final surge analysis technical memorandum
- Draft and final Basis of Design Report including list of specification sections, 30% design drawings, a construction cost estimate, and estimated construction schedule

**Assumptions:**

- Deliverables will be in electronic (PDF) format
- Anticipated drawing list is attached
- Property access will be available or provided for surveying and geotechnical investigations.
- Title reports for right-of-way mapping is not included. Easements will only be shown if the easement or title report is provided by the District. This assumption does not include the planned title report in the Plat Map and Legal Description task.
- Arial images showing the area surrounding the alignment surrounding areas will be provided however will not be orthorectified.
- "Dipping" sewer and storm drain manholes is anticipated to take 1 day and includes traffic control. A no-cost permit fee is assumed. The traffic control plans will be provided approximately 2-1/2 weeks in advance for review and approval of the City.
- Deconstruction of the wells is assumed to be completed by the contractor during construction and that requirement should be included in the specifications
- A geotechnical report is anticipated to be suitable for the project and a geotechnical data report is not needed.
- Borings and direct push sampling capped with quick setting concrete as directed by the District. Patching borings with hot mix asphalt is not anticipated.
- Surge assumptions – Subconsultant NHC will build off the model developed in 2011 for the Central/Suisun FM Equalization Project.
- Cathodic protection design is not needed because the pipeline material will be inert to corrosion. Carollo will include cathodic protection for metallic fittings, if any.

- Surge assumptions – Subconsultant NHC will build off the model developed in 2011 for the Central/Suisun FM Equalization Project. One surge report will be provided to incorporate both the parallel FM and pump modifications. SCADA data from the recent 2-3 years will be reviewed during the surge analysis.

## **Task 2 – Environmental Support and CEQA+ Compliance**

The purpose of this task is to provide environmental support to assist the District in complying with CEQA+ requirements that are required for state environmental approvals and federal funding. As part of this task, Carollo will contract with Ascent Environmental to:

1. Conduct a kick-off meeting to review the environmental compliance process and strategies and conduct up to 6 project video conference calls to review key details and decisions of the environmental compliance process
2. Perform studies needed to complete CEQA+ including:
  - a. Special status species evaluation
  - b. Air Quality and Climate Change Studies
  - c. Biological and Aquatic Resource Studies
  - d. Cultural Resource Studies
  - e. Alternatives Analysis including a No-Project alternative
3. Prepare the Initial Study / Mitigated Negative Declaration (IS/MND) including:
  - a. Developing the Administrative Draft IS/MND focusing on air quality, biological resources, cultural resources, energy, greenhouse gas emissions, hydrology and water quality, noise, tribal cultural resources, compliance with federal laws and regulations, and a brief qualitative analysis to address other issues, which are not anticipated to have potentially significant effects.
  - b. Prepare the Public Review IS/MND and IS/MND Distribution and Notices documentation
  - c. Attend a public comments meeting at the District's site, and gather and documents all verbal and written comments received
  - d. Prepare a Mitigation Monitoring and Reporting Program (MMRP)
  - e. Prepare a response memorandum to Draft IS/MND comments, present the IS/MND and MMRP to the District Board of Directors, Ascent will also prepare the required CEQA notices to support the public review process, including the draft and final Notice of Intent (NOI), Notice of Completion (NOC), and prepare a Notice of Determination Filing

### **Deliverables:**

- Meeting agenda and meeting notes – electronic submittal (MS Word)
- Information needs memorandum – electronic submittal (MS Word)
- Draft and Final project description – electronic submittal (MS Word)
- Draft and Final General Conformity Applicability Analysis Appendix – electronic submittal (MS Excel and Adobe PDF)
- Draft and Final Biological Resources Assessment Report Memorandum – electronic submittal (MS Word and Adobe PDF)



- Draft and Final Aquatic Resources Delineation Report – electronic submittal (MS Word and Adobe PDF)
- Draft and Final Section 106 Cultural Resources Report – electronic submittal (MS Word)
- Draft SHPO Letter – electronic submittal (MS Word)
- Draft AB 52 Notification Letters – electronic submittal (MS Word)
- Draft and Final Alternatives Analysis Memorandum – electronic submittal (MS Word and Adobe PDF)
- Administrative draft CEQA-Plus IS/MND – electronic submittal (MS Word)
- Screencheck IS/MND – electronic submittal (MS Word)
- Public IS/MND – electronic submittal (MS Word and Adobe PDF)
- Draft and final distribution list – electronic submittal (MS Word MS Excel)
- Draft and final NOI – electronic submittal (MS Word and Adobe PDF)
- Newspaper notice – electronic submittal (MS Word)
- NOC – electronic submittal (Adobe PDF)
- Draft and Final MMRP – electronic submittal (MS Word and Adobe PDF)
- Draft and final responses to comments memo – electronic submittal (MS Word)
- Draft and final IS/MND presentation – electronic submittal MS PowerPoint)
- Draft and final NOD – electronic submittal (Adobe PDF)

#### Assumptions:

- Meetings will take up to 1 hour
- Up to 2 meetings with Native American tribes are budgeted.
- District comments will be consolidated into a single file
- The Project emissions will be below the federal de minimis threshold
- The Project will not require take of species
- The District will file the IS/MND and NOD with the County Recorder
- The District will post the IS/MND on its website for the 30 day public review
- A single response to public comments will be required
- Ascent has budgeted 16 hours of technical staff effort have been allocated to respond to public comments
- If funding is sought from other federal agencies, it is assumed that these federal agencies will be responsible for preparation of any NEPA documentation and associated noticing in accordance with federal requirements. Because the CEQA-Plus IS/MND will address all applicable federal cross-cutting requirements, it may be relied upon to support those NEPA processes
- The District will pay CEQA fees.

### Task 3 – Regulatory Permitting, Local Agency Approvals, and Funding Support

The purpose of this task is to assist the District in obtaining project permits, obtaining agency approvals, and providing technical assistance for obtaining project funding. As part of this task, Carollo will:

1. Assist the District in coordinating with and obtaining the following biological resources permits:
  - a. Clean Water Act Section 404 Nationwide Permit
  - b. Clean Water Act Section 401 Water Quality Certification
  - c. Notification of Lake and Streambed Alteration
    - i. FSSD, as the project applicant, to set up a user account in EPIMS and then add Ascent as its designated representative to prepare the notification.
2. Assist the District in obtaining approvals from the following local agencies:
  - a. Union Pacific Railroad – License Agreement
  - b. Union Pacific Railroad – Right of Entry
  - c. California Northern Railroad – License Agreement
  - d. California Northern Railroad – Right of Entry
  - e. Caltrans – Parent Permit
  - f. Caltrans – Right of Entry
  - g. Cal OSHA – Tunnel Classification
3. Funding Support
  - a. Identify applicable external funding opportunities with projected amounts, assist District with applications and review applications for competitiveness, summarize key requirements and action items for the District, and provide technical project information to support obtaining project funding. An allowance for this effort is included in the budget

#### **Deliverables:**

- Draft and final permit applications with cost estimates for total fees due per permit and/or approval.

#### **Assumptions:**

- Deliverables will be in PDF format
- Permitting timelines in the schedule are estimated based on past projects. Carollo does not have control over permitting timelines.
- The District will pay permit fees. Carollo will estimate application and permit fees due
- The project will fall within the permit parameters of a USACE Nationwide Permit (NWP)
- One coordination meeting with USACE, by teleconference, will be required
- Any impacts to waters of the state will be temporary and compensatory mitigation will not be required. It is also assumed that the project will directly affect less than two tenths of an acre or 300 linear feet of waters of the state, will not directly impact rare, threatened, or endangered species habitat in waters of the state, and will therefore not require an alternatives analysis to identify the Least Environmentally Damaging Practicable Alternative (LEDPA)
- The following additional information that may be required by RWQCB in some cases under the state procedures will not be required for this project:
  - Water quality monitoring plans for in water work if RWQCB determines activities could cause water quality impacts.

- Watershed approach and watershed profiles for compensatory mitigation.
- Climate change assessments for permittee-responsible mitigation, which evaluates the potential impacts of climate change on the long-term viability of the proposed compensatory mitigation. Specifically, it should be an assessment of reasonably foreseeable impacts to the compensatory mitigation associated with climate change, and any measures to avoid or minimize those potential impacts
- The certified CEQA document will satisfy the requirement to documents vegetation removal for the Lake and Streambed Alteration Agreement
- The District will pay filing and permit fees. Carollo will estimate application and permit fees due
- An allowance is included in the funding support task because the scope is difficult to define at this time.
- The District will be responsible for preparation and submission of funding applications. Carollo will provide technical assistance and figures.
- The District will coordinate draft encroachment permits from the City of Suisun City and City of Fairfield.
- 

#### **Task 4 – Pipeline Final Design**

The purpose of this task is to prepare final design documents for bidding the new Suisun Force Main. As part of this task, Carollo will:

1. Prepare 60% Design Documents
  - a. Develop a pothole plan based on the 30% design and pothole critical existing utility crossings. Pothole locations will be surveyed.
  - b. 60% Plans, Specifications, and Class 3 Construction Cost Estimate
  - c. Anticipated construction schedule
  - d. Responses to comments from the 30% design submittal
  - e. Facilitate a 60% design review workshop
2. Prepare 90% Design Documents
  - a. 90% Plans, Specifications, and Class 3 Construction Cost Estimate
  - b. Anticipated construction schedule
  - c. Anticipated construction constraints and sequencing
  - d. Responses to comments from the 60% design submittal
  - e. Facilitate a 90% design review workshop
3. Prepare 100% Design Documents for Bidding
  - a. 100% Plans, Specifications, and Class 3 Construction Cost Estimate
  - b. Anticipated construction schedule
  - c. Updated construction constraints and sequencing
  - d. Responses to comments from the 75% design submittal
4. Plat Map and Legal Descriptions
  - a. Prepare a plat map and legal description for easement acquisition. Carollo will also provide assistance in negotiating with the property owner, preparing an appraisal, and obtaining a title report.

### **Deliverables:**

1. 60%, 90%, and 100% design documents with cost estimates
2. Workshop meeting agenda and minutes
3. All deliverables will be in electronic PDF format.

### **Assumptions:**

1. 30 utility potholes are anticipated, preliminarily estimated at \$2,500 per pothole
2. The District's front-end specifications will be used. Carollo will review and make recommended updates to the front-end specifications.
3. Carollo technical specifications will be used (in CSI Spec Format 0 – 17).
4. Anticipated drawing list is attached.
5. The bioretention area at Ohio St and Union Ave is included in the design.
6. Carollo CAD standards will be used. The District standard cover sheet and pollution prevention requirements plan will be used.
7. A single plat map and legal description will be prepared for an area north of Highway 12 and east of Main Street for the trenchless railroad crossing.
8. Only 1 pipeline material will be bid

## **Task 5 – Bid Period Support**

The purpose of this task is to provide bid period support to assist the District bidding the Project and Contractor selection. As part of this task, Carollo will:

1. Attend 2 pre-bid meetings and present a project overview to perspective bidders
2. Review contractor questions and develop responses to questions for the District to issue.
3. Prepare up to 4 Addenda to update the bid documents during the bid phase and clarify the bid documents
4. Assist the District in reviewing bids, if requested
5. Preparation of Conformed Documents and publishing in PDF

### **Deliverables:**

- Pre-bid meeting presentation and meeting minutes
- Addenda
- Responses to Bidder questions
- Bids review comments

### **Assumptions:**

- The District will issue responses to questions and addenda, prepared by Carollo
- Up to 4 addenda are anticipated
- Conformed documents are not included
- Deliverables will be in PDF format

## **Task 6 – Project Management**

The purpose of this task is to manage the Project and subconsultants, conduct project progress meetings, and additional workshops as needed. As part of this task, Carollo will:

1. Provide technical oversight of the project and ensure the full scope of work is completed on-time and within the contractual budget.
2. Implement quality control procedures for deliverables.
3. Facilitating a project kickoff meeting with staff from all owner Agencies
4. Conduct bi-weekly virtual project progress calls with the District.
5. Prepare monthly invoice with a project status summary.
6. Conduct up to 4 additional in-person meetings at the District's treatment plant with District staff to discuss key project items.
7. Attend up to 3 board meetings to assist the District in answering any questions and/or present the project to the Board, if requested.

### **Deliverables:**

- Kickoff agenda, presentation materials, and meeting minutes with a summary of feedback from participants
- Bi-weekly progress call agenda and meeting minutes
- In-person meeting agenda and meeting minutes
- Monthly invoices and progress status summary

### **Assumptions:**

- The Principal in Charge, Project Manager and Project Engineer will attend the kick-off meeting.
- The Project Manager and Project Engineer will attend the bi-weekly progress calls; 54 are anticipated during the anticipated project duration from August 2023 to August 2025.
- The Project Manager and Project Engineer will attend the 4 in-person meetings at the District's treatment plant.
- The Project Manager and/or Principal in Charge will attend 3 in-person board meetings.

## **Optional Task 7 – Preliminary Bicycle Path Design**

The purpose of this task is to prepare preliminary plans for the proposed bike path project improvements on Lotz Way between Civic Center Blvd and Main Street. As part of this task, Carollo will:

1. Prepare 30% (Preliminary) Plans based generally include the following:
  - a. Notes – Enumerating standard City and Engineer's general notes that apply to this project.
  - b. Typical Sections & Details – preliminary typical sections of the roadway will be developed at key locations to indicate drainage, paving materials, dimensions, and slopes.
  - c. Paving Plan – Shows limits of paving and utility protection/adjustments.

- d. Striping Plan – Will show the location of new improvements based on survey control including centerlines of new pathways.
  - e. Construction quantities and cost estimates
2. Facilitate a workshop with the District and City to review the design
3. Research, summarize, and recommend potential grant funding opportunities.

#### **Deliverables:**

- 30% design drawings and a construction cost estimate with potential grant funding information
- Design review agenda and meeting minutes

#### **Assumptions:**

- The project plans will conform to City, County and State Standards
- Final design will need to be scoped once the class of bike path is known

### **Optional Task 8 – Suisun Pump Station Pump Replacement Final Design**

The purpose of this task is to prepare final design documents for bidding the Suisun Pump Station pump replacement and associated work. Modifications will include replacement of the existing centrifugal line-shaft pumps with new immersible chopper pumps, electrical upgrades including VFD replacement, structural retrofit, potential surge tank replacement, and demolition work as required. As part of this task, Carollo will:

1. Provide additional project management associated with pump replacement final design effort.
2. Prepare 50% Design Documents
  - a. 50% Plans, Specifications, and Class 3 Construction Cost Estimate
  - b. Anticipated construction schedule
  - c. Responses to comments from the 30% design submittal
  - d. Facilitate a 50% design review workshop
3. Prepare 75% Design Documents
  - a. 75% Plans, Specifications, and Class 3 Construction Cost Estimate
  - b. Anticipated construction schedule
  - c. Anticipated construction constraints and sequencing
  - d. Responses to comments from the 50% design submittal
  - e. Facilitate a 75% design review workshop
4. Prepare 100% Design Documents
  - a. 100% Plans, Specifications, and Class 3 Construction Cost Estimate
  - b. Anticipated construction schedule
  - c. Anticipated construction constraints and sequencing
  - d. Responses to comments from the 75% design submittal
  - e. Facilitate a 100% design review workshop
5. Prepare Bid Set Design Documents
  - a. Bid Set Plans, Specifications, and Class 3 Construction Cost Estimate
  - b. Anticipated construction schedule
  - c. Anticipated construction constraints and sequencing

d. Responses to comments from the 100% design submittal

**Deliverables:**

1. 50%, 75%, 100%, and Bid Set design documents in Adobe PDF format
2. Workshop meeting agenda and minutes

**Assumptions:**

- The pumps will be designed to provide a firm capacity of 34.2 mgd to meet estimated future peak wet weather flow (PWWF) conditions.
- Modifications will require structural evaluation and potential retrofit to meet current seismic code requirements.
- The pump station replacement will be bid separately from the force main pipeline
- The fee estimate for this task includes project management for work in this task, which is not included in Task 7
- Electrical design assumptions:
  - The new diesel standby generator, which is currently being pre-purchased by the District and is planned to be installed as part of the Electrical Replacement Project Phase 2, will have been installed prior to the pump station improvements being constructed. This is very important since the installation of the new diesel generator will eliminate the existing diesel engine-driven right-angle drives that currently supply power to three of the four existing sewage pumps. In order to replace the existing VFDs and put them into the main pump station building, the small pump engines and right-angle drives will need to have been removed.
  - It is assumed that the District desires to replace the existing VFDs with new VFDs as the existing VFD's have been problematic.
  - It is assumed that the existing PG&E service will not be required to be upsized based upon the new pump ratings.

**Overall Project Assumptions:**

- Carollo has no control over the cost of labor, materials, equipment or services furnished by others, over the incoming wastewater quality and/or quantity, or over the way District's plant and/or associated processes are operated and/or maintained. Data projections and estimates are based on Carollo's opinion based on experience and judgment. Carollo cannot and does not guarantee that actual costs and/or quantities realized will not vary from the data projections and estimates prepared by Carollo and Carollo will not be liable to and/or indemnify District and/or any third party related to any inconsistencies between Carollo's data projections and estimates and actual costs and/or quantities realized by District and/or any third party in the future.
- The services to be performed by Carollo are intended solely for the benefit of the District. No person or entity not a signatory to this Agreement, shall be entitled to rely on the Carollo 's performance of its services hereunder, and no right to assert a claim against Carollo by assignment of indemnity rights or otherwise shall accrue to a third party as a result of this Agreement or the performance of Carollo 's services hereunder.



- Carollo shall not be responsible for warranties, guarantees, fitness for a particular purpose, breach of fiduciary duty, loss of anticipated profits or for economic, incidental or consequential damages to the District or any third party arising out of breach of contract, termination, or for any other reason whatsoever. Additionally, Carollo shall not be responsible for acts and decisions of third parties, including governmental agencies, other than Carollo's subconsultants, that impact project completion and/or success.

**Figure 1: Planned Survey Area**





AGREEMENT FOR CONSULTING SERVICES  
FOR  
SUISUN FORCE MAIN RELIABILITY PROJECT 9011 – PHASE 2  
EXHIBIT B  
FEE SCHEDULE

Exhibit B contains the detailed fee schedule. The Consultant shall perform Tasks 1 – 6 as indicated in the fee schedule and scope of work. Optional Tasks 7 and 8 shall only be completed after written authorization is issued by the District to the Consultant. No budget may be used from these tasks unless authorized in writing by the District.

FEE ESTIMATE  
Suisun Force Main Reliability - Final Design  
Fairfield-Suisun Sewer District



Task Description	Carollo Labor																Subconsultants											Subs and Other Direct Expenses <sup>(1,2)</sup>	Estimated Fee
	Principal in Charge (Scott Parker)	Project Manager (Jon Marshall)	Technical Advisor (Tim Taylor)	Quality Control (Ryan Hook)	Pipeline Lead (K yle Gourley)	Pump Station Lead (Ricky Gutierrez)	Structural Lead (Mike Dadlik)	Cost Estimating (Jason Rozgonyi)	Grants and Funding (Katie Menzer)	Bioretention Design (Cheyenne Thompson)	Assistant Professional	Senior Technician CAD	Technician CAD	Document Processing	Total Hours	Labor Cost	Ascent Environmental (Environmental)	Bennett Trenchless (Trenchless Design)	Crawford & Associates Geotechnical	LCC, Inc. Surveying	Northwest Hydraulic Consultants (Surge)	Arrow Construction (Potholing)	Associated Right-of-Way Services (Land Acquisition)	Beecher Engineering (Electrical)	Almendarez (Traffic Control)				
Current Hourly Rates <sup>(3)</sup>	\$332	\$311	\$332	\$311	\$290	\$311	\$311	\$311	\$290	\$245	\$200	\$210	\$151	\$134															
1.0 Basis of Design Report																													
1.1 Baseline Mapping and Geotechnical Investigations		8			8							8			24	\$ 6,500		\$ 214,000	\$ 98,000							\$ 343,700	\$ 350,200		
1.2 Evaluate Force Main Materials		8	2		16										26	\$ 8,300										\$ 400	\$ 8,700		
1.3 Evaluate Hydraulics with and without Pump Replacement		8	4		24	24					56				116	\$ 31,400				\$ 81,000						\$ 90,700	\$ 122,100		
1.4 Pump Station Site Visit and Facility Confirmation	2					8	4				8				22	\$ 6,400										\$ 500	\$ 6,900		
1.5 Draft and Final Basis of Design Report and 30% Drawings	16	16	0	28	60	40	20	56	0	24	100	34	190	20	604	\$ 145,800	\$ 35,000						\$ 30,000			\$ 80,000	\$ 225,800		
Sub-Total Task 1	18	40	6	28	108	72	24	56	0	24	164	42	190	20	792	\$ 198,400	\$ -	\$ 35,000	\$ 214,000	\$ 98,000	\$ 81,000	\$ -	\$ -	\$ 30,000	\$ -	\$ 515,300	\$ 713,700		
2.0 Environmental Support and CEQA Compliance																													
2.1 Project Description		4			8										12	\$ 3,800	\$ 21,000									\$ 23,300	\$ 27,100		
2.2 Field Investigations and Special Studies															0	\$ -	\$ 55,000									\$ 60,500	\$ 60,500		
2.3 Initial Study / Mitigated Negative Declaration		4			8										12	\$ 3,800	\$ 136,000									\$ 150,100	\$ 153,900		
2.4 Mitigation Monitoring and Reporting Program															0	\$ -	\$ 3,000									\$ 3,500	\$ 3,500		
2.5 IS/MND Adoption, Approval, and Environmental Package Submittal															0	\$ -	\$ 11,000	\$ -								\$ 12,100	\$ 12,100		
Sub-Total Task 2	0	8	0	0	16	0	0	0	0	0	0	0	0	0	24	\$ 7,600	\$ 226,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 249,500	\$ 257,100	
3.0 Regulatory Permitting, Local Agency Approvals, and Funding Support																													
3.1 Regulatory Permitting		8			20										28	\$ 8,900	\$ 53,000	\$ -								\$ 58,700	\$ 67,600		
3.2 Local Agency Approvals		24			40						40				104	\$ 28,900	\$ 23,000	\$ -								\$ 26,800	\$ 55,700		
3.3 Funding Support (Allowance)										80					80	\$ 23,200		\$ -								\$ 1,100	\$ 24,300		
Sub-Total Task 3	0	32	0	0	60	0	0	0	80	0	40	0	0	0	212	\$ 61,000	\$ 53,000	\$ 23,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 86,600	\$ 147,600	
4.0 Pipeline Final Design																													
4.1 60% Design Documents and Potholing	4	24	8	24	120		8	40		60	80	76	424	24	892	\$ 194,800	\$ 30,000	\$ 4,000	\$ 8,000		\$ 75,000		\$ 59,000			\$ 206,100	\$ 400,900		
4.2 90% Design Documents and Plat Map / Legal Description	4	16	8	24	80		6	24		32	60	46	254	24	578	\$ 135,700	\$ 20,000	\$ 4,000			\$ 33,000		\$ 20,000		\$ 92,800	\$ 228,500			
4.3 100% (Bid) Design Documents	4	12	4		80		4	24		24	40	34	148	24	398	\$ 96,000	\$ 18,000							\$ 15,000	\$ 41,900	\$ 137,900			
Sub-Total Task 4	12	52	20	48	280	0	18	88	0	116	180	156	826	72	1868	\$ 426,500	\$ -	\$ 68,000	\$ 4,000	\$ 12,000	\$ -	\$ 75,000	\$ 33,000	\$ 59,000	\$ 35,000	\$ 340,800	\$ 767,300		
5.0 Bid Period Support																													
5.1 Pre-Bid Meetings		12			16										28	\$ 9,500										\$ 400	\$ 9,900		
5.2 Addenda and Questions during Bidding	2	8			20					16	8	24	16		94	\$ 22,200	\$ 6,000						\$ 3,600		\$ 11,900	\$ 34,100			
Sub-Total Task 5	2	20	0	0	36	0	0	0	0	0	16	8	24	16	122	\$ 31,700	\$ -	\$ 6,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,600	\$ -	\$ 12,300	\$ 44,000		
6.0 Project Management																													
6.1 Project Kickoff Meeting	8	8			8	8									32	\$ 10,600										\$ 400	\$ 11,000		
6.2 Bi-Weekly Project Progress Calls		56			112										168	\$ 53,300										\$ 2,400	\$ 55,700		
6.3 Four Additional In-Person District Meetings		32			32										64	\$ 20,500										\$ 900	\$ 21,400		
6.4 Monthly Invoices, Subconsultant Management, and Project Administration	12	120													132	\$ 43,700										\$ 1,800	\$ 45,500		
Sub-Total Task 6	20	216	0	0	152	8	0	0	0	0	0	0	0	0	396	\$128,100	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$5500	\$ 133,600		
Total Tasks 1 - 6	52	368	26	76	652	80	42	144	80	140	400	206	1040	108	3414	\$853,300	\$ 279,000	\$ 132,000	\$ 218,000	\$ 110,000	\$ 81,000	\$ 75,000	\$ 33,000	\$ 92,600	\$ 35,000	\$ 1,210,000	\$ 2,063,300		
7.0 Optional Task - Preliminary Bicycle Path Design																													
7.1 Preliminary Bicycle Path Design		4			8										12	\$ 3,800			\$ 20,000							\$ 22,200	\$ 26,000		
Sub-Total Task 8	0	4	0	0	8	0	0	0	0	0	0	0	0	0	12	\$3,800	\$0	\$0	\$0	\$20,000	\$0	\$0	\$0	\$0	\$0	\$0	\$22,200	\$26,000	
8.0 Optional Task Suisun Pump Station Pump Replacement																													
8.1 50% Design Documents	4	8		8		28	16	40			64	20	60	20	268	\$ 65,100							\$ 40,000		\$ 47,900	\$ 113,000			
8.2 75% Design Documents	6	12		12		36	24	24			80	40	80	16	330	\$ 78,900							\$ 50,000		\$ 59,600	\$ 138,500			
8.3 100% Design Documents	6	12		16		44	32	16			100	40	85	16	367	\$ 93,300							\$ 15,000		\$ 21,600	\$ 114,900			
8.4 Bid Documents	4	8		4		16	8	16			40	20	32	8	156	\$ 40,100							\$ 7,000		\$ 9,900	\$ 50,000			
8.5 Bid Period Support		8				12	4				24	12		16	76	\$ 19,100							\$ 8,800		\$ 10,700	\$ 29,800			
Sub-Total Task 8	20	48	0	40	0	136	84	96	0	0	308	132	257	76	1197	\$296,500	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$120,800	\$0	\$ 149,700	\$ 446,200		

Notes:  
(1) Mileage travelling to/from meetings at IRS Federal Rate and other direct expenses are at cost. Project Equipment and Communication Expense rate billed at \$14.00 per hour.  
(2) Subconsultant costs include 10% markup  
(3) Rates are based on current billing rates and subject to annual revisions due to labor adjustments.

# FAIRFIELD-SUISUN SEWER DISTRICT

## MINUTES

1010 Chadbourne Road • Fairfield, California 94534 • (707) 429-8930 • [www.fssd.com](http://www.fssd.com)

### Board of Directors Special Meeting Minutes

Date: Monday, July 24, 2023

Meeting Place: 1010 Chadbourne Road, Fairfield, California

Meeting Time: 5:00 p.m.

1. The special meeting started at 5:00 p.m.

Roll Call – The meeting was optional to attend. The following Board members were present: Directors Carr, Dawson, Hernandez, Osum, Tonnesen and Washington. General Manager Talyon Sortor, Assistant General Manager/District Engineer Jordan Damerel and Director of Administrative Services James Russell-Field were in attendance from the District.

2. Discussion Item

(a) Tour of Lystek Fairfield Organic Material Recovery Center

Jim Dunbar, General Manager/Business Development Manager of Lystek International, gave a tour of Lystek's facilities located at the District.

The meeting adjourned at 5:53 p.m.

Respectfully submitted,

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
District Clerk

# FAIRFIELD-SUISUN SEWER DISTRICT

## MINUTES

1010 Chadbourne Road • Fairfield, California 94534 • (707) 429-8930 • [www.fssd.com](http://www.fssd.com)

### Board of Directors Meeting Minutes

Date: Monday, July 24, 2023

Meeting Place: 1010 Chadbourne Road, Fairfield, California

Meeting Time: 6:00 p.m.

1. The meeting was called to order at 6:00 p.m. by President Vaccaro. President Vaccaro presided over the meeting.

Roll Call – The following members were present: Directors Carr, Dawson, Hernandez, Moy, Osum, Tonnesen, Vaccaro and Washington. Directors Pal and Panduro were absent. No Board Alternates were present.

2. Pledge of Allegiance was led by Director Carr.
3. Public Comments – None.
4. Director Comments – With the CASA Annual Conference coming up in August, President Vaccaro and Vice President Hernandez emphasized the networking opportunities at the conference, understanding the role better as a Board member and representing the District.
5. General Manager Report – General Manager Sortor expressed similar sentiment on the CASA Conference that attendees are Board members and senior staff. Assistant General Manager/District Engineer Jordan Damerel announced staff achievements – Laboratory Manager Nicole Van Aken was awarded CWEA 2023 Emerging Leader; Senior Engineer Emily Corwin was recognized as a “Hidden Hero of the Greenbelt” by the Greenbelt Alliance and will be formally recognized in August.
6. Consent Calendar
  - (a) Approve Board Minutes of June 26, 2023

No comments.

Upon motion by Director Dawson, seconded by Director Washington, Consent Calendar Items were passed by the following vote:

AYES: Carr, Dawson, Hernandez, Moy, Osum, Tonnesen, Vaccaro, Washington

NOES: None

ABSTAIN: None

ABSENT: Pal, Panduro

7. Discussion Item  
(a) Overview of Lystek Public-Private Partnership

Assistant General Manager/District Engineer Jordan Damerel presented an overview of Lystek public-private partnership with the District, key agreement elements, performance review, and the latest on the Digestate Dilution Water project. General Manager Jim Dunbar of Lystek International followed up with a presentation on the past, present and future of Lystek. Mr. Dunbar introduced Lystek Plant Engineer Nayeli Basulto and staff visiting from Canada--Financial Director Jim Robins and Operations Director Simon Muelendyk.

8. Action Item  
(a) Adopt Resolution No. 2023-14, Pay Rate Schedule

General Manager Sortor explained PERS rules require the District to update the pay rate schedule after adopting Resolution 2023-13, Amendment 1 to Employment Agreement with General Manager which included a merit adjustment.

No comments by the Board of Directors or public.

Upon motion by Director Tonnesen, seconded by Director Moy, Action Item 8a was passed by the following vote:

AYES: Carr, Dawson, Hernandez, Moy, Osum, Tonnesen, Vaccaro, Washington  
NOES: None  
ABSTAIN: None  
ABSENT: Pal, Panduro

9. Information Items  
(a) Quarterly Investment Report  
(b) Board Calendar

No comments.

The meeting adjourned at 7:02 p.m.

Respectfully submitted,

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President

ATTEST:

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District Clerk



# FAIRFIELD-SUISUN SEWER DISTRICT

1010 Chadbourne Road • Fairfield, California 94534 • (707) 429-8930 • [www.fssd.com](http://www.fssd.com)

September 20, 2023

## AGENDA REPORT

TO: Board of Directors

FROM: Talyon Sortor, General Manager

SUBJECT: Solano County's Request to Provide Sewer Service to Woodcreek 60 Subdivision

**Recommendation:** Consider County request to provide sewer service to Woodcreek 60 subdivision.

**Background:** The Fairfield-Suisun Sewer District Act of 1951 (Enabling Act), the District's enabling legislation, originally prohibited the District from "contracting for disposal of any sewage emanating from outside the district except sewage from public buildings or buildings of a public utility subject to regulation by the Public Utilities Commission." (Sec. 48) Sometime in the early 1970s the City of Fairfield constructed a sewer line beyond the city limit near Solano Community College that extended to the intersection of Suisun Valley Road and Rockville Road that served some, but not all, of the parcels along the sewer line.

In the early 2000s, the District was requested to serve a proposed subdivision known as Woodcreek 33 near the intersection of Suisun and Rockville Road. Several homes along Suisun Valley road also had failed septic systems and were interested in connecting to the existing sewer line in front of their homes. It was determined at that time that the District could not serve any of these parcels outside of the District boundary without a change to its Enabling Act. It was also discovered that several homes outside the District boundary were already connected to the sewer. After much debate and negotiations with the County, it was agreed that the District would seek a change to its enabling act to serve the existing homes and businesses already connected to the sewer line and allow existing homes along the sewer to connect if they wished to. The Board did not agree to serve the proposed Woodcreek 33 Subdivision and it was not built.

In 2002, California Assembly Bill 776 was signed into law which amended the Enabling Act. This amendment allowed for the District to provide sewer service for sewage emanating from outside the District by contract with Solano County or another public agency, "if the board of the district determines that the contract furthers the protection of public health and safety and is in the best interests of the district." (Sec. 48) On May 13, 2003, an Agreement to Provide Disposal of Sewage was executed between the District and Solano County and was subsequently submitted to the Solano County Local Agency Formation Commission (LAFCO) for approval.

In 2004, LAFCO developed a policy on out-of-agency service contracts which allowed for out-of-agency service to (1) parcels that were already connected to the system, and (2) parcels that were adjacent to existing service lines but were not yet connected. The Agreement to Provide Disposal of Sewage between the District and Solano County was amended for consistency with the LAFCO policy on September 27, 2004.

The Agreement to Provide Disposal of Sewage, as amended, requires that "all connections to Collection System shall be made with a single sewer lateral serving the Parcel," (Sec. 1.c.) and that "no more than one single family residence and one permitted accessory use on a Parcel – including a secondary living unit, a companion living unit or an accessory dwelling unit consistent with County zoning regulations – may be connected to the sewer system." (Sec. 1.d.) The Agreement also allows that "all other land uses consistent with County zoning regulations may be connected to the sewer system only upon review and approval by LAFCO." (Sec. 1.d.)

In January and February 2018, the District's Board of Directors considered whether to support proposed legislative changes to the Enabling Act. Two developments outside of the District requested allowance of sewer service: a proposed Woodcreek 66 subdivision on Suisun Valley Road that was a redesign of the original Woodcreek 33 project, as well as allowance of sewer service to the Middle Green Valley Specific Plan area. The Board voted to support the allowance of sewer service to the Middle Green Valley Specific Plan area but did not support the allowance of sewer service to Woodcreek 66. The resulting Assembly Bill 530 was adopted into law in 2019 enabling sewer service to the Middle Green Valley Specific Plan area.

In September 2022, Solano County staff sent a formal request to the District indicating that an application had been received to subdivide Assessor Parcel Nos. 0027-120-030, 0027-160-010 and 0027-160-020 (collectively referred to as Woodcreek 60). District staff responded to the request by outlining the regulations and agreements described above, concluding that (1) Parcels 0027-160-010 and 0027-160-020 are both allowed to

be served by the Agreement to Provide Disposal of Sewage, but each parcel could only have one lateral connection from one single family residence (plus one permitted accessory use); and (2) Parcel 0027-120-030 is not allowed to be served by the Agreement to Provide Disposal of Sewage.

On August 22, 2023, the County Board of Supervisors voted (3-2) to formally request the District to “determine the feasibility, capacity and commitment of the District to provide sewer services...to the 33+ acre property currently known as Woodcreek 60....”

**Discussion:** The current regulations and agreements in place do not allow the District to provide sewer service to the Woodcreek 60 subdivision, except for a single connection on each of Parcels 0027-160-010 and 0027-160-020.

The attached Figure 1 shows a map of parcels that were allowed to connect, and parcels that were already connected to the sewer system (as of 2004; note that some of the “allowed to connect” parcels have since connected to the sewer system).

At this time, District staff have not modeled the impacts of the proposed Woodcreek 60 subdivision on the sewer system. If directed by the District Board, staff would consider the Woodcreek 60 development in conjunction with other proposed developments within the City of Fairfield, served by the same sewer system, to evaluate potential downstream impacts. The District is aware of a potential capacity deficiency at the Cordelia Pump Station, which would deliver wastewater from this region to the wastewater treatment plant, and this developed could trigger necessary infrastructure upgrades. The cost of improvement would be the responsibility of the developer that triggers the upgrade.

The Board has two options for proceeding:

1. The Board could direct staff to not provide sewer service to Woodcreek 60. Because the proposed development is outside of the District boundary it is discretionary if the District wants to provide service to it. The Board has voted twice before not to provide sewer service to this development, in the early 2000's and in 2018.
2. If the Board determines that it is interested in providing sewer service to Woodcreek 60, the Board could direct staff to accept Solano County's request to determine the feasibility, capacity, and commitment of the District to provide sewer service. This would trigger several subsequent steps:

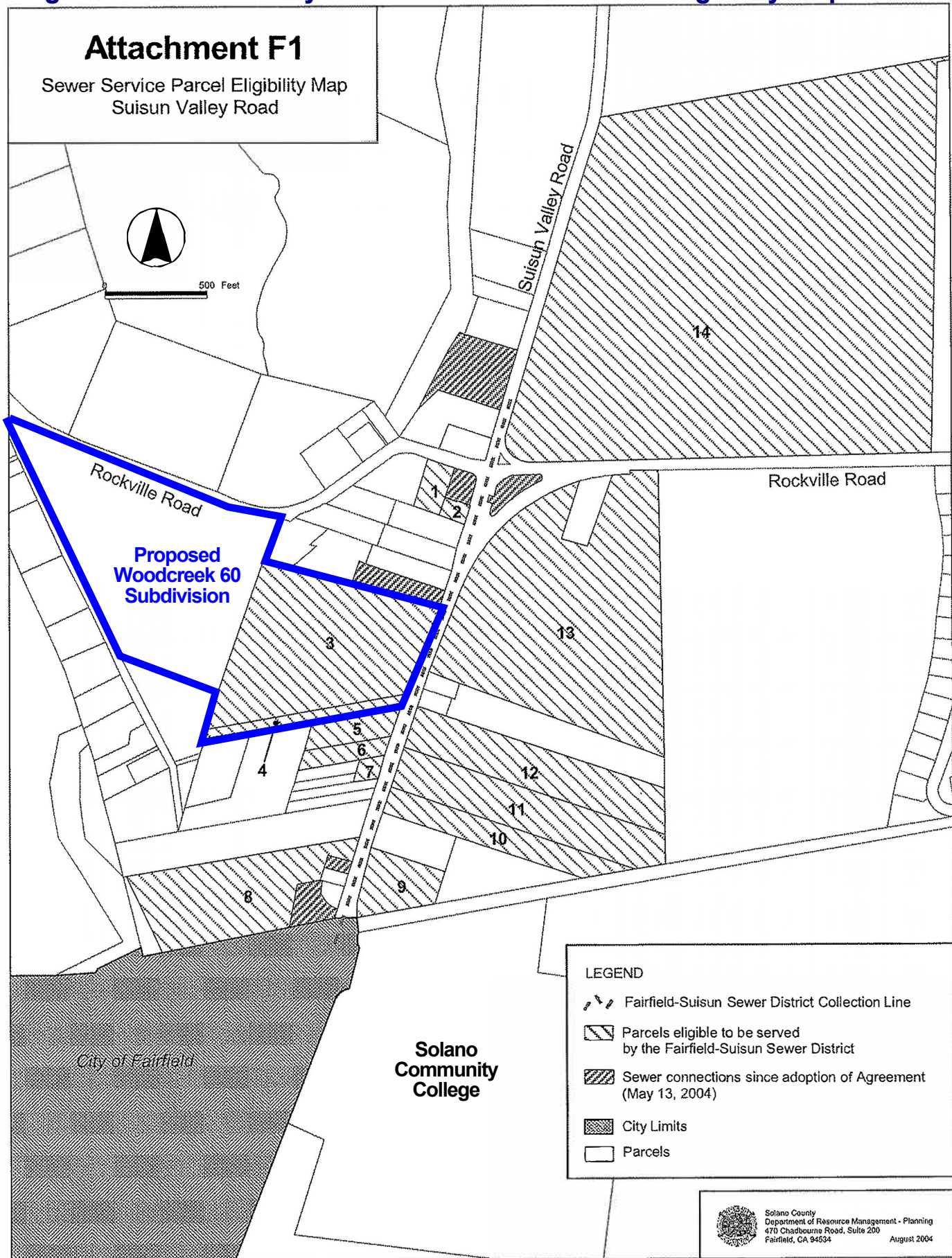


- Staff would work with County staff to determine estimated sewer flows anticipated from the development, and would update the District's hydraulic model to determine potential downstream impacts. This work would be paid for by the developer.
- Staff would request County staff to coordinate with City of Fairfield regarding connection to the 10" Fairfield sewer in Suisun Valley Road.
- Staff would negotiate an agreement with the County or developer to reimburse the District for the cost of considering the subdivision including all legal fees, staff time and consultants.
- Legislation would need to be proposed to modify the Enabling Act to allow service to the Woodcreek 60 development.

**Fiscal Impact:** If the Board directs staff not to serve Woodcreek 60 then there would be no fiscal impact. If the Board determines that staff should continue evaluating the project, the developer would be responsible for all costs associated with updating the District's hydraulic model. The developer would also be required to pay Plan Check Review fees to the District (and potentially to the City of Fairfield for connection to their sewer). The developer would need to enter into an agreement to cover staff time, legal fees, and consultant fees incurred by the District to study technical issues, negotiate agreements, defend lawsuits, and draft legislative changes to the District's Enabling Act. Finally, if the subdivision is built, the project applicant would pay connection fees to connect to the sewer system (approximately \$418,000 for 60 units currently).

Attachment: Figure 1. Suisun Valley Rd. Sewer Service Parcel Eligibility Map

# Figure 1. Suisun Valley Rd. Sewer Service Parcel Eligibility Map



## Fairfield-Suisun Sewer District

### Contemplated Board of Directors Agenda Items

September 25, 2023

Month Year	Contemplated Board of Directors Meeting Agenda Items	Executive Committee	Board of Directors
October 2023	<ol style="list-style-type: none"> <li>Quarterly Investment Report</li> <li>Presentation on 2022-2023 Outreach Intern Program</li> <li>Presentation on FSSD Community Engagement Strategy</li> </ol>	10/16/2023	10/23/2023
November 2023	<ol style="list-style-type: none"> <li>Adopt Board Calendar for 2024</li> <li>Award Professional Services Contract for Preliminary Design of the Community Treatment Wetland</li> <li>Award Professional Services Contract for Design of the Kellogg Resiliency Project</li> <li>Presentation on Suisun Force Main Reliability Project</li> </ol>	11/20/2023	11/27/2023
December 2023		Not Scheduled	Not Scheduled
January 2024	<ol style="list-style-type: none"> <li>Quarterly Investment Report</li> <li>Report on Financial Audit for FY 2022/2023</li> <li>Award Professional Services Contract for Treatment Plant Seismic Evaluation</li> </ol>	1/22/2024	1/29/2024
February 2024	<ol style="list-style-type: none"> <li>General Manager Performance Meeting (Exec Comm)</li> </ol>	2/12/2024	2/26/2024
March 2024	<ol style="list-style-type: none"> <li>Directors Report on CASA DC Meeting</li> <li>Award Construction Contract for Roof Rehabilitation Project</li> </ol>	3/18/2024	3/25/2024
April 2024	<ol style="list-style-type: none"> <li>Quarterly Investment Report</li> </ol>	4/15/2024	4/22/2023
May 2024	<ol style="list-style-type: none"> <li>Adopt Resolution Approving Budget</li> <li>Adopt Resolution Approving Employee Salary Schedule</li> <li>Review Updates and Approve Investment Policy</li> <li>Review Board Compensation</li> </ol>	5/20/2024	5/27/2024
June 2024	<ol style="list-style-type: none"> <li>General Manager Performance Review</li> </ol>	6/17/2024	6/24/2024
July 2024	<ol style="list-style-type: none"> <li>Quarterly Investment Report</li> </ol>	7/15/2024	7/22/2024
August 2024		Not Scheduled	Not Scheduled
September 2024	<ol style="list-style-type: none"> <li>Directors Report on CASA Annual Meeting</li> </ol>	9/16/2024	9/23/2024