

SUBRECIPIENT AGREEMENT
BETWEEN
THE TAMPA BAY ESTUARY PROGRAM
AND
PINELLAS COUNTY
FOR
BIPARTISAN INFRASTRUCTURE LAW – JOE’S CREEK GREENWAY RESTORATION

THIS AGREEMENT is entered into this 1st day of December 2023 by and between the Tampa Bay Estuary Program (TBEP) and Pinellas County hereinafter referred to as the SUBRECIPIENT.

WITNESSETH:

WHEREAS, TBEP desires assistance for planning; design; permitting; implementation (non-construction); and/or construction support; and

WHEREAS, TBEP and the SUBRECIPIENT have reached an understanding on the type, extent and quality of services to be rendered and the amount and method of compensation to be paid to the SUBRECIPIENT and the law requires said agreement to be reduced to writing;

NOW, THEREFORE, in consideration of the mutual terms, covenants, representations, and conditions herein contained, the parties agree as follows:

1. Covenant for Services.

The TBEP does hereby retain SUBRECIPIENT to perform the services identified in the Scope of Work, “Exhibit A” attached hereto, and the SUBRECIPIENT does hereby agree to perform such services hereinafter referred to as the "PROJECT", for the TBEP upon the terms and conditions set forth in this agreement. This agreement is subject to federal regulations, including those concerning procurement contained in 2 CFR Part 200.318, in effect on the date first written above.

2. Definition, Scope, and Quality of Services.

a) SUBRECIPIENT shall perform the services described in the Scope of Work with respect to the PROJECT as attached hereto and incorporated herein as Exhibit "A". The SUBRECIPIENT is responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports, data collections and other services furnished by the SUBRECIPIENT under this agreement. The SUBRECIPIENT shall consult with the TBEP during development of the PROJECT and TBEP shall be entitled to review any and all work progress of the SUBRECIPIENT. Prior to environmental data collection or data compilation, a Quality Assurance Project Plan (QAPP) must be approved by the Environmental Protection Agency (“EPA”). If requested, environmental data collected under this agreement must be submitted to EPA. The SUBRECIPIENT shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its designs, drawings, specifications, reports, and other services. Once the TBEP determines that the services identified in the Scope of Work, “Exhibit A” attached hereto, have been satisfactorily performed, completed, and accepted the

obligation of the SUBRECIPIENT is considered complete. The SUBRECIPIENT shall perform the professional services necessary to accomplish the work specified in the Scope of Work in accordance with this agreement. TBEP will be provided thirty (30) working days to review and approve all draft work products; and SUBRECIPIENT shall provide to the TBEP, upon completion, one (1) electronic copy of Project Reports in a format approved by the TBEP.

b) By entering into this Agreement, SUBRECIPIENT agrees to assist TBEP in complying with its responsibilities under the current EPA General Terms and Conditions included as Exhibit "B" hereto, and specifically acknowledges and agrees to comply with SUBRECIPIENT'S responsibilities under the following sections of Exhibit "B":

- 1. Introduction
- 6. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment
- 7. Consultant Cap
- 8. Establishing and Managing Subawards
- 9. Management Fees
- 13.2. Requirement for Unique Entity Identifier
- 14. Reporting Subawards and Executive Compensation
- 20. Suspension and Debarment
- 22.1. Disclosing Conflict of Interests
- 26.2. Utilization of Disadvantaged Business Enterprises-SIX GOOD FAITH EFFORTS
- 26.6. Utilization of Disadvantaged Business Enterprises-MBE/WBE REPORTING
- 30. Acknowledgement Requirements for Non-ORD Assistance Agreements
- 42(a)(iv). Lobbying Restrictions
- 46. Build America, Buy America

c) BIL Grant Specific Programmatic Terms and Conditions are included as Exhibit "C" hereto. SUBRECIPIENT agrees to assist TBEP in complying with its responsibilities under Exhibit "C", and specifically acknowledges and agrees to comply with SUBRECIPIENT's responsibilities under the following sections of Exhibit "C":

- B. Subaward Performance Reporting
- C. Federal Funding Accountability and Transparency
- H. Prohibition of Fill Activities
- M. Quality Assurance Project Plan
- W. Signage
- X. Cybersecurity Condition
- Y. Other Award Considerations

3. Project Managers.

In order to assure proper coordination and review throughout the term of this agreement, TBEP shall designate a project manager who shall be the person with whom the SUBRECIPIENT shall communicate. The manager shall be responsible for transmitting and receiving information and will interpret and communicate all TBEP and TBEP decisions which are pertinent to this agreement to the SUBRECIPIENT. The manager will meet with the SUBRECIPIENT as necessary to provide guidance, as well as to review and comment on interim reports and draft submittals. The SUBRECIPIENT will initiate no actions outside the Scope of Work, including

issuance of statements and press releases, without prior written authorization from the project manager. The Project Manager for TBEP shall be Maya Burke, 263 13th Ave. South, Suite 350, St. Petersburg, Florida 33701. The SUBRECIPIENT shall designate Rob Burnes, whose address is 22211 US Hwy 19, Bldg. 10, Clearwater FL, 33765, with whom the TBEP project manager can coordinate and who shall have unqualified authority to act on behalf of the SUBRECIPIENT.

4. Consideration.

a) The TBEP will make available to SUBRECIPIENT a sum not to exceed Four Hundred Fifty-Four Thousand Nine Hundred (\$454,900) Dollars.

b) The SUBRECIPIENT shall submit completed invoices at the completion of each task defined in Exhibit A, along with a progress report to TBEP with certification that the invoices are accurate and in accordance with the terms of this agreement and the approved budget. Invoices shall be submitted for each PROJECT task and for completed work only. The TBEP shall remit to the SUBRECIPIENT within 30 days the entire invoice amount, up to the total amount allocated for each task and upon certification by the TBEP Project Manager that it is consistent with the project budget and otherwise in accordance with the terms of this agreement.

c) The SUBRECIPIENT shall provide TBEP with semi-annual reports (due March 31 and September 30) describing the progress of the PROJECT, adherence to the performance schedules, and any developments affecting the PROJECT. The SUBRECIPIENT shall promptly advise the TBEP of issues that arise that may impact the successful and timely completion of the PROJECT.

d) SUBRECIPIENT shall submit the final invoice for payment to TBEP no more than sixty (60) days after the agreement ends or is so terminated; if SUBRECIPIENT fails to do so, all right to payment is forfeited, and TBEP will not honor any requests submitted after the aforesaid time period. The TBEP Project Manager and the TBEP may withhold any payment due under the terms of this agreement until all work products due from SUBRECIPIENT, and necessary adjustments thereto, have been approved. The TBEP may not unreasonably withhold final payment once products have been approved.

e) Invoices requesting payment must be sent to the project manager at the following address:

Maya Burke, Assistant Director
Tampa Bay Estuary Program
263 13th Avenue S., Suite 350
St. Petersburg, Florida 33701
mburke@tbep.org

It is understood by the parties that the SUBRECIPIENT is responsible for the appropriate expenditure of the funds provided to it by the TBEP and shall only expend such funds pursuant to the terms and conditions of this agreement and shall not utilize such funds for any other purpose.

SUBRECIPIENT verifies that the wage rates and other factual unit costs supporting the

compensation called for in this agreement are accurate, complete and current. In the event TBEP determines that the agreement price was significantly increased due to inaccurate, incomplete or non-current rates and costs, the agreement price shall be adjusted to exclude said sums.

5. Payment Limitations.

Project costs incurred prior to October 1, 2022, are not fundable under this agreement.

6. Independent Contractor Status.

SUBRECIPIENT acknowledges that it is an independent contractor providing services contemplated pursuant to this agreement, and that it is neither an agent, employee, partner nor joint venture of or with the TBEP. No work area, supplies, telephone lines, equipment or other resources shall be supplied to the SUBRECIPIENT by TBEP. In addition thereto, both parties acknowledge that this agreement is for their mutual benefit and is not intended to create any third party beneficiary rights or obligations. Notwithstanding any other provisions of this contract, neither EPA nor the United States is a party to this contract.

7. Federal Laws and Regulations.

a) SUBRECIPIENT shall, prior to agreement execution, complete the Certificate Regarding Lobbying Form, ATTACHMENT 1. If a Disclosure of Lobbying Activities Form, Standard Form LLL, is required, it may be obtained from the project manager. All disclosure forms as required by the Certification Regarding Lobbying Form must be completed and returned to the project manager.

b) SUBRECIPIENT shall, comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C., 1857(h)), Section 508 of the Clean Water Act (33 U.S.C., 1368), Executive Order 11738 and E.P.A. regulations (40 CFR, Part 15).

SUBRECIPIENT and subcontractors, when applicable, shall:

a) Comply with all applicable provisions of 2 CFR Part 2 including but not limited to 2 CFR 200.318 and other applicable regulations;

b) Comply with the Americans with Disabilities Act of 1990, 42 USC 12101, et. seq., which prohibits discrimination against, and provides equal opportunities for individuals with disabilities, in employment, public services, and public accommodations.

c) Comply with EPA quality assurance requirements pursuant to 40 CFR 31.45 prior to commencement of work.

d) Ensure that any subagreements contain the required provisions contained in 40 CFR 31.36(e) and (i).

e) Ensure that prior to agreement execution certify that it has not been Debarred or Suspended pursuant to 40 CFR, Part 32, Subparts A through D, ATTACHMENT 2.

- f) Comply with all provisions of 40 CFR 31.30 for all Budget and Programmatic changes.
- g) 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) 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; (6) The Americans with Disabilities Act of 1990, (42 U.S.C. 12101, et seq.), which prohibits discrimination against, and provides equal opportunities for individuals with disabilities, in employment public services, and public accommodations; (7) The requirements of any other nondiscrimination statute(s) which may apply to this agreement.
- h) Ensure the use of recycled paper for all documents and data including draft, interim, and final reports developed, created and written by SUBRECIPIENT pursuant to EPA Order 1000.25 and shall include on the bottom of the first page, "This document is printed on recycled paper".
- i) Comply with all requirements of all other Federal laws, executive orders, regulations and policies governing this program.
- j) Comply with any applicable provisions of the Davis-Bacon Act, 40 USC 3141 - 3148 and 2 CFR 200, App.II (D).
- k) Comply with any applicable federal or state requirements concerning participation in rendering services hereunder by certified minority-owned business or woman-owned business enterprises.
- l) Ensure that all contractors, subcontractors, subgrantees, or others with whom it arranges to provide services will comply with the above laws and regulations.

8. Requirements of Section 287.058, Florida Statutes.

The SUBRECIPIENT agrees:

- a) To submit bills for fees or other compensation for services or expenses in sufficient detail for a proper pre-audit and post-audit thereof.
- b) Where applicable, to submit bills for any travel expenses in accordance with Section 112.061, Florida Statutes.
- c) To provide units of deliverables, including reports, findings, and drafts as specified in this agreement and the scope of work, to be received and accepted by the project manager prior

to payment.

d) To allow public access to all documents, papers, letters, or other materials that are subject to, but not exempt by, the provisions of the Federal Freedom of Information Act of 5 U.S.C. 552 and Chapter 119, Florida Statutes, and made or received by the SUBRECIPIENT in conjunction with this agreement.

e) That any products or materials which are the subject of or are required to carry out this agreement shall be procured in accordance with the provisions of EPA regulations concerning procurement found at 2 CFR 200.318 and Section 403.7065, Florida Statutes.

9. Contract Data, Documents, Patent, and Copyrights.

All documents and data including draft, interim, and final reports developed, created or written by the SUBRECIPIENT shall be the joint property of TBEP and the SUBRECIPIENT. The SUBRECIPIENT shall not use any of the data or reports developed pursuant to this agreement without the express written consent of TBEP. Further unrelated use by TBEP of the data, reports or other work product generated by the SUBRECIPIENT pursuant to this agreement shall be at the risk of TBEP, and SUBRECIPIENT makes no representations or warranties as to the correctness of the material when used for unrelated purposes.

If any discovery or invention arises or is developed in the course of or as a result of work or services performed under this agreement, or in any wise connected herewith, the SUBRECIPIENT shall refer the discovery or invention to the TBEP to determine whether patent protection will be sought in the name of the United States of America and the State of Florida. Any and all patent rights accruing under or in connection with the performance of this agreement are hereby reserved to the United States of America and the State of Florida. In the event that any books, manuals, films or other copyrightable material are produced, the SUBRECIPIENT shall notify the TBEP and all copyrights accruing under or in connection with the performance under this agreement are hereby reserved to the United States of America and the State of Florida.

10. Audits and Records.

The SUBRECIPIENT agrees:

a) To maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices that sufficiently and properly reflect all revenues and expenditures of funds provided by the TBEP under this agreement.

b) To assure that these records shall be subject at all reasonable times to inspection, review, audit, copy, or removal from premises by TBEP personnel and other personnel duly authorized by the TBEP, as well as by federal personnel.

c) To maintain and file with the TBEP such progress, fiscal and other reports as the TBEP may require within the period of this agreement. Such reporting requirements must be reasonable given the scope and purpose of this agreement.

d) To include these aforementioned audit and record keeping requirements in all approved subcontracts.

11. Retention of Records.

The SUBRECIPIENT agrees:

a) To retain all records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this agreement for a minimum period of three (3) years after termination of this agreement or such other period of time as required by 2 CFR 200.333, or if an audit has been initiated and audit findings have not been resolved at the end of three (3) years, the records shall be retained until resolution of the audit findings.

b) The TBEP shall have full access to and the right to examine any of said records and documents during said retention period.

12. Public Access to Records.

The SUBRECIPIENT acknowledges that all said documents regarding the PROJECT, as well as all of the documents, papers, letters or other material prepared and completed, made or received in conjunction with this agreement, are subject to the disclosure requirements of the Federal Freedom of Information Act of 5 U.S.C. 552 and Chapter 119, Florida Statutes, unless exempt thereby, and shall be maintained and made available to the public at the SUBRECIPIENT's custodial address, to-wit: 22211 US Hwy 19, Bldg. 10, Clearwater FL, 33765. Refusal by the SUBRECIPIENT to allow such public access shall be grounds for unilateral cancellation of this agreement by the TBEP.

13. Period of Agreement.

This agreement shall begin on October 1, 2022 and end on September 30, 2027, inclusive.

14. Insurance.

The SUBRECIPIENT shall, at its own expense, maintain during the performance of its services under this agreement adequate comprehensive insurance of not less than the following: worker's compensation, general liability, bodily injury (including contractual), property damage (including contractual), professional liability (including errors and omissions).

15. Indemnification.

Each party hereto agrees that it shall be solely responsible for its own negligence. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, F.S. Further, nothing herein shall be construed as consent by either party to be sued by third parties in any manner arising out this AGREEMENT or contracts related thereto.

16. Members Liability.

No covenant, stipulation, obligation, or agreement contained herein shall be deemed to be a covenant, stipulation, obligation, or agreement of any present or future member of the governing body or agent or employee of TBEP or the Board, nor any official executing this agreement shall be liable personally or be subject to any accountability for reasons of execution by the TBEP of this agreement or any act pertaining thereto.

17. Termination.

a) Termination at will

This agreement may be terminated by either party upon no less than fifteen (15) calendar days' notice without cause. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery.

b) Termination because of Lack of Funds

In the event funds to finance this agreement become unavailable, the TBEP may terminate the agreement upon no less than seventy-two (72) hours' notice in writing to the SUBRECIPIENT. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. The TBEP shall be the final authority as to the availability of funds.

c) Termination for Breach

Unless the SUBRECIPIENT'S breach is waived by the TBEP in writing, the TBEP may, by written notice to the SUBRECIPIENT, terminate this agreement upon no less than seventy-two (72) hours' notice. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. Waiver of breach of any provisions of this agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this agreement. The provisions herein do not limit the TBEP's right to remedies at law or to damages.

d) Termination at End of Agreement

See paragraph 2c, supra.

In the event this agreement is terminated by TBEP under a through c supra, all payments due either party on the effective day of termination, pursuant to the provisions of this Agreement shall be reconciled within sixty (60) days of the effective date of termination.

18. Suspension.

a) Reasonable Cause

The TBEP may, for reasonable cause, temporarily suspend the use of funds by the SUBRECIPIENT pending corrective action or pending a decision of terminating the agreement. Reasonable cause is such cause as would compel a reasonable person to suspend

the use of funds pursuant to this agreement; it includes, but is not limited to, the SUBRECIPIENT'S failure to permit inspection of records, or to provide reports, or to rectify deficiencies noted by the TBEP within the time specified by the TBEP, or to utilize funds as agreed in this agreement, or such other cause as might constitute breach of any of the terms of this agreement.

b) The TBEP may prohibit the SUBRECIPIENT from receiving further payments and may prohibit the SUBRECIPIENT from incurring additional obligations of funds. The suspension may apply to any part, or to all of the SUBRECIPIENT'S obligations.

c) To suspend operations of the SUBRECIPIENT, the TBEP will notify the SUBRECIPIENT in writing by Certified Mail of: the action taken, the reason(s) for such action; and the conditions of the suspension. The notification will also indicate: what corrective actions are necessary to remove the suspension.

19. Availability of Funds.

The performance by TBEP under this agreement shall be subject to and contingent upon the availability of moneys lawfully appropriated and applicable for the purposes of this agreement.

20. Modification of Agreement.

This agreement represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this agreement shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this agreement.

21. Assignment.

This agreement may not be assigned by either party without the expressed written consent of the other. The parties each bind itself, its successors, assigns, and legal representatives to the other party hereto and to the successors, assigns, and legal representatives of such other party in respect to all covenants, agreements, and obligations contained herein.

22. Subcontractors.

The SUBRECIPIENT shall not subcontract any portion of the work required by this agreement without the written consent of TBEP. The SUBRECIPIENT shall ensure that all subcontractors comply with the terms of this Agreement including, but not limited to, sections 7, 8, 10, 11, 12 and Exhibit B.

23. Covenant Against Contingent Fees.

The SUBRECIPIENT assures that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the SUBRECIPIENT for the purpose of securing business. For breach or violation of this assurance, the TBEP shall have the

right to annul this agreement without liability or, at its discretion, to deduct from the agreement price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

24. Gratuities.

(a) If the TBEP finds after a notice and hearing, that the SUBRECIPIENT or any of the SUBRECIPIENT'S agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the TBEP may, by written notice to the SUBRECIPIENT, terminate this agreement.

(b) In the event this agreement is terminated as provided in paragraph (a), the TBEP may pursue the same remedies against the SUBRECIPIENT as it could pursue in the event of a breach of this agreement by the SUBRECIPIENT, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the TBEP) which shall be not less than three nor more than ten times the costs the SUBRECIPIENT incurs in providing any such gratuities to any such official, employee or agent.

25. Notices.

All notices and other communications received or permitted to be given under the agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, via email, or mailed certified mail, return receipt requested, postage prepaid on the date posted and addressed to the appropriate party at the following address or such other address as may be given to the parties:

a) Rob Burnes, Project Coordinator
Pinellas County Environmental Management
22211 US Hwy 19, Bldg. 10
Clearwater FL, 33765
rburnes@pinellas.gov

b) Maya Burke, Assistant Director
Tampa Bay Estuary Program
263 13th Avenue S., Suite 350
St. Petersburg, Florida 33701
mburke@tbep.org

26. Remedies.

Unless otherwise provided in this agreement, all claims, counter-claims, disputes and other matters in question between the TBEP and the SUBRECIPIENT arising out of, or relating to, this agreement or the breach of it will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Florida.

27. Waiver of Breach.

A waiver by either party of any breach of violation of any provision of this agreement shall not operate, or be construed to be, a waiver of any subsequent breach of the same or other provisions hereof.


28. Governing Laws.

Nothing in this agreement shall be effective if contrary to Federal or Statutory authority.

This agreement and the rights and obligations of the parties hereto shall be governed and construed according to the laws of the State of Florida.

IN WITNESS WHEREOF, the parties have caused these presents to be duly executed,
as of the day and year first above-mentioned.

Tampa Bay Estuary Program

BY:  11/28/2023

Edward T. Sherwood, Executive Director

ATTEST: 

Federal Employer I.D. Number: 59-3501959

BY: _____

Kathleen Peters, Chair

(SEAL)

ATTEST: _____
(Secretary)

Federal Employer I.D. Number: _____

APPROVED AS TO FORM

By Brendan Mackesey
Office of the County Attorney

EXHIBIT “A”
Joe’s Creek Greenway Restoration
Scope of Work

Project Summary: The Tampa Bay Estuary Program (TBEP) has identified Pinellas County to build flood resiliency, improve nutrient attenuation, and enhance habitats and ecosystem function in the Joe’s Creek watershed with funding support from the Bipartisan Infrastructure Law.

The project will address nuisance vegetation overgrowth and result in the design and permitting of additional stormwater controls, including green infrastructure techniques, to better absorb nutrients and other pollutants that flow through the Joe’s Creek watershed. The project will also engage the public, including underserved and overburdened communities in the Lealman area, to identify and achieve consensus on desired project benefits. These planned improvements are intended supplement the other stormwater upgrades to this watershed involving flood protection and water quality projects included in the Joe’s Creek Restoration and Greenway Trail.

The project area is bounded by Park Boulevard to the north, 71st Street N. to the east, 54th Avenue N to the south, and Park Street to the west. Four sub-areas have been identified: Area 1) Limits of Nuisance Species Removal and Drainage Upgrades (eastern area); Area 2) 24-Acre Pond Upgrades; Area 3) Salt Tern & Mosquito Ditch Restoration Limits (western area); and Area 4) Limits of Joes Creek Dredging. The County will acquire a consultant(s) to administer these services.

TASK 1: PUBLIC INVOLVEMENT

Description: Public involvement for this project includes communicating information to and receiving input from interested persons, groups, businesses, neighboring communities, Title 1 schools, and government organizations regarding the development of the project. The consultant(s) will prepare a Public Involvement Plan (PIP) to describe the approach for engaging stakeholders, including underserved and overburdened communities in the Lealman area. A minimum of two public meetings will be conducted.

Budget: \$42,105.00

Milestone: October 15, 2025

Deliverables: Two public meetings; copies of meeting agendas, presentations, sign-in sheets, and meeting summaries

TASK 2: TRIBUTARY CONVEYANCE IMPROVEMENTS

Description: The consultant(s) will complete the drainage and ecological/environmental services to support the environmental work to removal nuisance plant species, identify restoration activities to remove vegetation and sediment from the existing tributaries, and design proposed stormwater conveyance improvements in Area 1.

Budget: \$104,905.00

Milestone: May 15, 2025

Deliverables: Technical Memo including Drainage Conveyance Calculations; Invasive Plant Management Plan; Drone Aerial Photography; Area 1 Complete Design Plans (PDF & CAD) and (ACOE, FDEP, SWFWMD); and Area 1 Construction Bid Documents

TASK 3: EXISTING CONDITIONS STUDY

Description: The consultant(s) will provide the baseline conditions for the feasibility analysis and conceptualization of proposed projects that produce the most effective water quality and environmental benefits within the Joe's Creek watershed. The study will consider SLR and include GIS analyses of historic land cover, hydrologic connectivity, and invasive species presence; field reconnaissance of potential saltern/saltmarsh habitat areas and the mosquito-ditched mangrove habitats; hydraulic modeling to evaluate erosion potential, invasive vegetation, scour, sedimentation and shoreline and channel improvement opportunities; and a new stormwater pond configuration and design.

Budget: \$109,770.00

Milestone: August 15, 2025

Deliverables: Technical memo including Land Cover and Hydrologic Connectivity Mapping; Invasive Species Mapping and Characterization; Priority Habitat Assessments; Shoreline, Channel, and Tributary Assessments; Stormwater Pond Designs

TASK 4: PROJECT FEASIBILITY AND PRIORITY MATRIX

Description: The consultant(s) will identify, evaluate, and rank potential projects to be compiled into a priority matrix that may be used to guide future project implementation. The feasibility of conceptual projects within the Joe's Creek watershed will be assessed according to estimated costs, timelines, secondary benefits (educational, economic, recreational), environmental benefits (habitat, species, water quantity), water quality benefits (nutrient load reductions), public support, grant eligibility, permitting constraints, utilities, constructability, easement/access, etc.

Budget: \$63,720.00

Milestone: September 15, 2025

Deliverables: Final PER (signed/sealed)

TASK 5: DESIGN & PERMITTING AND QA/QC

Description: The County and its consultant(s) will participate in pre-application meetings with regulatory agencies and stakeholders; submit all required permit applications, standard and customary technical support application narrative, graphics, and documents related to the design; and respond to requests for additional information. The consultant(s) will provide final signed and sealed Construction Plans and Project Technical Specifications Package for the Construction Bid Documents.

Budget: \$79,400.00

Milestone: February 15, 2026

Deliverables: Final Design Plans for Areas 2,3, and 4 (signed/sealed PDF & CAD); All applicable Permit Applications Submitted (ACOE, FDEP, SWFWMD); Construction Bid Documents for Areas 2, 3, and 4; and Meeting Minutes

TASK 6: EXOTICS REMOVAL

Description: The County will contract exotic plant removal services from the project area using a qualified professional specializing in exotic vegetation removal. The consultant(s) will provide construction oversight services and after-action reporting to document the invasive species removal activities as well as

be available to the contractor should any questions, field inspection needs, or field coordination issues arise during rehabilitation activities. Exotic removal activities shall be completed in accordance with the approved Invasive Species Management Plan.

Budget: \$55,000.00

Milestone: February 15, 2026

Deliverables: Photos documenting site conditions before, during, and after exotics removal activities.

Project Timeline:

TASK	DESCRIPTION OF MILESTONE	ESTIMATED DATE COMPLETED
1	Public Involvement	October 2025
2	Tributary Conveyance Improvements	May 2025
3	Existing Conditions Study	August 2025
4	Project Feasibility and Priority Matrix	September 2025
5	Design & Permitting	February 2026
6	Exotics Removal	February 2026

Project Budget:

TASK	TASK DESCRIPTION	AMOUNT
1	Public Involvement	\$42,105.00
2	Tributary Conveyance Improvements	\$104,905.00
3	Existing Conditions Study	\$109,770.00
4	Project Feasibility and Priority Matrix	\$63,720.00
5	QA/QC, Design & Permitting	\$79,400.00
6	Exotics Removal	\$55,000.00
	TOTAL	\$454,900.00

EXHIBIT “B”
EPA General Terms and Conditions

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.fsrs.gov. (2) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on any date during the month of November of a given year, the obligation must be reported by no later than December 31 of that year.)
- c. **What to report.** The recipient must report the information about each obligating action as described in the submission instructions available at: <http://www.fsrs.gov>.

14.2. Reporting Total Compensation of Recipient Executives.

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

14.3. Reporting of Total Compensation of Subrecipient Executives.

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

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

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

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

14.3.b.1. To the recipient.

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

14.4. Exemptions

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

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

14.5. Definitions. For purposes of this award term:

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

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

14.5.f.1. Salary and bonus.

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

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

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

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

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

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

15.1. General Reporting Requirement

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

15.2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a.** Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b.** Reached its final disposition during the most recent five-year period; and
- c.** Is one of the following:
 - 15.2.c.1.** A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - 15.2.c.2.** A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - 15.2.c.3.** An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - 15.2.c.4.** Any other criminal, civil, or administrative proceeding if:
 - 15.2.c.4.1.** It could have led to an outcome described in paragraph 15.2.c.1, 15.2.c.2, or 15.2.c.3 of this award term and condition;
 - 15.2.c.4.2.** It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - 15.2.c.4.3.** The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

15.3. Reporting Procedures

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

15.4. Reporting Frequency

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

15.5. Definitions

For purposes of this award term and condition:

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

16. Federal Financial Reporting (FFR)

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

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

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

17. Indirect Cost Rate Agreements

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

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

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

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

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

18. Audit Requirements

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

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

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

19. Closeout Requirements

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

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

20. Suspension and Debarment

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

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

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

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

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

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

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

22. Disclosing Conflict of Interests

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25. Extension of Project/Budget Period Expiration Date

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

26. Utilization of Disadvantaged Business Enterprises

GENERAL COMPLIANCE, 40 CFR, Part 33

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

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

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

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

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

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

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

3. CONTRACT ADMINISTRATION PROVISIONS, 40 CFR Section 33.302

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

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

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

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

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

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

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

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

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

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

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

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

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

Programmatic General Terms and Conditions

27. Sufficient Progress

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

28. Copyrighted Material and Data

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

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

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

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

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

29. Patents and Inventions

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

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

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

30. Acknowledgement Requirements for Non-ORD Assistance Agreements

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

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

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

31. Electronic and Information Technology Accessibility

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

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

32. Human Subjects

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

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

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

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

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

33. Animal Subjects

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

34. Light Refreshments and/or Meals

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

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

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

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

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

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

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

FOR STATE CONTINUING ENVIRONMENTAL PROGRAM GRANT RECIPIENTS EXCLUDING STATE UNIVERSITIES:

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

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

35. Tangible Personal Property

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

35.2 Disposition

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

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

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

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

36. Dual Use Research of Concern (DURC)

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

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

37. Research Misconduct

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

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

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

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

38. Scientific Integrity Terms and Conditions

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

38.1 Scientific Products

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

38.2 Scientific Findings

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

38.3 Scientific Misconduct

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

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

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

38.4 Additional Resources

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

Public Policy Requirements

39. Civil Rights Obligations

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

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

a. Statutory Requirements

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

b. Regulatory Requirements

- i. The recipient agrees to comply with all applicable EPA civil rights regulations, including:
 1. For Title IX obligations, 40 C.F.R. Part 5; and
 2. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 CFR 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.

EXHIBIT “C”
Bipartisan Infrastructure Law (BIL)
Grant-Specific Administrative and Programmatic Conditions

Administrative Conditions

General Terms and Conditions

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

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

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

GRANT-SPECIFIC ADMINISTRATIVE CONDITIONS

A. Correspondence Condition

The terms and conditions of this agreement require the submittal of reports, specific requests for approval, or notifications to EPA. Unless otherwise noted, all such correspondence should be sent to the following email addresses:

- Federal Financial Reports (SF-425): rtpfc-grants@epa.gov
- MBE/WBE reports (EPA Form 5700-52A):
 - R4epagrantsmbewbereporting@epa.gov and davis.latoria@epa.gov
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, Requests for Extensions of the Budget and Project Period, Amendment Requests, Requests for other Prior Approvals, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications:
 - Latoria Davis-Reed, Grants Management Specialist, davis.latoria@epa.gov, (404)562-9782
 - Tina Lamar, Project Officer, lamar.tina@epa.gov, (404)562-9323
- Payment requests (if applicable):
 - Tina Lamar, Project Officer, lamar.tina@epa.gov, (404)562-9323
- Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables:
 - Tina Lamar, Project Officer, lamar.tina@epa.gov, (404)562-9323

Programmatic Conditions

BIPARTISAN INFRASTRUCTURE LAW (BIL)

GRANT-SPECIFIC PROGRAMMATIC TERMS AND CONDITIONS

A. PERFORMANCE REPORTING AND FINAL PERFORMANCE REPORTS

Performance reports are required for all open EPA cooperative agreement awards. In accordance with 2 CFR 200.328, the recipient agrees to include in performance reports submitted under this agreement and pursuant to the EPA National Estuary Program Bipartisan Infrastructure Law Funding Implementation Memorandum for Fiscal Years 2022-2026, dated July 26, 2022.

The purpose of this report is to provide a clear record of how BIL funds were spent during the reporting period. This may align with the current regional schedule of reporting for CWA §320 annual appropriations but a separate header is needed. In addition, EPA expects each NEP to identify BIL projects within the existing NEP Online Reporting Tool (NEPORT) database where relevant, and to build a separate mechanism for reporting and tracking other required metrics for BIL funding.

Regularly scheduled NEP Program Evaluations will include documentation and results of BIL projects as they proceed. Evaluations should consider tracking and reporting information collected over the life of the projects. As a part of CCMP implementation, the BIL-funded activities should be included in the program evaluation packages as appropriate.

The recipient will submit annual Government Performance and Results Act (GPRA) reporting information to EPA as specified in the annual program funding guidance by the date stipulated in the annual funding guidance.

Report Frequency:

The recipient shall submit, to the EPA Project/Technical Officer, annual workplan & CCMP progress performance reports (preferably electronic copies) as follows: 1) Midyear progress report for the period Oct 1st – March 31st; current FY, due to EPA by April 30th or last workday in April. 2) Bulleted list of MAJOR BIL program accomplishments (3 to 5) due to EPA by September 1st or first workday in September and 3) END OF YEAR program accomplishment report; reporting period from Oct 1 – Sept. 30th, current FY; due to EPA on October 30th or last business workday in October. The above schedule is consistent with NEP CWA 320 progress reporting timeline and project elements.

In accordance with 2 CFR 200.328(2)(d)(1), the recipient agrees that it will notify EPA of problems, delays, or adverse conditions which materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

Final Performance Report (Close out/deliverables):

The recipient agrees to submit electronic copies of the Final Performance Report to the EPA Grant Project Officer/Technical Officer. The Final Project Report is due within 120 days after the end of the budget/project period.

After the final expenditure of BIL funds, NEPs shall provide a final narrative that includes any agreed-upon work-product(s) resulting from the project(s) (See BIL Implementation for clarifying report details).

B. SUBAWARD PERFORMANCE REPORTING

The recipient must report on its subaward monitoring activities under 2 CFR 200.331(d). BIL Compliance tracking/reporting requirements extend to sub-awardees. Examples of items that must be reported if the pass-through entity has the information available are:

Summaries of results of reviews of financial and programmatic reports.

Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.

Environmental results the subrecipient achieved.

Summaries of audit findings and related pass-through entity management decisions.

Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.331(e), 2 CFR 200.207 and the 2 CFR Part 200.338

Remedies for Noncompliance.

- C. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY (FFATA) Reporting Requirements for Sub-award and Executive Compensation. Purpose: To describe new Federal reporting requirements for EPA assistance agreement recipients. If, during the preceding fiscal year, a prime recipient or sub-recipient (a "prime" recipient is the recipient of record, the entity to which the Federal government makes an award; a "sub-recipient" is a sub-awardee at any other level down from the prime recipient) meets all three criteria listed below, then for each sub-award of \$30,000 or more that the recipient provides, the recipient must enter into the FFATA Subaward Reporting System (FSRS) the total compensation of its five most highly-paid executives: • the recipient received 80% or more of its annual gross revenue in Federal procurement contracts and financial assistance, and • the recipient received \$25,000,000 or more in annual gross revenues from Federal procurement contracts and financial assistance, and • there are no regularly-filed, publicly-available reports depicting the total compensation of the recipient's five most highly-paid executives. • The policy is available at: <https://fsrs.gov/>

D. PROGRAM BIPARTISAN INFRASTRUCTURE LAW (BIL) AUTHORITY

During the performance period of this award, all recipients of grants or cooperative agreements awarded under the Bipartisan Infrastructure Law (P.L. 117-58 – Nov 15, 2021), also known as

the "Infrastructure Investment and Jobs Act of 2021" (IIJA) or "BIL. are required to comply with EPA's National Estuary Program Bipartisan Infrastructure Law Funding Implementation Memo for Fiscal Years 2022-2026 signed by Radhika Fox, EPA Assistant Administrator on July 26, 2022. The FY 2021 – FY 2024 Clean Water Act §320 National Estuary Program Funding Guidance also applies to BIL funding, and all recipients must comply.

EPA's Award Official or Grants Management Officer may amend this agreement to specify additional requirements applicable to IIJA or BIL funding as information becomes available. In the interim, the recipient agrees to have financial management and programmatic management systems in place to track and report on expenditures of IIJA/BIL funds including outputs and outcomes.

E. MATCHING FUNDS REQUIREMENTS/AWARDING BIL FUNDS

This NEP BIL Implementation Memorandum serves as approval to waive the NEP non-federal match/cost-share requirements, for all NEPs, for BIL funds in FY 2022 – FY 2023. For FY 2024 – FY 2026 BIL funds, after approval of each estuary program's equity strategy (Section H), EPA will waive non-federal cost-share requirement. Cost-share waivers must be approved by the Assistant Administrator of the Office of Water, or by relevant Regional Administrator. Regions will consult with Headquarters prior to approving a cost-share waiver to ensure national consistency.

In accordance with Policy Notice Number PN-2022-G03 regarding "Split Funding", EPA has determined, based on anticipated OMB direction for accounting, tracking, reporting on, documenting and conditioning BIL funds as well as the need to facilitate effective transaction testing for expenditures of BIL grant funds, that EPA will not combine BIL appropriations and "regular" annual appropriations in the same grants. Regions have the flexibility to use the funding mechanism of their choice (annual, incremental, supplemental, etc.).

F. FUNDS TRACKING

NEPs must track BIL funds separately from other funds received. Further guidance may be provided in consultation with EPA's Office of Environmental Justice (OEJ) for tracking benefits to disadvantaged communities. Additional tracking/measurement activities/requirements may be added to the Terms and Conditions post award.

Reporting measures and schedules initially will align where possible with CWA 320, however, a separate header for reporting, tracking is needed to better identify BIL activities in these combined reports.

Routine BIL financial tracking and updates to NEPs Management Conference (MC) will be conducted and shared during program scheduled meetings (NEP MC meeting packages).

However, EPA using existing agency systems (COMPASS) will track BIL funds Quarterly and reports will be shared with each NEP for BIL fund withdrawals and reimbursements, if applicable. Additional tracking requirements may be amended and added to these Terms and Conditions, if needed.

G. BIL FUNDING ELIGIBLE USES

Eligible NEP projects funded through BIL should accelerate and more extensively implement NEPs Comprehensive Conservation Management Plans (CCMPs) to ensure that benefits reach disadvantaged communities (defined in Executive Order 14008); build the adaptive capacity of ecosystems and communities; elevate climate efforts and leverage additional

resources, to the extent possible.

In accordance with 40 CFR 30.36, EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works developed under this assistance agreement for Federal purposes.

H. PROHIBITION OF FILL ACTIVITIES

No funding under this agreement shall be used to support the placement of fill, pilings, or platforms directly or indirectly in open waters, near shore waters, or wetlands to create artificial islands or serve as infrastructure for commercial development or new land for purposes other than habitat restoration.

I. ANNUAL BIL WORKPLAN

Each NEP must develop a detailed Management Conference approved BIL Long-Term Plan and Annual BIL Workplan to submit to EPA Grants.gov by June 1 of each year starting in 2023, except for FY2022. For FY 2022, NEPs must provide a complete SF 424 application, including required forms and certifications (budget sheets, workplan, etc.) in Grants.gov within 90 days after the issuance of the July 26, 2022, National Estuary Program Bipartisan Infrastructure Law Funding Implementation Memorandum, by October 24, 2022. Initially, NEP's can submit a combined workplan and budget into Grants.gov for FY22 and FY23; total of 2 years of BIL funds, with no match requirement.

Workplan elements:

Annual BIL Workplans can be submitted in the same format as annual appropriations workplans per the NEP funding guidance and must contain at a minimum the following workplan elements (refer to BIL Implementation Memo):

- CCMP Goals and BIL-supported tasks or activities related to each.
- Discussion of how projects reflect BIL priorities and implement their CCMP, particularly with respect to how the proposed work may benefit disadvantaged communities, provide climate adaptation or mitigation co-benefits, and support CCMP goals.
- Budget and personnel per SF 424 categories.

J. LONG TERM PLAN

Under this agreement, each NEP Management Conference (MC) approved BIL Long-Term Plan must describe the key activities and expectations for BIL funds through all 5 years of BIL funding (FY 2022 – FY 2026) and *submit with the annual workplan to EPA no later than June 1, 2023*. The BIL long-term plan may have less detail than the annual workplans, and may be amended, modified, or revised at any time. Changes (per MC approval) may be submitted each year along with the annual BIL workplan (refer to BIL Implementation memo for required elements).

K. EQUITY STRATEGY

In accordance with this agreement, the NEP must create an equity strategy to outline how

BIL funds will be utilized to increase investments in disadvantaged communities and the benefits that flow to them. Each NEP's long-term plan must include an equity strategy detailing how the NEP will contribute to the national program-wide goal of ensuring that at least 40% of the benefits (Justice40) and investments from BIL funding flow to disadvantaged communities and to ensure that each NEP is reviewing potential projects and utilization of BIL funds through the lens of equitable and fair access to the benefits from environmental programs for all individuals. The equity strategy must be submitted as part of each NEP's BIL long-term plan (June 1, 2023), which must be approved by EPA's Assistant Administrator for Water; process as defined by

EPA HQ's. (See BIL Implementation memo for additional details).

L. COMPETENCY OF ORGANIZATIONS GENERATING ENVIRONMENTAL MEASUREMENT DATA

In accordance with EPA's Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, for all awards where the maximum value of the assistance agreement will exceed \$200,000 in federal funding and the project will involve the generation or use of environmental data, the Recipient will be required to demonstrate competency prior to award.

Alternatively, where a pre-award demonstration of competency is not practicable, the Recipient must demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. The Recipient shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy, including methods by which competency may be demonstrated, is available online at http://www.epa.gov/fem/lab_comp.htm.

M. QUALITY ASSURANCE PROJECT PLAN

Grantees implementing environmental projects that include: 1) direct measurement, sampling or observation activities, 2) environmental modeling, 3) use of existing data, 4) use of survey results, or 5) calculation of environmental outcomes must prepare and implement a Quality Assurance Project Plan (QAPP).

The grantee shall submit to the EPA Project Officer (PO) an approvable QAPP prior to any data collection. The PO/TO will review the QAPP to ensure that it meets programmatic needs, is consistent with the approved workplan and includes all the required QAPP elements. Once approved by the EPA TO/PO, the QAPP is forwarded to the EPA QA staff for review and approval.

No data collection/use activities may occur until the QAPP has been reviewed and approved by EPA R4.

N. DATA MANAGEMENT

The NEP will organize and maintain all environmental data collected through funding

generated under this cooperative agreement in a manner that allows potential users of the NEP data to readily identify data of interest, access those data for use, and determine the suitability of those data for other users based on readily available QA/QC and methodology summaries. NEP metadata integrity must be assured. The NEP will inform the EPA Project Officer and TO/Program Manager in writing of the name of the entity or organization responsible for maintaining the NEP collected data and the method of data access.

O. TRAVEL

A minimum of \$10,000 collectively per this FY grant award including the CWA 320 cooperative agreement combined for travel associated with program management and outreach support. A NEP Management Conference may allocate additional funds above \$10,000 per FY grant award for travel within the workplan and cooperative agreement at their discretion. A multiyear cooperative agreement may have less than \$10,000 in any FY award if the total available/remaining for travel in the next FY will be \$10,000 or more. These funds are to cover travel for the Director, staff and other non-federal individuals to: (1) report on BIL & CWA 320 activities of the Management Conference at regional and national meetings called on behalf of the National Estuary Program (e.g., Regional and National NEP meetings, NEP Technical meetings/Conferences, etc.) and/or (2) provide peer-to-peer technical assistance to other NEP Management Conferences or neighboring communities. As a requirement of this cooperative agreement, the NEP Director is required to attend all national or regional meetings called on behalf of the program. Under extenuating circumstances, such as family emergencies or conflict in meeting dates caused by previously scheduled events, a NEP Director may delegate attendance to a senior staff member from the NEP.

P. NEP KEY PERSONNEL

The key personnel specified on the Cooperative Agreement Key Contacts form are considered to be essential to work performance. The process to enact changes to personnel is defined by each program's Management Conference (MC) and/or host agency. The Grantee shall notify the EPA Project Officer/Technical Officer or Program Manager of any changes in Key Contacts, as approved by the NEP MC, within 30 days.

Q. DIRECTOR PERFORMANCE EVALUATION

The governing body of each NEP Management Conference shall establish guidelines for an annual NEP Director Performance Evaluation. Results of the Director Performance Evaluation shall be provided to the EPA Project Officer/Technical Officer/Program Manager within 30 days of the evaluation.

R. EPA's SUBSTANTIAL INVOLVEMENT

In accordance with the EPA Order 5700.1, Section 7(b)(1), the agreement is being awarded as a cooperative agreement per 2 CFR 200.24 due to EPA's role in this agreement under BIL and Section 320, Clean Water Act. EPA will provide substantial involvement in the form

of technical assistance, development of outputs, and oversight. Specifically, substantial federal involvement will take the form of monitoring the project/program by EPA; participation and collaboration between EPA and the recipient in program content; review of project progress, and quantification and reporting of results. The tasks/activities involve annual on-site NEP visit to see on the ground project/program progress & success (beginning, ending & ongoing), member of Management Conference (Management/Policy Board/Committee/Council), TA to ad hoc technical/communication committees; EPA may serve as chair and co-chair on highest NEP decision board (advisory), and TO-review workplan & budget (reimbursements & ULOs) to ensure CCMP implementation/progress.

S. SUFFICIENT PROGRESS

In accordance with GPI 11-01 "Managing Unliquidated Obligations and Ensuring Progress under EPA Assistance Agreements" dated September 28, 2012, EPA may terminate the assistance agreement for failure of the recipient to make sufficient progress on work and on drawing down funds, so as to reasonably ensure completion of the project within the project period, including any extensions. EPA will measure sufficient progress by examining the performance required under the work plans in conjunction with the milestone schedule, the time remaining for performance within the project period, the availability of funds necessary to complete the project, and whether draw down funds is commensurate with work progress. In accordance with 2 CFR 200.98, unobligated balance means the amount of funds under a federal award that the non-Federal entity has not obligated.

T. PRODUCT SUBMISSION

The NEP is responsible for submitting final scientific and technical products/reports produced under this cooperative agreement electronically to the National Technical Information Service (NTIS) and the EPA PO/TO/Program Manager as follows:

- *Electronic Documents: Two ways to submit:*

URL: If the documents exist on an agency website, please notify NTIS in an email message to input@ntis.gov and to the EPA PO/TO/Program Manager. Please specify the URL address where the documents can be found.

Email: Please attach pdf or common electronic formatted documents in an email addressed to input@ntis.gov and to the EPA PO/TO/Program Manager.

Each final scientific and technical product/report produced by the NEP under this cooperative agreement must be available to the public for download through the NEP's website directly or through a link to an FTP site or other means of distribution.

U. FOOD POLICY

Unless the event(s) and all its components (i.e., receptions, banquets and other activities that take place after normal business hours) 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/TO and include:

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

V. CONFERENCE/WORKSHOP/MEETING

In accordance with the Best Practices Guide for Conferences GPI-98-11, grantees are required to provide EPA with conference information regarding sponsoring partners, type, and number of attendees (state, local, non-profits, universities, federal), use of EPA logo, travel expenses paid, registration fees and/or breakdown cost of meals and/or refreshments within the scope of work. This information may not be known at the time of the scope development and/or grant award; therefore, EPA requests the applicable items for your grant at least 2-3 weeks prior to the conference. The EPA Technical Officer and Project Officer will review and provide written approval via email prior to the conference start date. If you are hosting a conference and would like to utilize EPA funds, but it was not approved by EPA in your original scope of work, then you must contact your Project Officer/TO to discuss the options available for utilizing EPA funds at least 6 months prior to the conference date.

W. SIGNAGE

1. The recipient will ensure that a visible project identification sign is erected as appropriate at each public event or training location. The sign should summarize the purpose of the event and credit EPA and the National Estuary Program for funding. The recipient will determine the design, placement, and materials for each sign. The signage will contain logos of EPA and the recipient NEP.

To obtain the appropriate EPA logo or seal graphic file, the recipient should send a request directly to OPA and include the EPA Project Officer/TO in the communication. Instructions for contacting OPA is available at: <http://www2.epa.gov/stylebook/using-epa-seal-and-logo>. The EPA Logo will be displayed meeting the following specifications: http://www.epa.gov/ogd/tc/epa_logo_seal_specifications_for_infrastructure_grants.pdf.

2. If the award includes an outreach component, the recipient will provide signage that informs the public that the project is funded by EPA through its National Estuary Program and includes the following text: "This project has been funded, in whole or in part, by the U.S. Environmental Protection Agency's National Estuary Program."
3. If the EPA logo is displayed along with the logos of other participating entities, the EPA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead, the EPA logo must be accompanied with, and immediately next to, a statement indicating that the recipient received financial assistance from EPA for the project. As provided in the sign specifications from OPA, the EPA logo is the preferred identifier for assistance agreement projects.

4. Recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the EPA logo) into the appropriate non- English language(s). The costs of such translation are allowable, provided the costs are reasonable.

X. CYBERSECURITY CONDITION

The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State law cybersecurity requirements. EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure.

For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information.

Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer/Technical Officer (PO/TO) and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange.

The recipient will follow this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

Y. OTHER AWARD CONSIDERATIONS

- Fully enforce civil rights. EPA's nondiscrimination regulations prohibit recipients of EPA financial assistance from taking actions in their programs or activities that are intentionally discriminatory and/or have a discriminatory effect based on race, color, national origin (including limited English proficiency), age, disability, or sex. NEP funding under the BIL should ensure compliance with civil rights laws. EPA will provide interested NEPs with technical assistance and training to support their compliance with Title VI obligations
- Compliance with Build America Buy America Act Requirements. Congress passed the Build America Buy America (BABA) Act in 2021, concurrently with the BIL. Congress established this domestic preference program to create long-term opportunities for domestic manufacturers and manufacturing jobs, and to build resilient domestic supply chains for a wide range of products used in construction and infrastructure, including iron and steel products, manufactured products, and construction materials. EPA will work with the NEPs to determine the types of products that may be covered by this new law and will support compliance where necessary. Additional guidance and information regarding program-wide, project-specific, and product-specific waivers, and the process to apply for them, will be forthcoming. Compliance instructions will also be addressed in the terms and conditions of each award, and these requirements extend to sub-awardees
- Compliance with the Federal Flood Risk Management Standard for built infrastructure. Where appropriate, projects should incorporate the *Federal Flood Risk Management Standard* (FFRMS) defined in Executive Order 13690 to improve the resilience of communities, ensuring that federal investments located in or near floodplains are designed to be resilient to the impacts of flooding. The FFRMS requires that new construction, or significant improvements, of structural infrastructure funded using federal financial assistance be elevated to withstand local flood risk conditions. More information can be found at: <https://www.fema.gov/floodplain-management/intergovernmental/federal-flood-risk-management-standard>
- Support the American Worker and Renew the Conservation and Water Workforce. The BIL is not only an opportunity to reinvest in America's communities and ecosystems, but also an opportunity to invest in the American workers who support them. BIL investments through NEPs should contribute to developing a strong restoration and conservation workforce, build capacity

to maintain critical gray or green infrastructure, and support efforts to open pathways to environmental employment, especially for youth and groups currently under-represented in fields such as construction and trades, environmental restoration, science, and conservation. Note: funds from the NEP may not be used to support or oppose union organizing, whether directly or as an offset for other funds.

Z. Technical Officer: The Technical Officer/Reviewer assigned to this grant is burks.felicia - 404-562-9371 - burks.felicia@epa.gov.



EPA Project Control Number

CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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 such failure.

Kathleen Peters, Chair

Typed Name & Title of Authorized Representative

Signature and Date of Authorized Representative

APPROVED AS TO FORM

By Brendan Mackesey
Office of the County Attorney

The public reporting and recordkeeping burden for this collection of information is estimated to average 15 minutes per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.



SRF Project Number

United States Environmental Protection Agency
Washington, D.C. 20460

**Certification Regarding
Debarment, Suspension, and Other Responsibility Matters**

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Kathleen Peters, Chair

Typed Name and Title of Authorized Representative

APPROVED AS TO FORM

By Brendan Mackesey
Office of the County Attorney

Signature of Authorized Representative

Date

☐ I am unable to certify to the above statements. May explanation is attached.