



Request for Proposals

For

Technical Consultants for Sea Level Rise Adaptation Projects, Including Federally and State Funded Projects

For The

City of Alameda on behalf of the San Leandro
Bay/Oakland-Alameda Estuary Adaptation Working
Group

Issue Date:

Tuesday, May 2, 2023

Due Date:

Tuesday, June 20, 2023, 4:00 p.m.



Table of Contents

Purpose of the Request	1
Working Group Overview	3
Consultant Role	4
Project Funding and Budget	5
RFP Schedule	5
Project Manager	6
Pre-bid Meeting (optional)	6
Questions.....	6
Submittal Instructions	6
Submittal Requirements.....	7
Selection Process	8
Scope of Work	9
Federal Required RFP Provisions	17
Additional Terms and Conditions - City of Alameda.....	18
Exhibits: Contract Requirements.....	19

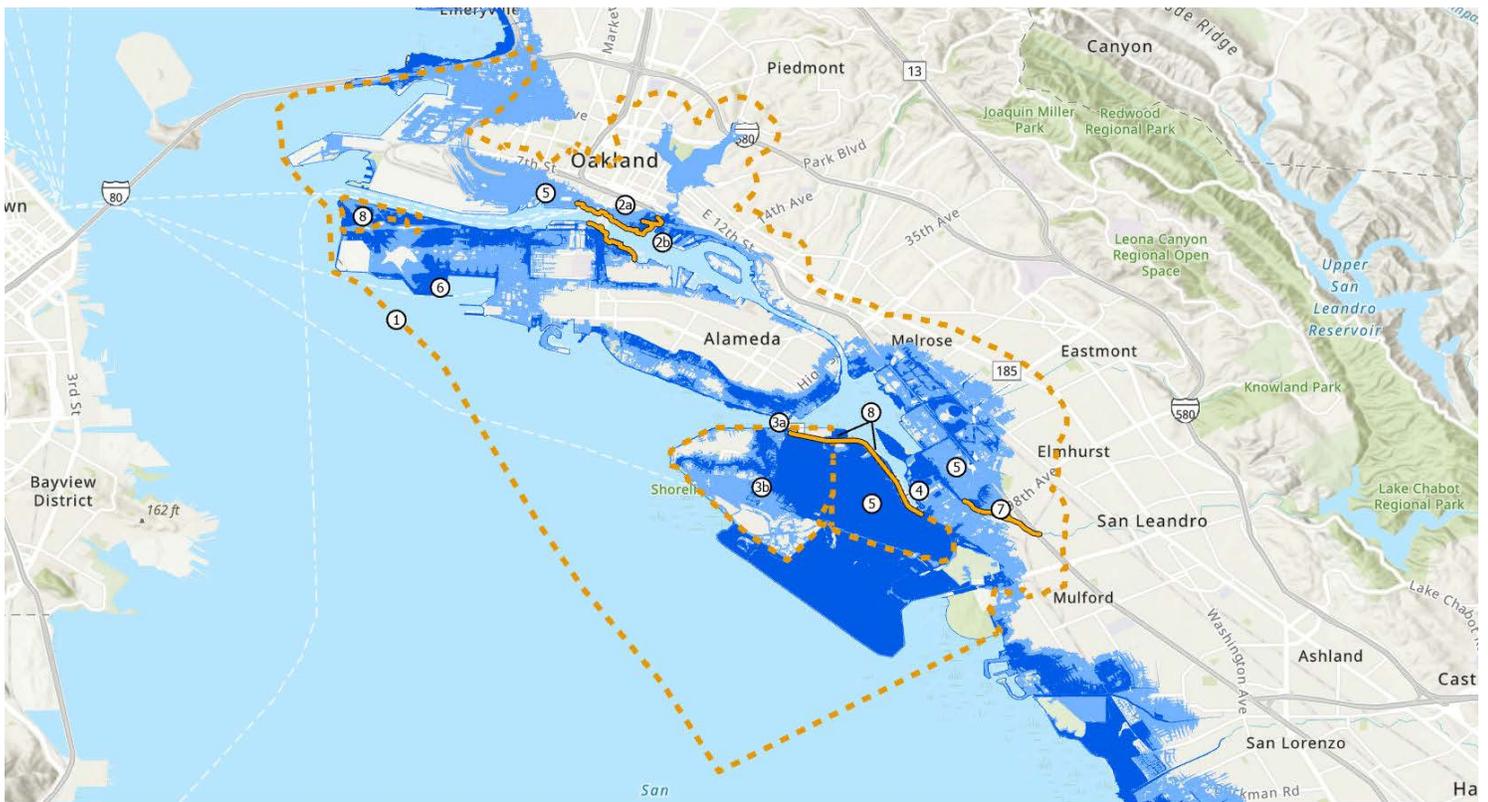
Purpose of the Request

The City of Alameda (City), on behalf of the [San Leandro Bay-Oakland Alameda Estuary Adaptation Working Group](#) (Working Group), seeks Technical Consultants (Consultant), interested in providing the sea level rise adaptation services described below. There are three separate and distinct projects (Parts A, B, and C) due to different funding sources. Consultant may submit interest in one, two or all three projects. These projects will be developed in coordination with one another and with the Project Partners: Community Partners (procured under separate RFP), Steering Committee of the Working Group and San Francisco Estuary Institute as the Scientific Advisors. Project Partners will review draft materials, will participate in meetings with Consultant, and will work together to conduct outreach and engagement activities. The following projects are expected to take up to three years to complete using an inclusive and equitable planning process:

- Long-term Adaptation Plan (Part A – EPA federal funding): Develop a long-term adaptation plan, which includes a review of existing vulnerability assessments, a final vision and a prioritization framework. The goal is to protect shoreline communities throughout the San Leandro operational landscape unit (OLU) from expected sea level and groundwater rise and liquefaction, enhance transportation and recreation corridors and bay access, reduce flood exposure, create or restore marsh, upland and transitional habitat with nature-based solutions, and improve air quality. The Plan will detail key steps and actions to take as the shoreline changes, identifying trigger points and costs for each of the outlined pathways. The planning process will use a decision-making process to ensure all stakeholder voices are heard. Webpage: www.alamedaca.gov/AdaptationLongTermPlan
- Oakland-Alameda Estuary Adaptation Project (Part B – Caltrans state funding): Develop a design concept equivalent to ten percent design in coordination with the Project Partners to protect both the downtown Oakland/Jack London Square shoreline and Alameda's northern shoreline near Marina Village from expected sea level rise and to reduce the impacts of flooding. The goal is to ensure long-term use of a multi-modal transportation system, including the Posey/Webster Tubes, the San Francisco Bay Trail and the adjacent diverse communities and disadvantaged populations in west Alameda and Oakland. Webpage: www.alamedaca.gov/AdaptationEstuary
- Bay Farm Island Adaptation Project (Part C – FEMA federal funding): This project is both a long-term plan with a short-term project for the northern waterfront area. Long-term Plan: Develop a long-term groundwater and sea level rise adaptation strategy and a design concept equivalent to ten percent design for Bay Farm Island that also enhances shoreline access and recreation, including replacing/relocating the wooden bicycle/pedestrian bridge, implements nature-based solutions and green infrastructure, addresses liquefaction risk and provides co-benefits for wildlife habitat and sequestering carbon. Short-term Priority Project: For the northern waterfront area, Consultant will develop detailed design drawings and advance the FEMA Environmental Historic Preservation (EHP) review and permitting process. Webpage: www.alamedaca.gov/AdaptationBayFarmIsland

These adaptation projects are shown on Figure 1 as **Projects 1, 2a, 3a and 3b**, and will be developed in conjunction and coordination with other Working Group projects shown in Figure 1, such as the Caltrans' Doolittle Drive/State Route 61 Sea Level Rise Adaptation Project (Caltrans State-Sponsored/Non-SHOPP Project Initiation Document), the Port of Oakland's Adaptation Vulnerability Assessment and Plan, the City of Oakland's Estuary Park Renovation and Expansion Project, the Metropolitan Transportation Commission's Bay Trail Gap Closure Project, the City of Alameda's De-Pave Park Master Plan, the BCDC's Regional Shoreline Adaptation Plan, and other adaptation efforts by Project Partners.

Figure 1. Adaptation Project Map



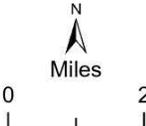
Sea Level Rise Adaptation Projects

<ul style="list-style-type: none"> 48" Sea Level Rise 84" Sea Level Rise Project Line Project Area 	<ul style="list-style-type: none"> ① Sub-regional Long-term Adaptation Plan ②a Oakland-Alameda Estuary Adaptation Project ②b Estuary Park Renovation and Expansion Project ③a Bay Farm Island Adaptation Project (short-term) ③b Bay Farm Island Adaptation Project (long-term) 	<ul style="list-style-type: none"> ④ Caltrans Doolittle Drive/SR-61 Sea Level Rise Adaptation Project ⑤ Port of Oakland Vulnerability Assessment and Plan ⑥ De-Pave Park Master Plan ⑦ San Leandro Creek Trail Restoration Project ⑧ East Bay Regional Park District SF Bay Trail Gap Closure
---	--	--



San Leandro Bay
Oakland-Alameda Estuary
Adaptation Working Group

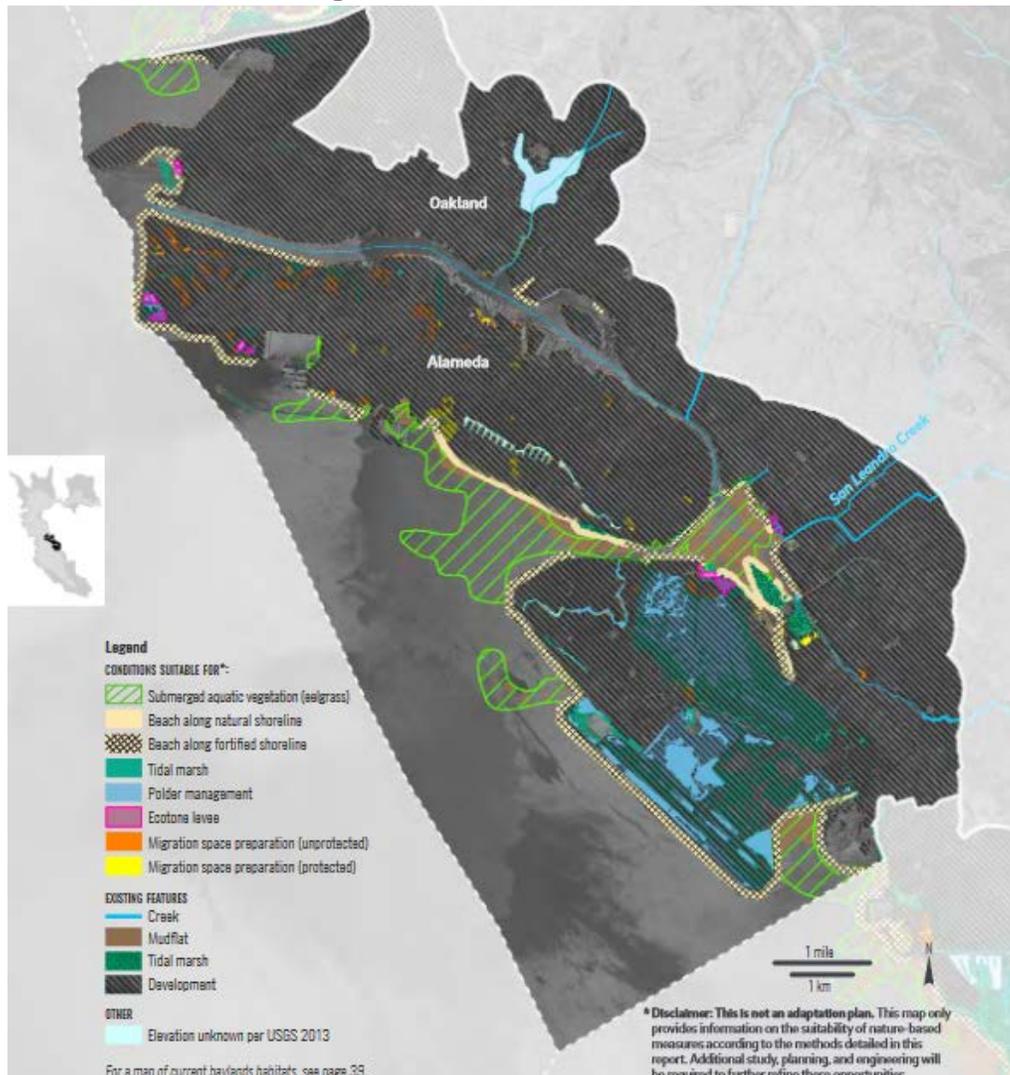
AECOM, BCDC, MTC, BATA (2017). Adapting To Rising Tides Bay Area Sea Level Rise & Mapping Project County/SF Bay (spatial data file). SF Bay Conservation and Development Commission. Accessed at <https://explorer.adaptgator.org/tides/download>.



Working Group Overview

These three adaptation projects will be collectively managed by the City of Alameda in partnership with the Steering Committee of the San Leandro Bay/Oakland Alameda Estuary Adaptation Working Group (Working Group). The Working Group is a coalition of shoreline communities, agencies and stakeholders working to coordinate flood and adaptation projects, and to protect and restore water and air quality, habitat and community resilience within the **San Leandro OLU**, as defined by SFEI's San Francisco Bay Shoreline Adaptation Atlas (Figure 2). Working Group members include the jurisdictions, agencies, tribes, and community-based organizations that have an interest in this shoreline, as well as regional and state collaborators and under-resourced communities vulnerable to climate change. The San Leandro OLU also includes critical regional infrastructure such as the Oakland International Airport, Oakland Coliseum, State Routes 61 and 260, Capital Corridor, I-880 freeway, Coast Guard Island, industrial and commercial development, and residential neighborhoods.

Figure 2. San Leandro OLU



The Working Group has established the below overarching preliminary **objectives** for adaptation projects within the San Leandro OLU. The adaptation projects described in the RFP will be designed to meet these objectives. Additional objectives also may be identified through the visioning process of this effort.

Working Group Objectives

- Prepare for near-term flooding as well as long-term groundwater and sea level rise;
- Identify opportunities for restoration and habitat protection, nature-based solutions and green infrastructure;
- Consider place-based sediment management strategies;
- Identify opportunities to improve recreational access to the shoreline and air quality in impacted areas;
- Protect residents and vulnerable communities living on or near the shoreline so enhancements to the shoreline benefit those communities and do not contribute to gentrification and displacement pressures;
- Contribute to economic opportunities for local businesses and community members and improve those communities that are impacted by climate change, lack of infrastructure and disinvestment;
- Advocate for training and skill development to support underserved communities and work through institutional barriers to hiring local residents and small local minority-owned businesses; and
- Serve as an example for how to do sub-regional adaptation work and advance the Working Group's collective agendas.

Consultant Role

Through this RFP, the Project Partners will select a Consultant that has experience working with diverse stakeholders and community members to develop short- and long-term adaptation plans and projects and to ensure they align with community priorities.

The role of the Consultant will require:

- Working in collaboration with the Project Partners and other stakeholders throughout the project development.
- Using best available science and existing studies to develop forward-thinking near-term projects and long-term concepts that address shoreline inundation, liquefaction and sea level rise and groundwater rise while also enhancing transportation and recreation corridors and bay access, reducing flood exposure and climate risks to shoreline communities, and improving air quality.
- Prioritizing nature-based solutions, creation and restoration of habitat, and improvement of water quality in the Bay while also protecting community assets.

- Co-developing community engagement activities to be implemented by Community Partners and Consultant that ensure active and productive community engagement and review of draft adaptation plans and projects.
- Building trust among program participants and the larger community.

A detailed scope of work is provided below in the Scope of Work section.

Project Funding and Budget

Table 1 summarizes the funding and Consultant budgets available for each project within this RFP, which is expected to take up to three years to complete. Consultant will need to keep the invoices for the different projects separate. Consultant should build in contingencies into the proposals since no additional monies exist at this time.

Table 1: Adaptation Project Funding and Budget

Project	Funding	Technical Consultant Budget
Long-term Adaptation Plan (Part A)	San Francisco Estuary Partnership U.S. EPA + National Fish and Wildlife Foundation	\$599,000
Oakland-Alameda Estuary Adaptation Project (Part B)	Caltrans (State of CA) + City of Alameda local match	\$391,000
Bay Farm Island Adaptation Project (Part C)	FEMA (federal) + City of Alameda local match	\$1,676,000
Total Funding		\$2,666,000

RFP Schedule

Dates and Times	Action
Tuesday, May 2	RFP Issued
Monday, May 15, 2:00 – 3:00 p.m.	Pre-Bid Meeting (optional)
Friday, June 2	Deadline for RFP Questions
Wednesday, June 7	RFP Q&A Posted
Tuesday, June 20, 4 p.m.	Proposals Due
Tuesday, July 11 - morning	RFP Interviews (if needed)
Week of July 17	Selection of Technical Consultants

Project Manager

On behalf of the Working Group and Project Partners, the adaptation projects stated in Parts A, B and C will be administered by the City of Alameda. Please address questions or correspondence to:

Gail Payne, Project Manager
City Hall
2263 Santa Clara Avenue, Room 120, Alameda CA 94501
Phone: (510) 747-6892 / Email: gpayne@alamedaca.gov

Pre-bid Meeting (optional)

The optional pre-bid meeting is on Monday, May 15, 2:00 – 3:00 p.m., and is virtual using the following video link with phone option:

Video link: <https://alamedaca-gov.zoom.us/my/gpayne>

Personal Meeting ID: 813 722 3479

Zoom phone numbers: +1 669 900 9128 OR +1 346 248 7799

Questions

Please email any questions regarding the RFP to Gail Payne at gpayne@alamedaca.gov by Friday, June 2. Questions and answers will be posted on the RFP webpage by Wednesday, June 7.

Submittal Instructions

Please submit your proposal electronically to Gail Payne, Project Manager at gpayne@alamedaca.gov by **4:00PM PST on Tuesday, June 20, 2023**. Late proposals will not be accepted.

The proposal should be submitted as a single .pdf file, with the subject line: (Name of Organization) Response to RFP: Technical Consultants for Sea Level Rise Adaptation Projects.

Submittal Requirements

The City, on behalf of the Working Group and Project Partners, is requesting Consultant to submit the following materials for consideration by the Selection Committee:

1. Letter of Interest: A letter expressing interest in being considered the Consultant. Please include the name, title, mailing address, phone number and email address of the person whom the City should contact regarding this response. The letter of interest must be signed on behalf of the submitting Consultant by an individual authorized to bind the Consultant to its proposal (1-page recommended).
2. Project Understanding and Approach: A statement demonstrating Consultant understanding of the proposed project(s) and describing Consultant approach to completing the scope of work in a timely and cost-efficient manner (1-page recommended).
3. Team Organization and Description: An organizational chart and information about the relevant experience for the applicable staff. One employee must be designated as the principal contact and Project Manager for the City (1-page recommended). For Parts A and C, Consultant will need to comply with the federal requirements for good faith effort to include Disadvantaged Business Enterprises.
4. Key Staff/Team Experience: For key team members, please provide resumes and include examples of experience on adaptation plans and projects (5-page maximum excluding resumes).
5. Letters of Commitment: If applying with partners, letters of commitment from all partner organizations (other than lead) certifying their role and responsibilities in the proposed work plan (1-page recommended for each letter).
6. Work Plan, Fee Proposal and Schedule: A detailed work plan, task-by-task budget proposal, and implementation schedule. Consultant may submit interest in one, two or all three projects: Parts A, B and C. If Consultant has additions or suggested amendments to the presented scope of work, please include them in Consultant response. Parts A, B and C are separate projects due to the different funding sources, and Consultant will need to keep the invoices for the different projects separate. For Parts A and C, Consultant will need to comply with the federal consultant fee caps and indirect cost rates.
7. City, State and Federal Standards: Exhibits A and B show the federal and state provisions that need to be followed by both the Consultant and the City. The City's standard service provider agreement is attached as Exhibit C. If Consultant has any questions/concerns related to the standard form contract, Consultant must submit them in writing with the response to this RFP.

Selection Process

The Selection Committee will review and rank the Consultant proposals according to the below criteria for Parts A, B and C. For Part B, a certified small business will have its points increased by 5 percent of the points awarded to the highest scored non-small business bidder if the business commits to subcontract at least 25 percent of its net bid price with one or more small businesses ([See SCM 1, sections 8.20 and 8.21](#)).

Categories	Points
<p>Project Proposal</p> <ul style="list-style-type: none"> • Proposed work plan supports the project's goals and activities with clear, technically sound, and practical approaches, methodologies, and activities related to implementing the Scope of Work. • Applicant demonstrates understanding of barriers and challenges faced by low-income and historically excluded communities while mitigating the challenges for hard to reach communities. • Project activities are clearly defined and described. • Time commitment of staff is appropriate to the project scope. 	40 points
<p>Timeline & Budget Proposal</p> <ul style="list-style-type: none"> • Timeline of work is feasible. • Budget is in alignment with the proposed activities, and provides separate budgets for Project Parts A, B and C. • Budget and timeline demonstrate understanding of programmatic priorities. • This will not be a low-bid contract. However, proposed contract budget, cost controls, program efficiencies, and other budget matters will be taken into consideration. 	20 points
<p>Organization Experience</p> <ul style="list-style-type: none"> • Qualifications and relevant organization, staff experience and capacity to perform the proposed work plan. • Demonstrated commitment to serving low-income residents and historically excluded communities. • Experience partnering with both public entities and private organizations on projects of similar size and scope. 	35 points
<p>Ability to meet the City's standard contract requirements</p> <ul style="list-style-type: none"> • Through execution of the Service Provider Agreement attached as Exhibit C; written confirmation of this condition is required to be eligible to submit a proposal. If Consultant has questions/concerns related to the standard form contract, Consultant must submit them in writing with the response to this RFP. 	5 points
<p>Total Eligible Points (maximum 5 points for certified small business)</p>	100 points

Scope of Work

Part A: Long-term Adaptation Plan Scope of Work (EPA federal funding)

Consultant's scope of work for the Long-term Adaptation Plan includes the following:

1. Project Coordination, Governance and Regional Agency Liaising
 - a. Participate in project kick off and facilitate monthly project management meetings with the Project Partners to guide the development of the project.
 - b. Collaborate with the Working Group to co-create a sub-regional organizational structure to accelerate and streamline implementation of adaptation projects.
 - c. Coordinate with regional agencies to identify needs and opportunities for regional support and engagement, and to share information, lessons learned and best practices for adaptation planning processes in other OLU, which includes the upcoming Regional Shoreline Adaptation Plan guidelines.

Task A.1 Deliverables
<ul style="list-style-type: none">• Meeting agendas and minutes, and refined schedule.• Summary document describing needs for regional support and engagement.• Governance memo summarizing organizational findings and recommendations.• Recommendations for best practices for regional and state support for locally-driven, regionally supported OLU-based adaptation planning.

2. OLU Planning and Implementation

- a. Co-create a shared long-term adaptation vision, including goals and planning principles for the San Leandro OLU that align with other local and regional plans. Research best practices and interview stakeholders, including regional organizations.
- b. Review existing vulnerability and needs assessment reports, and supplement, where needed, to determine existing conditions and the hazards associated with sea level and groundwater rise such as erosion, flooding, habitat loss, contamination, and liquefaction. The needs assessment will include gaps in data, and will prioritize next steps and projects or studies to achieve the vision.
- c. Review and build off of available studies and documents from prior activities including the [2015 Baylands Ecosystem Habitat Goals Science Update](#), [Estuary Blueprint](#), the Port of Oakland's Sea Level Rise Assessment (2019), the City of Alameda's Climate Action and Resiliency Plan (2019) and Response of the Shallow Groundwater Layer and Contaminants to Sea Level Rise

Alameda study (2020), the Shallow Groundwater Response to Sea Level Rise: Alameda, Marin, San Francisco, San Mateo Counties (2022), the Adapting to Rising Tides Program and the Atlas to consider for the Long-term Plan, including potential nature-based, sea-level rise adaptation measures and goals identified across the San Leandro OLU.

- d. Assess the feasibility of implementing recommended adaptation measures as identified in the previous subtask, particularly nature-based solutions in highly urbanized shorelines, and an adaptation pathways approach, including the feasibility of short- and long-term project phasing. Synthesize lessons learned from case studies around the world of innovative long-term adaptation plans and solutions to facilitate necessary transformations in the San Leandro OLU.
- e. Develop an implementation plan including critical implementation tasks. Implementation tasks include, but are not limited to, working on organizational structure setup, writing grants for specific locations within the San Leandro OLU, developing baseline data packets for use by individual member organizations, and jointly procuring a pool of on-call consultants to assist Working Group members on specific adaptation plans or projects.

Task A.2 Deliverables
<ul style="list-style-type: none"> • Adaptation vision, including shared goals and planning principles for the San Leandro OLU. • Vulnerability, existing conditions including adaptation studies, needs assessment summary, recommended next steps or projects, and feasibility report for the San Leandro OLU with repository of relevant data and studies. • Implementation memo summarizing key implementation tasks.

3. Public and Stakeholder Outreach (in coordination with projects in Parts B and C)

- a. **Plan:** Co-develop with Community Partners and other Working Group members a public and stakeholder outreach and engagement plan and a communications strategy to build Community Partner capacity to lead outreach within the San Leandro OLU, to communicate the impacts of sea level and groundwater rise, and to gather input on adaptation needs, priorities and solutions. The community engagement will be built with equity in mind, and will seek to advance diverse strategies to reach vulnerable, traditionally underserved communities and California Tribes.
- b. **Toolkit:** Fact sheets, press releases, articles, social media posts, presentations and talking points for Working Group members including multilingual versions.
- c. **Outreach:** Conduct community engagement in two rounds of outreach. The first round will focus on draft vision, goals, preliminary concept ideas and

governance options. The second round will focus on the Draft Long-term Adaptation Plan. The Working Group will provide a forum for input and Consultant will refine the products and plans based on community input.

Task A.3 Deliverables
<ul style="list-style-type: none">• Community Outreach and Engagement Plan.• Communications toolkit materials.• Community Outreach and Engagement Summary and Results.

4. Long-term Adaptation Plan

- a. Facilitate a process with the Working Group to develop a prioritization framework with criteria that value the benefits to fish and wildlife, community, and the economy. Leverage existing tools and frameworks, including the [San Francisco Bay Shoreline Adaptation Atlas](#) (Atlas), and the [SLR CHARG](#) and ART frameworks to develop multi-benefit criteria and identify priority assets and solutions.
- b. Assess adaptation capacity, regulatory and permitting requirements and financing within the San Leandro OLU. Integrate capacity building priorities, regulatory barriers and actions, and long-term financing strategy into the Long-term Adaptation Plan.
- c. Develop a comprehensive, Long-term Adaptation Plan for the San Leandro OLU. The Plan will detail key steps and actions to take as the shoreline changes, identifying trigger points and costs for each of the outlined pathways. The plan will identify innovative strategies that enable the San Leandro OLU's adaptation to rising seas and provide collective benefits to coastal communities and wildlife, protect groundwater and ecosystems, restore marsh, upland and transitional habitat, and enable effective shoreline and wastewater management. Following community consultations, Consultant will prepare a final version of the Long-term Adaptation Plan for adoption across the San Leandro OLU.

Task A.4 Deliverables
<ul style="list-style-type: none">• Prioritization framework.• Draft and Final Long-term Adaptation Plan.

Part B: Oakland-Alameda Estuary Adaptation Project Scope of Work (State of California – Caltrans funding)

Consultant's scope of work for the Oakland-Alameda Estuary Adaptation Project includes:

1. Existing Conditions

- a. **Review** available studies and documents of the project areas and issues facing the project areas including Basis of Design analysis for Alameda.
- b. **Conduct** site visits of the project areas to understand the project approach, concept and constraints to be considered in the design. Potential locations within the watershed for green infrastructure, nature-based solutions, and storm water retention/detention will be identified and reviewed.
- c. **Refine** the base maps to fully capture the extent of the project area and to include any additional information useful to the project.
- d. Refine and **finalize** existing conditions memo to document site conditions.

Task B.1 Deliverables
Field Visit Documents, Refined Base Map, Draft and Final Existing Conditions Memo.

2. Analysis

- a. **Analyze alternatives** to identify the types of shoreline protection appropriate for each project area based on feasibility, project goals and sea level rise adaptability. This analysis includes "living levees," vegetated berms, sheet pile walls, concrete walls or hybrid combinations, and specifies which options are feasible in specific locations along the project alignment. The feasibility analysis will include an engineering and construction feasibility and the ability to incorporate nature-based solutions. Facilitate meetings for Community Partners, Working Group members and other stakeholders to provide input on and review the alternatives analysis.
- b. **Develop green infrastructure alternatives** for the project watershed drainage area and promote multi-benefit designs to add resiliency to the communities. This analysis will develop alternatives within the watershed to reduce peak discharge rates, reduce required storm drain system capital improvements, and improve water quality.
- c. **Conduct first round of outreach** with Project Partners, and present existing conditions and preliminary alternative options under consideration to the advisory committee and then to the general public as stated in Task B3, Public Outreach.

- d. **Develop structural/nature-based alternatives** for berm and floodwall types, alignments and methods of adaptability.
- e. **Conduct second round of outreach** with Project Partners on the preliminary concepts to the advisory committee and then to the general public as stated in Task B3, Public Outreach. Coordinate the two rounds of community engagement with Parts A and C of this RFP.

Task B.2 Deliverables

Alternatives Memo with Matrix, Preliminary Concept Drawings and Cost Estimate.
--

3. Public Outreach

- a. Develop a community engagement **strategy** with Community Partners and Working Group using a variety of formal and informal community engagement methods to facilitate grassroots community input and to build awareness of the project.
- b. Develop outreach **materials**.
- c. **Participate** in a project kick-off and two rounds of outreach coordination, community meetings and public venues.
- d. Develop an alternatives selection **matrix** that includes public input, and refines the alternatives based on comments received from the outreach effort to provide guidance on a draft and final concept.

Task B.3 Deliverables

Outreach materials, including multi-lingual versions, presentations, notes/action items, receipts of light snacks, sign-in sheets from in-person events, press releases, social media posts/advertisements, webpage links, tactile maps, email list summary, questionnaires and survey results.

4. Advisory Committee Meetings

- a. Advisory Committee members to represent the Oakland-Alameda estuary focus area within the San Leandro OLU will be **selected** with Consultant input to ensure a comprehensive approach that considers a broad perspective and that engages a variety of stakeholders, including community-based organizations, agencies such as Caltrans, utilities, transportation providers, adjacent property owners, and others.
- b. **Facilitate** up to five Advisory Committee meetings to ensure transparency

and communication at the following project stages: 1) kick-off, 2) existing conditions/preliminary alternative options, 3) preliminary concept, 4) draft concept, and 5) final concept.

- c. Investigate and identify **regulatory compliance** requirements and strategies.

Task B.4 Deliverables
Advisory Committee meeting agendas, minutes/action items/attendees and documents for up to five meetings with the full group of stakeholders as well as a subset of the committee to cover Caltrans and regulatory compliance coordination.

5. Draft and Final Concept

- a. Develop a Basis of Design/Next Steps **Report** to document necessary information and specifications required for design including a shoreline concept, the use of inland detention facilities, green infrastructure and nature-based solutions.
- b. Develop 10 percent design **drawings**, planning level **cost estimates** and project **schedule**. These documents will be made available for Advisory Committee, agency and public review for further comments and input. Input will be incorporated into final concept.

Task B.5 Deliverables
Basis of Design/Next Steps Report, 10% Design Drawings, Planning Level Cost Estimates, and Project Schedule, which credit Caltrans and is submitted to Caltrans in ADA accessible electronic formats.

6. City Council - Cities of Alameda and Oakland

Present the recommended concept to the City Councils of Oakland and Alameda. Along with the recommended concept, the City Councils also will review the other completed deliverables from this grant effort such as the finalized existing conditions memo, the alternatives analysis, the Basis of Design/Next Steps memo and a summary of community member and stakeholder involvement and comments. The City Councils will be asked to weigh in on next steps such as grant writing, environmental clearance and permitting, the plans, specifications and cost estimate and then construction.

Task B.6 Deliverables
City Council Agendas, presentations, meeting minutes with City Council direction.

Part C: Bay Farm Island Adaptation Project Scope of Work (FEMA federal funding)

1. Project Administration is reserved for City of Alameda staff and Community Partner billing – not for Consultant.

Consultant's scope of work for the Bay Farm Island Adaptation Project includes:

2. Existing Conditions

- a. **Review** available studies and documents of the project areas and issues facing the project areas including the topographic survey and initial ideas for the northern waterfront area of Bay Farm Island.
- b. **Conduct** site visits of the project areas to understand the project approach, concept and constraints to be considered in the design. Potential locations within the watershed for green infrastructure, nature-based solutions, and storm water retention/detention will be identified and reviewed.
- c. **Refine** the base maps to fully capture the extent of the project and to include any additional information useful to the project.
- d. Refine and **finalize** an existing conditions memorandum to document site conditions.
- e. Building off work done to date by East Bay Municipal Utility District and others, conduct additional **geotechnical site investigations**, as needed, and summarize findings. The geotechnical site investigation will include a file review, review of historic aerial photography, exploratory borings, and archeologic investigation.

Task C.2 Deliverables
Field Visit Documents, Refined Base Map, Draft and Final Existing Conditions Memorandum, Geotechnical and archaeological report and boring logs.

3. Feasibility Alternatives and Design

- a. **Feasibility Analysis:** Develop project goals, purpose and need using a pathways and phased approach to sea level rise adaptation, and assess options for addressing the needs and potential costs. Consider groundwater and liquefaction impacts and options for habitat enhancement and nature-based solutions such as submerged aquatic vegetation (eel grass) for wave attenuation and erosion control as well as other nature-based solutions. The analysis also includes developing green infrastructure alternatives for the project watershed, and options for raising/re-locating a bike/pedestrian bridge that lands on Veterans Court.
- b. **Analyze alternatives** to identify the types of shoreline protection

appropriate for each Bay Farm Island project area based on feasibility, project goals and sea level rise adaptability. This analysis includes “living levees,” green infrastructure, vegetated berms, sheet pile walls, concrete walls or hybrid combinations, and specifies which options are feasible in specific locations along the project alignment.

- c. **Conduct outreach** with Community Partners, Scientific Advisors and Working Group. As a first round of outreach, present existing conditions and preliminary alternative options under consideration. As a second round of outreach, present the preliminary concepts including both short- and long-term concepts. Coordinate the two rounds of community engagement with Parts A and B of this RFP.
- d. **Northern Waterfront Design:** Develop basis of design report, 30 percent design drawings, cost estimate and project schedule for a short-term project in the northern waterfront area - including the shoreline park, the lagoon outfall and Veterans Court - that would transition well into a long-term project. Evaluate structure types and alignments for the bicycle/pedestrian paths, tie-ins to existing waterfront path and upgrades of the fishing pier. Coordinate with permitting agencies, and then refine plans to include additional details up to 100 percent design drawings in compliance with all applicable federal, state and local requirements. Develop draft and final Benefit Cost Analysis. Conduct peer review.

Task C.3 Deliverables
Feasibility Analysis and Alternatives Report. Community engagement summary. Design drawings. Benefit Cost Analysis. Peer Review.

4. Long-term Concept Development – Bay Farm Island

- a. In conjunction with Part A of this RFP “Long-term Adaptation Plan,” Consultant will: (1) develop long-term adaptation concepts for Bay Farm Island to address rising bay waters and groundwater, inclusive of nature-based solutions, managed retreat, living levees, submerged aquatic vegetation, and green infrastructure; (2) identify structure types and alignments for the bicycle/pedestrian trail system; (3) prepare concept design drawings and cost estimates; and (4) prepare Benefit Cost Analysis.
- b. EHP and Permitting: Coordinate with permitting agencies to understand requirements; develop documentation needed to obtain permits; perform additional data collection and studies.

Task C.4 Deliverables
Draft and final long-term concept, 10 percent design drawings and order-of-magnitude cost estimates, benefit cost analysis, and permitting documentation, as needed.

Federal Required RFP Provisions

Please refer to Exhibit A for federal provisions that are specific to the EPA and FEMA grant projects (Parts A and C of this RFP).

PROVISIONS FOR PERSONS WITH DISABILITIES: If any person with an interest in participating in the aforementioned federal program is a person with a disability as defined by Section 504 of the Rehabilitation Act of 1974 and requires an accommodation to participate or take interest, a request for accommodation may be made to Gail Payne at (510) 747-6892 or by email at gpayne@alamedaca.gov. Such request shall include a description of the accommodation sought, along with a statement of the impairment that necessitates the accommodation. Any request for accommodation shall be reviewed and a response provided within five business days of receipt of such request. Notice of any accommodation granted will be promptly provided to the requester.

PROVISIONS FOR NON-ENGLISH SPEAKING RESIDENTS: The City of Alameda has a network of employees speaking some 45 languages who can act as interpreters for residents seeking information regarding the aforementioned federal programs. If notified two business days in advance, the City will arrange to have an interpreter available. Please contact Gail Payne at (510) 747-6892 (Voice) or email gpayne@alamedaca.gov.

NON-DISCRIMINATION POLICY: The City of Alameda does not discriminate against any persons on the grounds of race, color, religion, national origin, ancestry, sex, gender, gender identity, gender expression, sexual orientation, marital status, familial status, source of income, genetic information, medical condition, physical disability or mental disability or any other category protected by law.

ADA Complaint/Request for Additional Assistance:

<https://www.alamedaca.gov/RESIDENTS/ADA-ComplaintRequest-for-Assistance>

Additional Terms and Conditions - City of Alameda

The City of Alameda – as the fiscal sponsor – has the following service provider agreement as shown in Exhibit C as well as additional terms and conditions:

1. Nondiscrimination: Applicants for this RFP shall not discriminate against any interested individual, firm or applicant on the grounds of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation.
2. Permits, Licenses, and Insurance: The successful applicant for this RFP shall, at its sole expense, obtain and maintain during the term of any agreement executed pursuant to this RFP all appropriate permits, certificates, licenses, and insurance including, but not limited to, a City of Alameda Business License which may be required in connection with the performance of services hereunder.
3. Signatures and Declarations: Each proposal responding to this RFP must be signed on behalf of the submitting entity by an officer authorized to bind the entity to its proposal.
4. City's Right to Waive: The City reserves the right, in its sole discretion, to waive any immaterial irregularities in a proposal responding to this RFP or in the submission of a proposal.
5. City's Right to Modify the RFP: The City reserves the right, in its sole discretion, to modify this RFP should the City deem that it is in its best interests to do so. Any changes to the RFP requirements will be made by written addendum posted on the City's website. The failure of an applicant to read any addenda shall have no effect on the validity of such modification.
6. City's Right to Suspend or Cancel the RFP: The City reserves the right, in its sole discretion, to suspend or cancel this RFP in part or in its entirety should the City deem that it is in the City's best interests to do so.
7. City's Right to Reject Any Proposal: The City reserves the right, in its sole discretion, to reject any proposal responding to this RFP that the City determines does not satisfy the conditions set forth in this RFP, or contains false, misleading, or materially incomplete information.
8. City's Right to Reject All Proposals: The City reserves the right, in its sole discretion, to reject all applicants and not to award to any applicant should the City deem that it is in its best interests to do so.
9. City's Right to Extend RFP Deadlines: The City reserves the right, in its sole discretion, to extend any of the deadlines listed in this RFP by written addenda should the City deem that it is in its best interests to do so.
10. Cost of Proposals: All costs incurred during proposal preparation or in any way associated with an applicant's preparations, submission, presentation or oral interview (if any) shall be the sole responsibility of Applicant.
11. Liability for RFP Errors: Applicants are solely responsible for all errors and omissions contained in their responses to the RFP.
12. Proposals Property of City: Upon receipt, each proposal responding to this RFP that an applicant submits to the City becomes the sole property of the City and will not be returned to the applicant.
13. Oral and Written Explanations: The City shall not be bound by oral explanations or instructions given at any time during the process or after the award. Oral explanations given during the review process and after award become binding only when confirmed in writing by an authorized City official. Written responses to question(s) asked by one proposer will be provided to all applicants to this RFP.

Exhibits: Contract Requirements

Exhibit A: Federal Requirements

- EPA General Terms and Conditions Effective October 1, 2022 (Part A)
- Project Assurances for Federal Assistance Hazard Mitigation Grants (Part C)

Exhibit B: State Requirements

- Sustainable Communities Grants (State) Restricted Grant Agreement Requirements (Part B)

Exhibit C: City's Standard Service Provider Agreement

Exhibit A

General Federal Terms and Conditions (Parts A and C of RFP)

Consultant Fee Cap: For individual consultant fees as set forth in 2 CFR 1500.10, 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.

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.

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.

Utilization of Disadvantaged Business Enterprises

GENERAL COMPLIANCE, 40 CFR, Part 33

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

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

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

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

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

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

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

3. CONTRACT ADMINISTRATION PROVISIONS, 40 CFR Section 33.302

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

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

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

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

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

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

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

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

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

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

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

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

EPA General Terms and Conditions Effective October 1, 2022

1. Introduction

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

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

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

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

3. Termination

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

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

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

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

Financial Information

4. Reimbursement Limitation

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

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

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

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

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

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

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

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

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

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

Proper Payment Drawdown (for recipients other than states)

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

Proper Payment Drawdown for State Recipients

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

Selected Items of Cost

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

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

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

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

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

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

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

7. Consultant Cap

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

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

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

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

8. Establishing and Managing Subawards

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

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

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

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

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

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

Prior experience with same or similar subawards;

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

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

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

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

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

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

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

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

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

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

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

15. As provided in 2 CFR 200.333, pass-through entities must obtain EPA approval to make fixed amount subawards. EPA is restricting the use of fixed amount subawards to a limited number of situations that are authorized in official EPA pilot projects. Recipients should consult with 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.frs.gov. (2) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on any date during the month of November of a given year, the obligation must be reported by no later than December 31 of that year.)
- c. **What to report.** The recipient must report the information about each obligating action as described in the submission instructions available at: <http://www.frs.gov>.

14.2. Reporting Total Compensation of Recipient Executives.

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

14.3. Reporting of Total Compensation of Subrecipient Executives.

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

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

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

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

14.3.b.1. To the recipient.

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

14.4. Exemptions

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

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

14.5. Definitions. For purposes of this award term:

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

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

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

- d. **Subaward:**

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

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

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

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

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

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

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

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

14.5.f.1. Salary and bonus.

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

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

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

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

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

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

15.1. General Reporting Requirement

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

15.2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

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

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

c. Is one of the following:

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

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

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

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

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

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

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

15.3. Reporting Procedures

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

15.4. Reporting Frequency

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

15.5. Definitions

For purposes of this award term and condition:

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

16. Federal Financial Reporting (FFR)

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

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

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

17. Indirect Cost Rate Agreements

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

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

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

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

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

18. Audit Requirements

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

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

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

19. Closeout Requirements

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

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

20. Suspension and Debarment

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

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

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

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

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

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

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

22. Disclosing Conflict of Interests

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25. Extension of Project/Budget Period Expiration Date

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

26. Utilization of Disadvantaged Business Enterprises

GENERAL COMPLIANCE, 40 CFR, Part 33

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

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

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

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

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

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

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

3. CONTRACT ADMINISTRATION PROVISIONS, 40 CFR Section 33.302

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

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

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

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

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

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

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

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

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

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

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

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

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

Programmatic General Terms and Conditions

27. Sufficient Progress

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

28. Copyrighted Material and Data

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

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

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

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

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

29. Patents and Inventions

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

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

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

30. Acknowledgement Requirements for Non-ORD Assistance Agreements

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

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

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

31. Electronic and Information Technology Accessibility

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

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

32. Human Subjects

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

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

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

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

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

33. Animal Subjects

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

34. Light Refreshments and/or Meals

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

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

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

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

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

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

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

FOR STATE CONTINUING ENVIRONMENTAL PROGRAM GRANT RECIPIENTS EXCLUDING STATE UNIVERSITIES:

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

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

35. Tangible Personal Property

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

35.2 Disposition

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

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

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

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

36. Dual Use Research of Concern (DURC)

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

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

37. Research Misconduct

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

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

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

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

38. Scientific Integrity Terms and Conditions

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

38.1 Scientific Products

- 38.1.1** Produce scientific products of the highest quality, rigor, and objectivity, by adhering to applicable EPA [information quality guidelines](#) [quality policy](#) and peer review policy.
- 38.1.2** Prohibit all recipient employees, contractors, and program participants, including scientists, managers, and other recipient leadership, from suppressing, altering, or otherwise impeding the timely release of scientific findings or conclusions.
- 38.1.3** Adhere to [EPA's Peer Review Handbook, 4th Edition](#), for the peer review of scientific and technical work products generated through EPA grants or cooperative agreements which, by definition, are not primarily for EPA's direct use or benefit.

38.2 Scientific Findings

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

38.3 Scientific Misconduct

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

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

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

38.4 Additional Resources

For more information about the Scientific Integrity Policy, an introductory video can be accessed at: <https://youtu.be/FQJCy8BXXq8>. A training video is available at: <https://youtu.be/Zc0T7foot8>.

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/.

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.

PROJECT ASSURANCES FOR FEDERAL ASSISTANCE HAZARD MITIGATION GRANTS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact California Governor's Office of Emergency Services (Cal OES). Further, certain federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, Federal Office of Inspector General 2 CFR 200.336, and if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of the project.
4. Will comply with the requirements of the assistance-awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or state.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gains.
8. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.), which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

9. Will comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibit discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255) as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made, and (j) the requirements on any other nondiscrimination statute(s) which may apply to the application.
10. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal and federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchases.
11. Will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$5,000 or more.
12. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.O. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.O. 93-205).
13. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

14. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
15. Will comply with Standardized Emergency Management (SEMS) requirements as stated in the California Emergency Services Act, Government Code, Chapter 7 of Division 1 of Title 2, Section 8607.1(e) and CCR Title 19, Sections 2445, 2446, 2447 and 2448.
16. Subrecipients expending \$750,000 or more in federal grant funds annually are required to secure an audit pursuant to OMB Uniform Guidance 2 CFR Part 200, Subpart F. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 and the Single Audit Act Amendments of 1996.
17. Will disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with §200.112.
18. Will comply with all applicable requirements of all other federal laws, Executive Orders, regulations and policies governing this program.
19. Has requested through the State of California, federal financial assistance to be used to perform eligible work approved in the subrecipient application for federal assistance. Will, after the receipt of federal financial assistance, through the State of California, agree to the following:
 - a. The state warrant covering federal financial assistance will be deposited in a special and separate account, and will be used to pay only eligible costs for projects described above;
 - b. To return to the State of California such part of the funds so reimbursed pursuant to the above numbered application, which are excess to the approved actual expenditures as accepted by final audit of the federal or state government.
 - c. In the event the approved amount of the above numbered project application is reduced, the reimbursement applicable to the amount of the reduction will be promptly refunded to the State of California.
20. The non-Federal entity for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award §200.113. Failure to make required disclosures can result in any of the remedies described in §200.338 Remedies for noncompliance, including suspension or debarment.
21. Will not make any award or permit any award (subaward or contract) to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension.

“I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized by City of Alameda
(Name of Organization)

to enter into this agreement for and on behalf of said subrecipient, and by my signature do bind the subrecipient to the terms thereof .

Erin Smith
Printed Name of Authorized Applicant’s Agent

Public Works Director
Title

DocuSigned by:
Erin Smith
21DC39E8C019480...
Signature of Authorized Applicant’s Agent

12/8/2022
Date

Authorization

I, Erin Smith , do hereby certify as the authorized representative or
Printed Name

officer of City of Alameda , that the information contained in this
Name of Organization

application is true and correct.

Public Works Director
Title

DocuSigned by:
Erin Smith
21DC39E8C019480...
Signature

12/8/2022
Date

Exhibit B

Sustainable Communities Grants (State Funding) Restricted Grant Agreement Requirements (Part B of RFP)

DBE contract goals are not required for state-only funded contracts. This guidance is for contracts utilizing state funds only. If any federal funds are added or reimbursed, the federal process must be followed.

**Sustainable Communities Grants
(State)**

Restricted Grant Agreement

This Restricted Grant Agreement (RGA), between the State of California acting by and through its Department of Transportation, referred to herein as **CALTRANS**, and the **CITY OF ALAMEDA**, hereinafter referred to as **AGENCY**, will commence on **November 1, 2022**, or upon approval by **CALTRANS**, whichever occurs later. This RGA is of no effect unless approved by **CALTRANS**. **AGENCY** shall not receive payment for work performed prior to approval of the RGA and before receipt by **AGENCY** of Notice to Proceed from **CALTRANS** Contract Manager. This RGA shall expire on **February 28, 2025**.

Attachments:

The following attachments are incorporated into and are made a part of this RGA by this reference and attachment.

- I. **AGENCY** Resolution
- II. Scope of Work and Project Cost and Schedule
- III. Grant Application Guide

Recitals

1. Under this RGA, **CALTRANS** intends to convey State restricted grant funds to **AGENCY**, pursuant to Budget Act Line Item 2660-102-0042, who will conduct transportation studies and planning within the regional area under the jurisdiction of **AGENCY** under the terms, covenants, and conditions of this RGA.
2. **CALTRANS** and **AGENCY** intend that only funds that are authorized as restricted grants will be subject to this RGA, and that no funds that should be the subject of a Joint Powers Agreement, Interagency Agreement, or other non-grant agreement, shall be subject to this RGA.

Now, therefore, based upon the terms, covenants, and conditions, the parties agree as follows:

Section I

AGENCY Responsibility:

To timely and satisfactorily complete all Project work described in **Attachment II** within the project budget and in accordance with the items of this RGA.

Section II

CALTRANS Responsibility:

That when conducting an audit of the costs claimed by **AGENCY** under the provisions of this RGA, to conduct the audit in accordance with applicable laws and regulations.

Section III

Parties' Mutual Responsibilities:

1. Under this RGA, **CALTRANS** will convey State grant restricted funds to **AGENCY**, pursuant to Budget Act Line Item 2660-102-0042, and **AGENCY** will conduct transportation studies and planning within the regional area described in **Attachment II**. The funds subject to this RGA must

be (a) identified as available for a restricted grant in **CALTRANS'** budget and (b) for the purpose of conducting transportation studies or planning and (c) to a public entity that is responsible for conducting transportation studies or planning.

2. Details of the Grant Program, Funds, Project, and Program Guidelines and the governing State and Federal law are fully described in **Attachment III**, which is attached to and made a part of this RGA.
3. Under this restricted grant, funds may be only used for the purpose set forth in this RGA, **Resolution (Attachment I)**, **Scope of Work and Cost and Schedule (Attachment II)**, and the applicable **Grant Application Guide (Attachment III)**, and funds may only be used for costs and expenses that are directly related to such purpose.
4. **AGENCY** shall perform all the duties and obligations described in the Oakland-Alameda Estuary Adaptation Project, hereinafter the Project, subject to the terms and conditions of this RGA and the Approved Project Grant Application (**Scope of Work and Cost and Schedule**), which are attached hereto as **Attachment II**.
5. The **RESOLUTION** authorizing **AGENCY** to execute this RGA pertaining to the above described Project is attached hereto as **Attachment I**.
6. All services performed by **AGENCY** pursuant to this RGA shall be performed in accordance with all applicable Federal, State, and Local laws, regulations, ordinances, all applicable **CALTRANS** policies and procedures, and all applicable **CALTRANS** published manuals, including, but not limited to, the applicable **Grant Application Guide (Attachment III)**.

In case of conflict between any applicable Federal, State, and Local laws, regulations, and ordinances, and/or any applicable policies, procedures, or published manuals of either **CALTRANS** or **AGENCY**, the order of precedence of the applicability of same to this RGA shall be established in this order: 1) Federal laws and regulations; 2) California laws and regulations; 3) **CALTRANS** policies, procedures, and published manuals; 4) Local ordinances; and 5) **AGENCY** policies, procedures, and published manuals. This RGA may not include any Federal funds.

7. Project funding is as follows:

Fund Source: STATE	Fund Source: AGENCY				Total Project Cost
State Highway Account (SHA) Grant Funds	Local Match (Cash)	Local Match (In-Kind)	Total Local Match	% Local Match	
\$425,000.00	\$75,000	\$0.00	\$75,000.00	15%	\$500,000.00

No in-kind contributions may be made unless the amount and type of the contribution is identified above.

8. This RGA is exempt from legal review and approval by the Department of General Services (DGS), pursuant to applicable law.
9. **Notification of Parties**
 - a. **AGENCY's** Project Manager for Project is Gail Payne, gpayne@alamedaca.gov, (510) 747-6892

- b. **AGENCY's** Financial Manager for the Project is N/A.
- c. **CALTRANS** Contract Manager is Jasmine Stitt, jasmine.stitt@dot.ca.gov, (510) 849-7958. "Contract Manager" as used herein includes his/her designee.
- d. All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and received by the parties at their respective addresses:

City of Alameda

Attention: Gail Payne, Senior Transportation Coordinator
Phone Number: (510) 747-6892
Email: gpayne@alamedaca.gov
Address: 2263 Santa Clara Avenue
Alameda, California, 94501

California Department of Transportation

District 4 / Pedestrian and Bicycle
Attention: Jasmine Stitt, Contract Manager
Phone Number: (510) 849-7958
Email: jasmine.stitt@dot.ca.gov
Address: 111 Grand Avenue, MS-10D
Oakland, California, 94612

10. Period of Performance

- a. Reimbursable work under this RGA shall begin no earlier than on **November 1, 2022**, following the written approval of **CALTRANS** and **AGENCY's** receipt of the Notice to Proceed letter of this RGA by the **CALTRANS** Contract Manager, and will expire on **February 28, 2025**.
- b. **AGENCY** will attend a kickoff meeting with **CALTRANS** to be scheduled within one (1) week from receipt of Notice to Proceed letter by **CALTRANS** Contract Manager.

11. Changes in Terms/Amendments

This Agreement may only be amended or modified by mutual written agreement of the parties. Any proposed modification to this agreement that requires a formal amendment must be submitted by **AGENCY** to **CALTRANS** no less than ninety (90) days prior to the expiration of this RGA.

12. Cost Limitation

- a. The maximum total amount granted and reimbursable to **AGENCY** pursuant to this RGA by **CALTRANS** shall not exceed **\$425,000.00**.
- b. It is agreed and understood that this RGA fund limit is an estimate and that **CALTRANS** will only reimburse the cost of services actually rendered in accordance with the provisions of this RGA and as authorized by the **CALTRANS** Contract Manager at or below that fund limitation established herein.

13. Termination

- a. If the applicable law and the Grant Program guidelines provide for such termination, **CALTRANS** reserves the right to terminate this RGA for any or no reason upon written notice to **AGENCY** at least 30 days in advance of the effective date of such termination in the event **CALTRANS** determines (at its sole discretion) that **AGENCY** failed to proceed with Project

work in accordance with the terms of this RGA. In the event of termination for convenience, **CALTRANS** will reimburse **AGENCY** for all allowable, authorized, and non-cancelled costs up to the date of termination.

- b. This RGA may be terminated by either party for any or no reason by giving written notice to the other party at least 30 days in advance of the effective date of such termination. In the event of termination for convenience, **CALTRANS** will reimburse **AGENCY** for all allowable, authorized, and non-cancelled costs up to the date of termination.
- c. **AGENCY** has 60 days after the Termination Date to submit accurate invoices to **CALTRANS** to make final allowable payments for Project costs in accordance to the terms of this RGA. Failure to submit accurate invoices within this period of time shall result in a waiver by **AGENCY** of its right to reimbursement of expended costs.

14. Budget Contingency Clause

- a. It is mutually agreed that if the US Congress or the State Legislature fail to appropriate or allocate funds during the current year and/or any subsequent years covered under this RGA and do not appropriate sufficient funds for the program, this RGA shall be of no further force and effect. In this event, **CALTRANS** shall have no liability to pay any funds whatsoever to **AGENCY** or to furnish any other considerations under this RGA and **AGENCY** shall not be obligated to perform any provisions of this RGA.
- b. If funding for any fiscal year is reduced or deleted by the US Congress or the State Legislature for purposes of this program, **CALTRANS** shall have the option to either terminate this RGA with no liability occurring to **CALTRANS**, or offer an RGA Amendment to **AGENCY** to reflect the reduced amount.

15. Payment and Invoicing

AGENCY, its contractors, subcontractors and sub-recipients shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line. The accounting system of **AGENCY**, its contractors, all subcontractors, and sub-recipients shall conform to Generally Accepted Accounting Principles (GAAP) and any standards specified by the source of funds, to enable the determination of incurred costs at interim points of completion, and to provide support for reimbursement payment vouchers or invoices.

- a. The method of payment for this RGA will be based on the actual allowable costs that are incurred in accordance with the provisions of this RGA and in the performance of the Project Work. **CALTRANS** will reimburse **AGENCY** for expended actual allowable direct costs and including, but not limited to, labor costs, travel, and contracted consultant services costs incurred by **AGENCY** in performance of the Project work. Indirect costs are reimbursable only if the **AGENCY** has identified the estimated indirect cost rate in **Attachment II** and an approved Indirect Cost Allocation Plan or an Indirect Cost Rate Proposal as set forth in **Section III–Cost Principles, Paragraph 17d**. The total cost shall not exceed the cost reimbursement limitation set forth in **Section III–Cost Limitation, Paragraph 12a**. Actual costs shall not exceed the estimated wage rates, labor costs, travel, and other estimated costs and fees set forth in **Attachment II** without an amendment to this RGA, as agreed between **CALTRANS** and **AGENCY**.
- b. Reimbursement of **AGENCY** expenditures will be authorized only for those allowable costs actually incurred by **AGENCY** in accordance with the provisions of this RGA and in the performance of Project Work. **AGENCY** must not only have incurred the expenditures on or

after the start date and the issuance of Notice to Proceed letter for this RGA and before Expiration Date but must have also paid for those costs to claim any reimbursement.

- c. Travel expenses and per diem rates are not to exceed the rate specified by the State of California Department of Human Resources for similar employees (i.e. non-represented employees) unless written verification is supplied that government hotel rates were not then commercially available to **AGENCY**, its sub-recipients, contractors, and/or subcontractors, at the time and location required as specified in the California Department of Transportation's Travel Guide Exception Process at the following link: <https://travelpocketguide.dot.ca.gov/>.
Also see website for summary of travel reimbursement rules.
- d. **AGENCY** shall submit invoices to **CALTRANS** at least quarterly, but no more frequently than monthly, in arrears for completion of milestones in accordance with the **PROJECT** Cost and Schedule in **Attachment II** to the satisfaction of **CALTRANS** Contract Manager. Invoices shall reference this RGA Number and shall be signed and submitted to **CALTRANS** Contract Manager at the following address, as stated in **Section III–Notification of Parties, Item 9c**. One-time lump sum invoices for grant amount is not allowed.
- e. Invoices shall include the following information:
 - 1) Names of the **AGENCY** personnel performing work
 - 2) Dates and times of Project Work
 - 3) Locations of Project Work
 - 4) Itemized costs as set forth in **Attachment II**, including identification of each employee, contractor, or subcontractor staff who provided services during the period of the invoice, the number of hours and hourly rates for each employee, contractor, sub-recipient, or subcontractor staff member, authorized travel expenses with receipts, receipts for authorized materials or supplies, and contractor, sub-recipient and subcontractor invoices.
- f. Incomplete or inaccurate invoices shall be returned to the **AGENCY**, unapproved, for correction. Failure to submit invoices on a timely basis may be grounds for termination of this RGA for material breach per **Section III–Termination, Paragraph 13**.
- g. **CALTRANS** will reimburse **AGENCY** for all allowable Project costs at least quarterly, but no more frequently than monthly, in arrears as promptly as **CALTRANS** fiscal procedures permit upon receipt of an itemized signed invoice.
- h. The RGA Expiration Date refers to the last date for **AGENCY** to incur valid Project costs or credits and is the date the RGA expires. **AGENCY** has 60 days after that Expiration Date to make final allowable payments to Project contractors or vendors and submit the Project's Final Product(s) as defined in **Attachment II** and a final accurate invoice to **CALTRANS** for reimbursement for allowable Project costs. Any unexpended Project funds not invoiced by the 60th day will be reverted and will no longer be accessible to reimburse late Project invoices.

16. Local Match Funds

- a. **AGENCY** shall contribute not less than its specified local match amount toward the services described herein by the grant expiration date identified in Paragraph 1 of this RGA. **AGENCY** can provide less than their percentage local match contribution in each invoice submittal, but **AGENCY** must fully satisfy the local cash and in-kind match amount and percentage identified in **Section III, Paragraph 7**, with the final invoice.

- b. If Agency fails to provide the contractual local match identified in **Section III, Paragraph 7**, it is grounds for contract termination as identified in **Section III, Paragraph 13**.

17. Quarterly Progress Reporting

AGENCY shall submit written quarterly progress reports to **CALTRANS** Contract Manager to determine if **AGENCY** is performing to expectations, is on schedule, is within funding cost limitations, to communicate interim findings, and to afford occasions for airing difficulties respecting special problems encountered so that remedies can be developed.

18. Cost Principles

- a. **AGENCY** agrees to comply with Title 2, Code of Federal Regulations (CFR), Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- b. **AGENCY** agrees, and will assure that its contractors, sub-recipients, and subcontractors will be obligated to agree, that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual Project costs and (b) all parties shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Every sub-recipient receiving Project funds as a sub-recipient, contractor, or subcontractor under this RGA shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards to the extent applicable.
- c. Prior to **AGENCY** seeking reimbursement of indirect costs, **AGENCY** must have identified the estimated indirect cost rate in **Attachment II**, prepare and submit annually to **CALTRANS** for review and approval an indirect cost rate proposal and a central service cost allocation plan (if any) in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and Chapter 5 of the Local Assistance Procedures Manual which may be accessed at: <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/ch05.pdf>.
- d. **AGENCY** agrees and shall require that all its agreements with consultants and sub-recipients contain provisions requiring adherence to this section in its entirety.

19. Repayment of Unallowable Costs

Any Project costs for which **AGENCY** has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, and/or Part 48, Chapter 1, Part 31, are subject to repayment by **AGENCY** to **CALTRANS**. Should **AGENCY** fail to reimburse moneys due **CALTRANS** within 30 days of discovery or demand, or within such other period as may be agreed in writing between the parties hereto, **CALTRANS** is authorized to intercept and withhold future payments due **AGENCY** from **CALTRANS** or any third-party source, including, but not limited to, the State Treasurer, the State Controller, or any other fund source.

20. Americans with Disabilities Act

By signing this Agreement, **LOCAL AGENCY** assures **CALTRANS** that in the course of performing Project Work, it will fully comply with the applicable provisions of the Americans with Disabilities Act (ADA) of 1990, as amended, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 USC Section 12101 et seq.).

21. Indemnification

Neither **CALTRANS** nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by **AGENCY**, its officers, employees, agents, contractors, sub-recipients, or subcontractors under or in connection with any work, authority, or jurisdiction conferred upon **AGENCY** under this RGA. It is understood and agreed that **AGENCY** shall fully defend, indemnify, and save harmless **CALTRANS** and all of **CALTRANS'** officers and employees from all claims, suits or actions of every name, kind, and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by **AGENCY**, its officers, employees, agents, contractors, sub-recipients, or subcontractors under this RGA.

22. Nondiscrimination Clause (2 CCR 11105 Clause b)

- a. During the performance of this RGA, the **AGENCY** contractors, sub-recipients, and subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. **AGENCY** shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- b. **AGENCY** shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code Sections 12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., Tit. 2, Sections 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code Sections 11135-11139.5), and the regulations or standards adopted by **CALTRANS** to implement such article.
- c. **AGENCY** shall permit access by representatives of the Department of Fair Employment and Housing and **CALTRANS** upon reasonable notice at any time during normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or **CALTRANS** shall require to ascertain compliance with this clause.
- d. **AGENCY** and contractors, sub-recipients, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- e. **AGENCY** shall include the nondiscrimination and compliance provisions of this clause in all agreements with its sub-recipients, contractors, and subcontractors, and shall include a requirement in all agreements with all of same that each of them in turn include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts they enter into to perform work under the RGA.

23. Retention of Records/Audits

- a. **AGENCY**, its contractors, subcontractors and sub-recipients, agree to comply with Title 2, Code of Federal Regulations (CFR), Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

- b. All accounting records and other supporting papers of **AGENCY**, its contractors, subcontractors and sub-recipients connected with Project performance under this RGA shall be maintained for a minimum of three (3) years from the date of final payment to **AGENCY** and shall be held open to inspection, copying, and audit by representatives of **CALTRANS**, the California State Auditor, and auditors representing the federal government. Copies thereof will be furnished by **AGENCY**, its contractors, its subcontractors and sub-recipients upon receipt of any request made by **CALTRANS** or its agents. In conducting an audit of the costs and match credits claimed under this RGA, **CALTRANS** will rely to the maximum extent possible on any prior audit of **AGENCY** pursuant to the provisions of State and **AGENCY** law. In the absence of such an audit, any acceptable audit work performed by **AGENCY's** external and internal auditors may be relied upon and used by **CALTRANS** when planning and conducting additional audits.
- c. For the purpose of determining compliance with applicable State and **AGENCY** law in connection with the performance of **AGENCY's** agreements with third parties pursuant to Government Code Section 8546.7, **AGENCY**, **AGENCY's** sub-recipients, contractors, subcontractors, and **CALTRANS**, shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire Project period and for three (3) years from the date of final payment to **AGENCY** under this RGA. **CALTRANS**, the California State Auditor, or any duly authorized representative of **CALTRANS** or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to a Project for audits, examinations, excerpts, and transactions, and **AGENCY** shall furnish copies thereof if requested.
- d. **AGENCY**, its sub-recipients, contractors, and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other **AGENCY** of the State of California designated by **CALTRANS**, for the purpose of any investigation to ascertain compliance with this RGA.
- e. Additionally, all grants may be subject to a pre-award audit prior to execution of the RGA to ensure **AGENCY** has an adequate financial management system in place to accumulate and segregate reasonable, allowable, and allocable costs.
- f. Any contract with a contractor, subcontractor, or sub-recipient entered into as a result of this RGA shall contain all the provisions of this article.

24. Adjudication of Facts in Disputes

- a. Any dispute concerning a question of fact arising under this RGA that is not disposed of by agreement shall be decided by the **CALTRANS** Contract Officer, who may consider any written or verbal evidence submitted by **AGENCY**. The **CALTRANS** Contract Officer shall issue a written decision within 30 days of receipt of the dispute. If **AGENCY** rejects the decision of the **CALTRANS** Contract Officer, **AGENCY** can pursue any and all remedies authorized by law. Neither party waives any rights to pursue remedies authorized by law.

- b. Neither the pendency of a dispute nor its consideration by **CALTRANS** Contract Officer will excuse **AGENCY** from full and timely performance in accordance with the terms of the RGA.
- c. Voluntary Resolution: Reference to Other Means of Resolution. In recognition of the government-to-government relationship of the **AGENCY** and **CALTRANS**, the parties shall make their best efforts to resolve disputes that occur under this RGA by good faith negotiations whenever possible. Therefore, without prejudice to the right of either party to seek injunctive relief against the other when circumstances are deemed to require immediate relief, the parties hereby establish a threshold requirement that disputes between the **AGENCY** and **CALTRANS** first be subjected to a process of meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each other with the terms, provisions, and conditions of this RGA, as follows:
 - 1) Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.
 - 2) The parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not later than 10 days after receipt of the notice, unless both parties agree in writing to an extension of time.
 - 3) If the dispute is not resolved to the satisfaction of the parties within 30 working days after the first meeting, then either party may seek to have the dispute resolved by alternative dispute resolution methods, including, but not limited to, non-binding arbitration, mediation, or the use of a technical advisor.
 - 4) Disagreements that are not otherwise resolved by mutually acceptable means as provided herein may be resolved in the Superior Court of the State of California located within the same county where a Project is located. The disputes to be submitted to the court include claims of breach or violation of this RGA. This RGA shall be interpreted under the laws of the State of California without regard to any conflict of laws' provisions. In no event may **AGENCY** be precluded from pursuing any arbitration or judicial award or remedy against **CALTRANS** on the grounds that **AGENCY** has failed to exhaust its state administrative remedies. The parties agree that, except in the case of imminent threat to public health or safety, reasonable efforts will be made to explore alternative dispute resolution avenues prior to initiating judicial proceedings.

25. Third-Party Contracts

- a. All State-government funded procurements must be conducted using a fair and competitive procurement process. AGENCY may use its own procurement procedures as long as the procedures comply with the local AGENCY's laws, rules, and ordinances governing procurement and all applicable provisions of State law, including, without limitation, the requirement that the AGENCY endeavor to obtain at least three (3) competitive bids for solicitation of goods, services, and consulting services.

Resources for Third Party Contracts, which are not inconsistent with this Paragraph 25, Third Party Contracts:

- 1) Part 2, Chapter 2, Articles 3 and 4 of the Public Contract Code
- 2) State Contracting Manual (SCM), Chapter 5

- 3) Caltrans Local Assistance Procedures Manual (LAPM) Chapter 10
- b. Any contract entered into as a result of this RGA shall contain all the provisions stipulated in this RGA to be applicable to **AGENCY's** subrecipients, contractors, and subcontractors. Copies of all agreements with subrecipients, contractors, and subcontractors must be submitted to the **CALTRANS** Contract Manager.
- c. **CALTRANS** does not have a contractual relationship with the **AGENCY's** subrecipients, contractors, or subcontractors and the **AGENCY** shall be fully responsible for all work performed by its sub-recipients, contractors, or subcontractors.
- d. Prior authorization in writing by **CALTRANS** Contract Manager shall be required before **AGENCY** enters into any non-budgeted purchase order or sub-agreement for supplies, or consultant services. **AGENCY** shall provide an evaluation of the necessity or desirability of incurring such costs. **AGENCY** shall retain all receipts for such purchases or services and shall submit them with invoices per **Section III–Payment and Invoicing, Paragraph 15(e)(4), above.**
- e. Any contract entered into by **AGENCY** as a result of this RGA shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subrecipients, contractors, and subcontractors, will be allowable as Project costs only after those costs are incurred and paid for by the subrecipients, contractors, and subcontractors. Travel expenses and per diem rates for subcontractors shall be reimbursed pursuant to **Section III–Payment and Invoicing, Paragraph 15c, above.**

26. Drug-Free Workplace Certification

By signing this RGA, **AGENCY** hereby certifies under penalty of perjury under the laws of California that **AGENCY** will comply with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code Sections 8350 et seq.) and will provide a Drug-Free workplace by doing all the following:

- A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
- B. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(a)(2) to inform employees about all the following:
 - 1) The dangers of drug abuse in the workplace;
 - 2) The person's or organization's policy of maintaining a Drug-Free workplace;
 - 3) Any available counseling, rehabilitation, and employee assistance programs; and
 - 4) Penalties that may be imposed upon employees for drug abuse violations.
- C. Provide, as required by Government Code Section 8355(a)(3), that every employee who works on the proposed contract or grant:
 - 1) Will receive a copy of the company's Drug-Free Policy Statement, and
 - 2) Will agree to abide by the terms of the company's statement as a condition of employment on the contract or grant.

- D. Failure to comply with these requirements may result in suspension of payments under this RGA or termination of this RGA or both, and **AGENCY** may be ineligible for the award of any future State contracts if **CALTRANS** determines that any of the following has occurred: (1) **AGENCY** has made a false certification or, (2) **AGENCY** violates the certification by failing to carry out the requirements as noted above.

27. Relationship of Parties

It is expressly understood that this agreement is executed by and between two (2) independent governmental entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of an independent party.

28. State-Owned Data

- A. **AGENCY** agrees to comply with the following requirements to ensure the preservation, security, and integrity of State-owned data on portable computing devices and portable electronic storage media:
- 1) Encrypt all State-owned data stored on portable computing devices and portable electronic storage media using government-certified Advanced Encryption Standard (AES) cipher algorithm with a 256-bit or 128-bit encryption key to protect **CALTRANS** data stored on every sector of a hard drive, including temp files, cached data, hibernation files, and even unused disk space.
 - 2) Data encryption shall use cryptographic technology that has been tested and approved against exacting standards, such as FIPS 140-2 Security Requirements for Cryptographic Modules.
 - 3) Encrypt, as described above, all State-owned data transmitted from one computing device or storage medium to another.
 - 4) Maintain confidentiality of all State-owned data by limiting data sharing to those individuals contracted to provide services on behalf of the State, and limit use of State information assets for State purposes only.
 - 5) Install and maintain current anti-virus software, security patches, and upgrades on all computing devices used during the course of the Agreement.
 - 6) Notify **CALTRANS** Contract Manager immediately of any actual or attempted violations of security of State-owned data, including lost or stolen computing devices, files, or portable electronic storage media containing State-owned data.
 - 7) Advise the owner of the State-owned data, the **AGENCY** Information Security Officer, and the **AGENCY** Chief Information Officer of vulnerabilities that may present a threat to the security of State-owned data and of specific means of protecting that State-owned data.
- B. **AGENCY** agrees to use the State-owned data only for State purposes under this Agreement.
- C. **AGENCY** agrees to not transfer State-owned data to any computing system, mobile device, or desktop computer without first establishing the specifications for information integrity and security as established for the original data file(s). (State Administrative Manual (SAM) Section 5335.1)

29. Assumption of Risk and Indemnification Regarding Exposure to Environmental Health Hazards

In addition to, and not a limitation of, Contractor's indemnification obligations contained elsewhere in this RGA, Contractor hereby assumes all risks of the consequences of exposure of Contractor's employees, agents, subrecipients, contractors, and subcontractors, subcontractors' employees, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, to any and all environmental health hazards, local and otherwise, in connection with the performance of this Agreement. Such hazards include, but are not limited to, bodily injury and/or death resulting in whole or in part from exposure to infectious agents and/or pathogens of any type, kind or origin. Contractor also agrees to take all appropriate safety precautions to prevent any such exposure to Contractor's employees, agents, subrecipients, contractors, and subcontractors, subcontractors' employees, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement. Contractor also agrees to indemnify and hold harmless Caltrans, the State of California, and each and all of their officers, agents and employees, from any and all claims and/or losses accruing or resulting from such exposure. Except as provided by law, Contractor also agrees that the provisions of this paragraph shall apply regardless of the existence or degree of negligence or fault on the part of Caltrans, the State of California, and/or any of their officers, agents and/or employees.

30. Mandatory Organic Waste Recycling

It is understood and agreed that pursuant to Public Resources Code Sections 42649.8 et seq., if Contractor generates two (2) cubic yards or more of organic waste or commercial solid waste per week, Contractor shall arrange for organic waste or commercial waste recycling services that separate/source organic waste for organic waste recycling. Contractor shall provide proof of compliance, i.e. organic waste recycling services or commercial waste recycling services that separate/source organic waste recycling, upon request from Caltrans Contract Manager.

31. ADA Compliance

All entities that provide electronic or information technology or related services that will be posted online by Caltrans must be in compliance with Government Code Sections 7405 and 11135 and the Web Content Accessibility Guidelines (WCAG) 2.0 or subsequent version, published by the Web Accessibility Initiative of the World Wide Web Consortium at a minimum Level AA success. All entities will respond to and resolve any complaints/deficiencies regarding accessibility brought to their attention.

32. Project Close Out/Final Product

- a. **AGENCY** will provide an electronic version, preferable ADA accessible of the Final Product(s) to the **CALTRANS** Contract Manager.
- b. **CALTRANS** reserves the right to withhold final payment to **AGENCY** pending receipt of Final Product(s) to **CALTRANS** Contract Manager.

33. Ownership of Proprietary Property

a. Definitions

- 1) **Work**: The work to be directly or indirectly produced by **AGENCY** under this RGA.
- 2) **Work Product**: All deliverables created or produced from **Work** under this RGA including, but not limited to, all **Work** and Deliverables conceived or made, or made hereafter conceived or made, either solely or jointly with others during the term of this RGA and

during a period of six (6) months after the termination thereof, which relates to the **Work** commissioned or performed under this RGA. "**Work Product**" includes all deliverables, inventions, innovations, improvements, or other works of authorship **AGENCY**, its subrecipients, a third-party contractor or subcontractor may conceive of or develop in the course of this RGA, whether or not they are eligible for patent, copyright, trademark, trade secret, or other legal protection.

- 3) **Inventions:** Any idea, methodologies, design, concept, technique, invention, discovery, improvement or development regardless of patentability made solely by **AGENCY** or jointly with the **AGENCY's** contractor, subcontractor and/or subrecipient and/or the **AGENCY's** contractor, subcontractor and/or subrecipient's employees with one or more employees of **CALTRANS**, during the term of this RGA and in performance of any Work under this RGA, provided that either the conception or reduction to practice thereof occurs during the term of this RGA and in performance of **Work** issued under this RGA.

b. **Ownership of Work Product and Rights**

- 1) **Copyright Ownership of Work Product:** Except in regard to Pre-existing Works, all **Work Product** derived by the **Work** performed by the **AGENCY**, its employees, or by any of the **AGENCY's** contractor's, subcontractor's, and/or sub-recipient's employees under this RGA, shall be owned by **CALTRANS** and **AGENCY** and shall be considered to be works made for hire by the **AGENCY** and **AGENCY's** contractor, subcontractor, and/or sub-recipient for **CALTRANS** and **AGENCY**. **CALTRANS** and **AGENCY** shall own all United States and international copyrights in the **Work Product**.

As such, all **Work Product** shall contain, in a conspicuous place, a copyright designation consisting of a "c" in a circle followed by the four-digit year in which the Work Product was produced, followed by the words "California Department of Transportation and **AGENCY**. All Rights Reserved." For example, a Work Product created in the year 2012 would contain the copyright designation © 2012 California Department of Transportation and **AGENCY**. All Rights Reserved.

- 2) **Vesting of Copyright Ownership:** **AGENCY**, its employees, and all of **AGENCY's** contractor's, subcontractor's, and sub-recipient's employees, agrees to perpetually assign, and upon creation of each Work Product automatically assigns, to **CALTRANS** and **AGENCY**, its successors and assigns, ownership of all United States and international copyrights in each and every **Work Product**, insofar as any such **Work Product**, by operation of law, may not be considered work made for hire by the **AGENCY's** contractor, subcontractor, and/or sub-recipient, from **CALTRANS**. From time to time, **CALTRANS** and the **AGENCY** shall require its contractors, subcontractors, and/or sub-recipients, and their respective employees, to confirm such assignments by execution and delivery of such assignments, confirmations, or assignment, or other written instruments as **CALTRANS** and the **AGENCY** may request. **CALTRANS** and the **AGENCY**, its successors, and assigns, shall have the right to obtain and hold in its or their own name(s) all copyright registrations and other evidence of rights that may be available for **Work Product**. **AGENCY** shall require contractors, including subcontractors, to waive all moral rights relating to identification of authorship restriction or limitation on use, or subsequent modifications of the **Work**.

c. **Inventions**

- 1) **Vesting of Patent Ownership:** **AGENCY** agrees to require sub-recipients, contractors, subcontractors, and their respective employees, to assign to **CALTRANS** and **AGENCY**,

its successors, and assigns, all Inventions, together with the right to seek protection by obtaining patent ownership rights and the right to claim all rights or priority there under, and the same shall become and remain **CALTRANS'** property regardless of whether such protection is sought. The **AGENCY**, its employees, and **AGENCY's** contractor, subcontractor, and sub-recipient, shall promptly make a complete written disclosure to **CALTRANS** of each Invention not otherwise clearly disclosed to **CALTRANS** in the pertinent **Work Product**, specifically pointing out features or concepts that the **AGENCY**, its employees, and/or **AGENCY's** contractor, subcontractor, and/or sub-recipient believes to be new or different. The **AGENCY**, its employees, and **AGENCY's** contractor, subcontractor, and subrecipient, shall, upon **CALTRANS'** and **AGENCY's** request and at **CALTRANS'** and **AGENCY's** expense, cause patent applications to be filed thereon, through solicitors designated by **CALTRANS** and **AGENCY**, and shall sign all such applications over to **CALTRANS** and **AGENCY**, its successors, and assigns. The **AGENCY**, its employees, and **AGENCY's** contractor, subcontractor, and sub-recipient, shall give **CALTRANS** and **AGENCY** and its solicitors all reasonable assistance in connection with the preparation and prosecution of any such patent applications and shall cause to be executed all such assignments or other instruments or documents as **CALTRANS** and **AGENCY** may consider necessary or appropriate to carry out the intent on this RGA.

- 2) **Agency:** In the event that **CALTRANS** and **AGENCY** are unable for any reason whatsoever to secure the **AGENCY's**, its employees', and/or **AGENCY's** contractor's, subcontractor's, and/or sub-recipient's signature to any lawful or necessary document required or desirable to apply for or prosecute any United States application (including renewals or divisions thereof), **AGENCY**, its employees, and **AGENCY's** contractor, subcontractor, and sub-recipient, hereby irrevocably designates and appoints **CALTRANS** and **AGENCY** and its duly authorized officers and agents, as its agent and attorney-in-fact, to act for and on **AGENCY**, its employees, and **AGENCY's** contractor's, subcontractor's, and sub-recipient's behalf and stead, to execute and file such applications and to do all other lawfully permitted acts to further the prosecution and issuance of any copyrights, trademarks, or patents, thereon with the same legal force and effect as if executed by **AGENCY**, its employees, and **AGENCY's** contractor, subcontractor, and subrecipient. **CALTRANS** and **AGENCY** shall have no obligations to file any copyright, trademark, or patent applications.

d. **Additional Provisions**

- 1) **Avoidance of infringement:** In performing services under this RGA, **AGENCY** and its employees agree to avoid designing or developing any items that infringe one (1) or more patents or other intellectual property rights of any third party. If **AGENCY** or its employees becomes aware of any such possible infringement in the course of performing any Work under this RGA, **AGENCY** or its employees shall immediately notify **CALTRANS** in writing.
- 2) **Pre-existing Works and License:** **AGENCY** agrees to require contractors, subcontractors, and subrecipients, to acknowledge that all **Work Product** shall be the sole and exclusive property of **CALTRANS** and **AGENCY**, except that any **Pre-existing Works** created by **AGENCY** and third parties outside of the RGA but utilized in connection with the RGA (the "**Pre-existing Works**") shall continue to be owned by **AGENCY** or such parties. **AGENCY** agrees to notify **CALTRANS** in writing of any **Pre-existing Works** used in connection with any **Work Product** produced under this RGA and hereby grants to

CALTRANS a non-exclusive, irrevocable, worldwide, perpetual, royalty-free license to utilize the **Pre-existing Works** in connection with the **Work Product**.

- 3) **Contractors, Subcontractors, and Subrecipients:** Through contract with its sub-recipients, contractors, and subcontractors, **AGENCY** shall affirmatively bind by contract all of its contractors, subcontractors, subrecipients, and service vendors (hereinafter "**AGENCY's Contractor/Subcontractor/Subrecipient**") providing services under this RGA to conform to the provisions of this Exhibit. In performing services under this RGA, **AGENCY's Contractor/Subcontractor/Subrecipient** shall agree to avoid designing or developing any items that infringe one (1) or more patents or other intellectual property rights of any third party. If **AGENCY's Contractor/Subcontractor/Subrecipient** becomes aware of any such possible infringement in the course of performing any Work under this RGA, **AGENCY's Contractor/Subcontractor/Subrecipient** shall immediately notify the **AGENCY** in writing, and **AGENCY** will then immediately notify the Department in writing.

e. **Ownership of Data**

- 1) Upon completion of all **Work** under this RGA, all intellectual property rights, ownership, and title to all reports, documents, plans, specifications, and estimates, produced as part of this RGA will automatically be vested in **CALTRANS** and **AGENCY** and no further agreement will be necessary to transfer ownership to **CALTRANS** and **AGENCY**. The **AGENCY**, its contractors, subcontractors, and subrecipients, shall furnish **CALTRANS** all necessary copies of data needed to complete the review and approval process.
- 2) It is understood and agreed that all calculations, drawings, and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the Project for which this RGA has been entered into.
- 3) **AGENCY**, its contractors, subcontractors, and subrecipients, are not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by **CALTRANS** of the machine readable information and data provided by **AGENCY**, its contractors, subcontractors, and subrecipients, under this RGA; further, **AGENCY**, its contractors, subcontractors, and subrecipients, are not liable for claims, liabilities or losses arising out of, or connected with, any use by **CALTRANS** of the Project documentation on other projects, for additions to this Project, or for the completion of this project by others, excepting only such use as may be authorized, in writing, by **AGENCY**, its contractors, subcontractors, and subrecipients.
- 4) Any sub-agreement in excess of \$25,000.00 entered into as a result of this RGA shall contain all of the provisions of this clause.

34. Electronic Signatures

Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures for this Agreement. Documents that are referenced by this Agreement may still require manual signatures.

35. Executive Order N-6-22 – Russia Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order [N-6-22](#) (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are

determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for terminations of this agreement. The State shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

Section IV

In Witness Whereof, the parties hereto have executed this RGA on the day and year first herein above written:

STATE OF CALIFORNIA

CITY OF ALAMEDA

DEPARTMENT OF TRANSPORTATION

By: 
Kathleen Stone-takai (Nov 14, 2022 15:57 PST)

By: 

Printed Name: Kathleen Stone-takai

Printed Name: Nancy Bronstein

Title: Contract Officer

Title: Interim City Manager

Date: 11/14/2022

Date: 10/25/2022

By:

Printed Name:

Title:

Date:

By: 

Printed Name: Celena H. Chen

Title: Chief Planning Counsel

Date: 10/25/2023

Exhibit C

City's Service Provider Agreement

SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT (“**Agreement**”) is entered into this ____ day of _____ 2023 (“**Effective Date**”), by and between the CITY OF ALAMEDA, a municipal corporation (“the **City**”), and COMPANY, a [STATE corporation, LLC, LP, GP, or sole proprietor/individual], whose address is ADDRESS (“**Provider**”), in reference to the following facts and circumstances:

RECITALS

- A. The City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. The City is in need of the following services: Technical Consultants for sea level rise adaptation projects. On behalf of the San Leandro Bay/Oakland-Alameda Estuary Adaptation Working Group, City staff issued an RFP on May 2, 2023 and after a submittal period of 49 days received NUMBER timely submitted proposals. City staff and the Working Group reviewed the proposals and selected the Provider that best meets the City’s needs.
- C. Provider is specially trained, experienced and competent to perform the special services which will be required by this Agreement. Provider possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.
- D. The City and Provider desire to enter into an agreement for _____, upon the terms and conditions herein.

AGREEMENT

NOW, THEREFORE, in consideration of the forgoing, which are incorporated herein by reference, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Provider agree as follows:

1. TERM:

The term of this Agreement shall commence on the ____ day of _____ 2023, and shall terminate on the ____ day of _____ 2026, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED:

Provider agrees to do all necessary work at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all necessary work included in Exhibit A as requested. Provider acknowledges that the work plan included in Exhibit A is tentative and does not commit the City to request Provider to perform all tasks included therein.

3. COMPENSATION TO PROVIDER:

a. By the 7th day of each month, Provider shall submit to the City an invoice for the total amount of work done the previous month. Pricing and accounting of charges are to be according to the fee schedule as set forth in Exhibit B and incorporated herein by this reference.

b. The total three-year compensation for this Agreement shall not exceed **\$XXX,XXX**. Use of contingency shall be for items of work outside the original scope and requires prior written authorization by the City.

4. TIME IS OF THE ESSENCE:

Provider and the City agree that time is of the essence regarding the performance of this Agreement.

5. STANDARD OF CARE:

Provider agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals or service providers, as applicable, in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the City.

6. INDEPENDENT PARTIES:

Provider hereby declares that Provider is engaged as an independent business and Provider agrees to perform the services as an independent contractor. The manner and means of conducting the services and tasks are under the control of Provider except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Provider's services. None of the benefits provided by the City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave, are available from the City to Provider, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any compensation due to Provider. Payments of the above items, if required, are the responsibility of Provider.

7. IMMIGRATION REFORM AND CONTROL ACT (IRCA):

Provider assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Provider shall indemnify, defend, and hold the City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Provider.

8. NON-DISCRIMINATION:

Consistent with the City's policy and state and federal law that harassment and discrimination are unacceptable conduct, Provider and its employees, contractors, and agents shall not harass or discriminate against any job applicant, City employee, or any other person on the basis of any kind of any statutorily (federal, state or local) protected class, including but not limited to: race, religious creed, color, national origin, ancestry, disability (both mental and physical)

including HIV and AIDS, medical condition (e.g. cancer), genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, pregnancy, political affiliation, military and veteran status or legitimate union activities. Provider agrees that any violation of this provision shall constitute a material breach of this Agreement.

9. HOLD HARMLESS:

a. To the fullest extent permitted by law, Provider shall indemnify, defend (with counsel acceptable to the City) and hold harmless the City, its City Council, boards, commissions, officials, employees, agents and volunteers (“Indemnitees”) from and against any and all loss, damages, liability, obligations, claims, suits, judgments, costs and expenses whatsoever, including reasonable attorney’s fees and costs of litigation (“Claims”), arising from or in any manner connected to Provider’s performance of its obligations under this Agreement or out of the operations conducted by Provider even if the City is found to have been negligent. If the Claims filed against Indemnitees allege negligence, recklessness or willful misconduct on the part of Provider, Provider shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence, recklessness or willful misconduct is not found on the part of Provider. Provider shall not have any obligations to indemnify Indemnitees if the loss or damage is found to have resulted solely from the negligence or the willful misconduct of the City. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

b. As to Claims for professional liability only, Provider’s obligation to defend Indemnitees (as set forth above) is limited as provided in California Civil Code Section 2782.8.

c. Provider’s obligation to indemnify, defend and hold harmless Indemnities shall expressly survive the expiration or early termination of this Agreement.

10. INSURANCE:

a. On or before the commencement of the terms of this Agreement, Provider shall furnish the City’s Risk Manager with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with Sections 10.b. (1) through (5). The Certificate Holder should be The City of Alameda, 2263 Santa Clara, Ave., Alameda, CA 94501. Such certificates, which do not limit Provider’s indemnification, shall also contain substantially the following statement:

“Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days’ advance written notice to the City of Alameda. Attention: Risk Manager.”

Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company licensed to offer insurance business in the State of California with a current A.M. Best’s rating of no less than A:VII or Standard & Poor’s Rating (if rated) of at least BBB unless otherwise acceptable to the City. Provider shall deliver updated insurance certificates to the City at the address described in Section 17.f. prior to the expiration of the existing insurance certificate for the duration of the

term of Agreement. Endorsements naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers as additional insured shall be submitted with the insurance certificates.

Provider Initials

b. COVERAGE REQUIREMENTS:

Provider shall maintain insurance coverage and limits at least as broad as:

(1) Workers' Compensation:

Statutory coverage as required by the State of California, as well as a Waiver of Subrogation (Rights of Recovery) endorsement.

(2) Liability:

Commercial general liability coverage in the following minimum limits:

Bodily Injury: \$1,000,000 each occurrence
 \$2,000,000 aggregate - all other

Property Damage: \$1,000,000 each occurrence
 \$2,000,000 aggregate

If submitted, combined single limit policy with per occurrence limits in the amounts of \$2,000,000 and aggregate limits in the amounts of \$4,000,000 will be considered equivalent to the required minimum limits shown above. Provider shall also submit declarations and policy endorsements pages. Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers is required. The Additional Insured Endorsement shall include primary and non-contributory coverage at least as broad as the CG 2010.

(3) Automotive:

Comprehensive automobile liability coverage (any auto) in the following minimum limits:

Bodily injury: \$1,000,000 each occurrence
Property Damage: \$1,000,000 each occurrence

or

Combined Single Limit: \$2,000,000 each occurrence

Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers is required.

(4) Professional Liability:

Professional liability insurance which includes coverage appropriate for the professional acts, errors and omissions of Provider's profession and work hereunder, including, but not limited to, technology professional liability errors and omissions if the services being provided are technology-based, in the following minimum limits:

\$2,000,000 each claim

As to commercial general liability and automobile liability insurance, such insurance will provide that it constitutes primary insurance with respect to claims insured by such policy, and, except with respect to limits, that insurance applies separately to each insured against whom claim is made or suit is brought. Such insurance is not additional to or contributing with any other insurance carried by or for the benefit of the City.

c. SUBROGATION WAIVER:

Provider hereby agrees to waive rights of subrogation that any insurer of Provider may acquire from Provider by virtue of the payment of any loss. Provider agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Provider, its employees, agents and subcontractors.

d. FAILURE TO SECURE:

If Provider at any time during the term hereof should fail to secure or maintain the foregoing insurance, the City shall be permitted to obtain such insurance in Provider's name or as an agent of Provider and shall be compensated by Provider for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

e. ADDITIONAL INSURED:

The City, its City Council, boards, commissions, officials, employees, agents, and volunteers shall be named as additional insured(s) under all insurance coverages, except workers' compensation and professional liability insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy. Additional Insured coverage under Provider's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured(s).

f. **SUFFICIENCY OF INSURANCE:**

The insurance limits required by the City are not represented as being sufficient to protect Provider. Provider is advised to consult Provider's insurance broker to determine adequate coverage for Provider. The coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of the coverage carried by or available to Provider; whichever is greater.

g. **EXCESS OR UMBRELLA LIABILITY:**

If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this Agreement, then said policies shall be true "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this Agreement, including but not limited to, the additional insured, SIR, and primary insurance requirements stated therein. No insurance policies maintained by the indemnified parties or Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until all the primary and excess liability policies carried by or available to the Provider are exhausted.

11. CONFLICT OF INTEREST:

Provider warrants that it is not a conflict of interest for Provider to perform the services required by this Agreement. Provider may be required to fill out a conflict of interest form if the services provided under this Agreement require Provider to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations. Provider will disclose in writing any potential conflict of interest to the awarding agency and the City.

12. PROHIBITION AGAINST TRANSFERS:

a. Provider shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of the City Manager. Provider shall submit a written request for consent to transfer to the City Manager at least thirty (30) days in advance of the desired transfer. The City Manager or their designee may consent or reject such request in their sole and absolute discretion. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money against the City under this Agreement may be assigned by Provider to a bank, trust company or other financial institution without prior written consent.

b. The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock, membership interest, partnership interest, or the equivalent, which shall result in changing the control of Provider, shall be construed as an assignment of this Agreement. Control means fifty percent or more of the voting power of Provider.

13. APPROVAL OF SUB-PROVIDERS:

a. Only those persons and/or businesses whose names and resumés are attached to this Agreement shall be used in the performance of this Agreement. However, if after the start of this Agreement, Provider wishes to use sub-providers, at no additional costs to the City, then Provider

shall submit a written request for consent to add sub-providers including the names of the sub-providers and the reasons for the request to the City Manager at least five (5) days in advance. The City Manager may consent or reject such requests in their sole and absolute discretion.

b. Each sub-provider shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance (as applicable) in reasonable conformity to the insurance carried by Provider.

c. In addition, any tasks or services performed by sub-providers shall be subject to each provision of this Agreement. Provider shall include the following language in their agreement with any sub-provider: "Sub-providers hired by Provider agree to be bound to Provider and the City in the same manner and to the same extent as Provider is bound to the City."

d. The requirements in this Section 13 shall not apply to persons who are merely providing materials, supplies, data or information that Provider then analyzes and incorporates into its work product.

14. PERMITS AND LICENSES:

Provider, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City business license that may be required in connection with the performance of the services and tasks hereunder.

15. REPORTS:

a. Each and every report, draft, work product, map, record and other document produced, prepared or caused to be prepared by Provider pursuant to or in connection with this Agreement shall be the exclusive property of the City.

b. No report, information or other data given to or prepared or assembled by Provider pursuant to this Agreement shall be made available to any individual or organization by Provider without prior approval of the City Manager or their designee.

c. Provider shall, at such time and in such form as City Manager or their designee may require, furnish reports concerning the status of services and tasks required under this Agreement.

16. RECORDS:

a. Provider shall maintain complete and accurate records with respect to the services, tasks, work, documents and data in sufficient detail to permit an evaluation of Provider's performance under the Agreement, as well as maintain books and records related to sales, costs, expenses, receipts and other such information required by the City that relate to the performance of the services and tasks under this Agreement (collectively the "**Records**").

b. All Records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Provider shall provide free access to the Records to the representatives of the City or its designees during regular business hours upon reasonable prior notice. The City, the Comptroller General of the United States, Federal Office of Inspector General 2 CFR 200.336, Caltrans, and the California State Auditor, through any

authorized representative, has the right to examine and audit the Records, and to make copies or transcripts therefrom as necessary, and to allow inspection of all proceedings and activities related to this Agreement. Such Records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained by Provider for a period of three (3) years after receipt of final payment.

c. If supplemental examination or audit of the Records is necessary due to concerns raised by the City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of this Agreement or failure to act in good faith, then Provider shall reimburse the City for all reasonable costs and expenses associated with the supplemental examination or audit.

d. Notwithstanding subsections 16.a. through c. above, Provider shall establish and maintain an accounting system and records that properly accumulate and segregate incurred project costs and matching funds by line. The accounting system shall conform to Generally Accepted Accounting Principles (GAAP) to enable the determination of incurred costs at interim points of completion, and to provide support for reimbursement payment vouchers or invoices.

17. NOTICES:

a. All notices shall be in writing and delivered: (i) by hand; or (ii) sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service; or (iii) sent by overnight or same day courier service at the party's respective address listed in this Section.

b. Each notice shall be deemed to have been received on the earlier to occur of: (x) actual delivery or the date on which delivery is refused; or (y) three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above (Sundays and City holidays excepted).

c. Either party may, at any time, change its notice address (other than to a post office box address) by giving the other party three (3) days prior written notice of the new address.

d. All notices, demands, requests, or approvals from Provider to the City shall be addressed to the City at:

City of Alameda
Planning, Building and Transportation Department
City Hall
2263 Santa Clara Avenue, Room 120
Alameda, CA 94501
ATTENTION: Gail Payne, Project Manager
Email: gpayne@alamedaca.gov
Ph: (510) 747-6892

e. All notices, demands, requests, or approvals from the City to Provider shall be addressed to Provider at:

[Provider Name]
[Department]
[Address]
[City, State, zip]
ATTENTION: [Title]
Ph: (xxx) [xxx-xxxx]

f. All updated insurance certificates from Provider to the City shall be addressed to the City at:

City of Alameda
Planning, Building and Transportation Department
City Hall
2263 Santa Clara Avenue, Room 120
Alameda, CA 94501
ATTENTION: Gail Payne, Project Manager
Email: gpayne@alamedaca.gov

18. SAFETY:

a. Provider will be solely and completely responsible for conditions of all vehicles owned or operated by Provider, including the safety of all persons and property during performance of the services and tasks under this Agreement. This requirement will apply continuously and not be limited to normal working hours. In addition, Provider will comply with all safety provisions in conformance with U.S. Department of Labor Occupational Safety and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of the Agreement. Where any of these are in conflict, the more stringent requirements will be followed. Provider's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

b. Provider will immediately notify the City within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the performance of this Agreement. Provider will promptly submit to the City a written report of all incidents that occur in connection with this Agreement. This report must include the following information: (i) name and address of injured or deceased person(s); (ii) name and address of Provider's employee(s) involved in the incident; (iii) name and address of Provider's liability insurance carrier; (iv) a detailed description of the incident; and (v) a police report.

19. TERMINATION:

a. In the event Provider fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Provider shall be deemed in default in the performance of this Agreement. If such default is not cured within two (2) business days after receipt by Provider from the City of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the City may thereafter immediately terminate the Agreement forthwith by giving to Provider written notice thereof.

b. The foregoing notwithstanding, the City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Provider as provided herein.

c. Upon termination of this Agreement either for cause or for convenience, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination. The obligation of the parties under this Section 19.c. shall survive the expiration or early termination of this Agreement.

20. ATTORNEYS' FEES:

In the event of any litigation, including administrative proceedings, relating to this Agreement, including but not limited to any action or suit by any party, assignee or beneficiary against any other party, beneficiary or assignee, to enforce, interpret or seek relief from any provision or obligation arising out of this Agreement, the parties and litigants shall bear their own attorney's fees and costs. No party or litigant shall be entitled to recover any attorneys' fees or costs from any other party or litigant, regardless of which party or litigant might prevail.

21. HEALTH AND SAFETY REQUIREMENTS.

Provider acknowledges that the City shall have the right to impose, at the City's sole discretion, requirements that it deems are necessary to protect the health and safety of the City employees, residents, and visitors. Provider agrees to comply with all such requirements, including, but not limited to, mandatory vaccinations, the use of personal protective equipment (e.g. masks), physical distancing, and health screenings. Provider also agrees to make available to the City, at the City's request, records to demonstrate Provider's compliance with this Section.

22. COMPLIANCE WITH ALL APPLICABLE LAWS:

a. During the term of this Agreement, Provider shall keep fully informed of all existing and future state and federal laws, Executive Orders, regulations, and policies, and all municipal ordinances and regulations of the City of Alameda which affect the manner in which the services or tasks are to be performed by Provider, as well as all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Provider shall comply with all applicable requirements of all laws, state and federal, Executive Orders, regulations, and policies, and all ordinances, rules and regulations enacted or issued by the City.

b. Provider acknowledges that the sea level rise adaptation project(s) are funded in whole or in part by various funding sources, including federal and state grant restricted funds. All services performed by Provider pursuant to this Agreement shall be performed in conformance with all applicable federal, state and local laws, regulations, ordinance, all applicable Caltrans policies and procedures, and all applicable Caltrans published manuals, including but not limited to, the applicable Grant Application Guide (Exhibit ____). In case of conflict between any applicable federal, state and local laws, regulations, and ordinances, and/or any applicable policies, procedures, or published manuals of the federal government, Caltrans or City, the order of precedence of the applicability of same to this Agreement shall be in the following order: (1) federal law and regulations; (2) California laws and regulations; (3) Caltrans policies, procedures and published manuals; (4) local ordinances; and (5) City policies, procedures and published manuals.

c. 2 CFR Appendix II to Part 200(G). Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

d. 2 CFR Appendix II to Part 200(H). Provider agrees that it is not a party listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM Exclusions can be found at <https://sam.gov/content/entity-information>.

e. 2 CFR Appendix II to Part 200(I). If Provider applies for or bids for an award exceeding \$100,000, Provider agrees to file the required certification under the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

f. Lead-Based Paint Poisoning Prevention Act. Provider will comply with the Lead-Based Paint Poisoning Prevention Act (42 USC 4801 et seq.), which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

g. Provider will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal and federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchases.

h. Provider will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$5,000 or more.

i. Provider will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.O. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal

Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.O. 93-205).

j. Provider will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

k. Provider will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

l. Provider will comply with Standardized Emergency Management (SEMS) requirements as stated in the California Emergency Services Act, Government Code, Chapter 7 of Division 1 of Title 2, Section 8607.1(e) and CCR Title 19, Sections 2445, 2446, 2447 and 2448.

m. Provider must disclose, in a timely manner, in writing to the federal awarding agency or the City all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award § 200.113. Failure to make required disclosures can result in any of the remedies described in § 200.338 Remedies for noncompliance, including suspension or debarment.

n. Consultant Fee Cap. For individual consultant fees as set forth in in 2 CFR 1500.10, EPA participation in the salary rate (excluding overhead) paid to Provider 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).

o. Provider agrees that pursuant to Public Resources Code §§ 42649.8 et seq., if Provider generates two (2) cubic yards or more of organic waste or commercial solid waste per week, Provider shall arrange for organic waste or commercial waste recycling services that separate/source organic waste for organic waste recycling. Provider shall provide proof of compliance, i.e., organic waste recycling services or commercial waste recycling services that separate/source organic waste recycling, upon request from the City.

23. CONFLICT OF LAW:

This Agreement shall be interpreted under, and enforced by the laws of the State of California without regard to any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws,

orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

24. WAIVER:

A waiver by the City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

25. INTEGRATED CONTRACT:

Subject to the language of Section 30, the Recitals and exhibits are a material part of this Agreement and are expressly incorporated herein. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both the City and Provider.

26. CAPTIONS:

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

27. COUNTERPARTS:

This Agreement may be executed in any number of counterparts (including by fax, PDF, DocuSign, or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

28. SIGNATORY:

By signing this Agreement, signatory warrants and represents that they executed this Agreement in their authorized capacity and that by their signature on this Agreement, they or the entity upon behalf of which they acted, executed this Agreement.

29. CONTROLLING AGREEMENT:

In the event of a conflict between the terms and conditions of this Agreement (as amended, supplemented, restated or otherwise modified from time to time) and any other terms and conditions wherever contained, including, without limitation, terms and conditions included within exhibits, the terms and conditions of this Agreement shall control and be primary.

30. NONDISCRIMINATION – FEDERAL REQUIREMENTS:

a. Provider shall comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (2) Title IX of the Education

Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex; (3) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibits discrimination on the basis of handicaps; (4) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age; (5) the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255) as amended, relating to nondiscrimination on the basis of drug abuse; (6) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 93-255) as amended, relating to nondiscrimination on the basis of drug abuse; (7) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (8) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (9) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (10) any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and (11) the requirements on any other nondiscrimination statute(s) which may apply to the application.

b. Provider certifies and agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, age, or condition or physical or mental handicap (as defined in 41 C.F.R. Section 60-741, et seq.), in accordance with requirement of state or federal law. Provider shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap in accordance with requirements of state and federal law. Such shall include, but not be limited to, the following:

- (1) Employment upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation.
- (2) Selection for training, including interns and apprentices.
 - A. Provider agrees to post in conspicuous places in each of Provider's facilities providing services hereunder, available and open to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - B. Provider shall, in all solicitations or advertisements for employees placed by or on behalf of Provider, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap, in accordance with requirements of state and federal law.
 - C. Provider shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract

or understanding a notice advising the labor union or workers' representative of Provider's commitments under this paragraph.

- D. Provider certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap, in accordance with requirement of state and federal law.
- E. In accordance with applicable state and federal law, Provider shall allow duly authorized county, state and federal representatives access to its employment records during regular business hours in order to verify compliance with the anti-discrimination provisions of this paragraph. Provider shall provide such other information and records as such representatives may require in order to verify compliance with the anti-discrimination provisions of this paragraph.

c. If the City finds that any of the provisions of this paragraph have been violated, the same shall constitute a material breach of Agreement upon which the City may determine to cancel, terminate, or suspend this Agreement. The City reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated. In addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Provider has violated state and federal anti-discrimination laws shall constitute a finding by the City that Provider has violated the anti-discrimination provisions of Agreement.

d. The parties agree that in the event Provider violates any of the anti-discrimination provisions of this paragraph, the City shall be entitled, at its option, to the sum of \$500.00 pursuant to California Civil Code Section 1671 as liquidated damages in lieu of canceling, terminating, or suspending this Agreement.

e. Provider hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), all requirements imposed by the applicable regulations, and all guidelines and interpretations issued pursuant thereto, to the end that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of Provider receiving Federal Financial Assistance. In addition, Provider shall comply with the Uniform Federal Accessibility Standards, and Provider, Engineer, or Architect responsible for any design, construction or alteration shall certify compliance with those Standards.

f. Provider's attention is directed to laws, including but not limited to:

(1) CIVIL RIGHTS/EQUAL OPPORTUNITY

- A. Civil Rights Act of 1964. Under Title VII of the Civil Rights Act of 1964, no person shall, on the grounds of race, sex, religion, color, or national origin, be excluded from participation in, be denied the

benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

- B. Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
- C. Section 109 of the Act further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with funds made available pursuant to the Act.

(2) PROGRAM ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES

This Agreement is subject to laws and regulations concerning the rights of otherwise qualified individuals with handicaps for equal participation in, and benefit from federally assisted programs and activities, including but not limited to:

- A. Americans with Disabilities Act of 1990 (ADA) (28 C.F.R. 5). Title II, Subpart A of the Americans with Disabilities Act of 1990 applies to all publicly funded activities and programs. Provider shall also comply with the public accommodations requirements of Title III of the ADA, as applicable.
- B. Nondiscrimination on the Basis of Handicap (24 C.F.R. 8). These regulations, which implement Section 504 of the Rehabilitation Act of 1973, as amended, and as cited in Section 109 of the Housing and Community Development Act, apply to all federally assisted activities and programs and are implemented through the regulations at 24 C.F.R. 8.
- C. Architectural Barrier Act of 1968. Any building or facility, excluding privately owned residential structures, designed, constructed, or altered with federal funds, shall comply with the Uniform Federal Accessibility Standards, 1984 (41 C.F.R. 3) and the Handicapped Accessibility Requirements of the State of California Title 24. The Consultant, Engineer or Architect responsible for such design, construction or alteration shall certify compliance with the above standards.

- D. In resolving any conflict between the accessibility standards cited in paragraphs (A), (B) and (C) above, the more stringent standard shall apply.

31. RESTRICTIONS ON LOBBYING – FEDERAL REQUIREMENT:

This Agreement is subject to 24 C.F.R. 87 which prohibits the payment of Federal funds to any person for influencing or attempting to influence, any public officer or employee in connection with the award, making, entering into, extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have each caused this Agreement to be duly executed on its behalf as of the Effective Date.

COMPANY
a (California corporation, LP, LLC,
GP, sole proprietor/individual)

CITY OF ALAMEDA
a municipal corporation

NAME
TITLE

Jennifer Ott
City Manager

RECOMMENDED FOR APPROVAL

NAME
TITLE

Andrew Thomas
Planning, Building and Transportation
Director

APPROVED AS TO FORM:
City Attorney

Celena H. Chen
Chief Planning Counsel

SAMPLE

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES or PROVIDERS FORM B

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

REF: _____

The City of Alameda, its City Council, boards and commissions, officers & employees are additional insured for work done on their behalf by the named insured.

PRIMARY INSURANCE:

IT IS UNDERSTOOD AND AGREED THAT THIS INSURANCE IS PRIMARY AND ANY OTHER INSURANCE MAINTAINED BY THE ADDITIONAL INSURED SHALL BE EXCESS ONLY AND NOT CONTRIBUTING WITH THIS INSURANCE.

SEVERABILITY OF INTEREST:

IT IS AGREED THAT EXCEPT WITH RESPECT TO THE LIMIT OF INSURANCE, THIS COVERAGE SHALL APPLY AS IF EACH ADDITIONAL INSURED WERE THE ONLY INSURED AND SEPARATELY TO EACH INSURED AGAINST WHOM CLAIM IS MADE OR SUIT IS BROUGHT.

WAIVER OF SUBROGATION:

IT IS UNDERSTOOD AND AGREED THAT THE COMPANY WAIVES THE RIGHT OF SUBROGATION AGAINST THE ABOVE ADDITIONAL INSURED (S), BUT ONLY AS RESPECTS THE JOB OR PREMISES DESCRIBED IN THE CERTIFICATE ATTACHED HERETO.

NOTICE OF CANCELLATION:

IT IS UNDERSTOOD AND AGREED THAT IN THE EVENT OF CANCELLATION OF THE POLICY FOR ANY REASON OTHER THAN NON-PAYMENT OF PREMIUM, 30 DAYS WRITTEN NOTICE WILL BE SENT TO THE CERTIFICATE HOLDER BY MAIL. IN THE EVENT THE POLICY IS CANCELED FOR NON-PAYMENT OF PREMIUM, 10 DAYS WRITTEN NOTICE WILL BE SENT TO THE ABOVE.

POLICY NUMBER:

COMMERCIAL AUTO
CG 20 48 02 99

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- GARAGE COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provisions of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective:	Countersigned By: (Authorized Representative)
Named Insured:	

SCHEDULE

SAMPLE

Name of Person or Organization:
 City of Alameda
 2263 Santa Clara Avenue
 Alameda, CA 94501-7558

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

REF: _____
The City of Alameda, its City Council, boards and commissions, officers, employees and volunteers are additional insured for work done on their behalf by the named insured.

NOTICE OF CANCELLATION:
IT IS UNDERSTOOD AND AGREED THAT IN THE EVENT OF CANCELLATION OF THE POLICY FOR ANY REASON OTHER THAN NON-PAYMENT OF PREMIUM, 30 DAYS WRITTEN NOTICE WILL BE SENT TO THE CERTIFICATE HOLDER BY MAIL. IN THE EVENT THE POLICY IS CANCELED FOR NON-PAYMENT OF PREMIUM, 10 DAYS WRITTEN NOTICE WILL BE SENT TO THE ABOVE.