

RESOLUTION NO. 2011-584

Adopted by the Sacramento City Council

October 25, 2011

GRANT FUNDING AGREEMENT FOR HOMEOWNER WATER CONSERVATION "FOLLOW THE METER" PROJECT (G14110300)

BACKGROUND

- A. Public Law 111-11 passed in March of 2009 authorized the U.S. Department of Interior Bureau of Reclamation (Reclamation) to provide grants to eligible applicants to assist in planning, designing, or constructing improvements to conserve water and increase water use efficiency.
- B. To meet California state law, the City is required to install over 60,000 water meters on unmetered single-family connections before 2025. Reclamation is providing grant funding for the "Follow the Meter" Project, which provides the City a unique opportunity to leverage residential water conservation with the City's meter retrofit program. This program will offer interior and exterior water conservation services and rebates to homeowners receiving a water meter. This program will use the construction project to focus homeowner's attention on water conservation and will be a coordinated effort that coincides with the installation of water meters.
- C. The grant agreement with Reclamation will allow the City to receive \$123,855 for the "Follow the Meter" project. Reclamation has a 50 percent match requirement, thus the \$123,855 grant request requires a match of \$123,855 for a total project budget of \$247,710.
- D. On September 26, 2011, the grant agreement was signed on behalf of the City Manager, because Reclamation required the City's approval prior to the close of the federal fiscal year on September 30, 2011.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Council ratifies the City Manager's approval, effective September 26, 2011, of Assistance Agreement No. R11AP20147 - CALFED: Homeowner Water Conservation Utilizing the "Follow the Meter" Project, with the U.S. Department of the Interior, Bureau of Reclamation, for federal grant funding in the amount of \$123,855.

- Section 2. The City Manager or the City Manager's designee is authorized to establish the Follow the Meter Grant Project (G14110300) and establish revenue and expenditure budgets in the Water Grant Fund (6205) for the incentive projects in the amount of \$123,855.
- Section 3. The City Manager or the City Manager's designee is authorized to transfer Water Funds (6005) to match the grant award in the amount of \$123,855, from the Operating Budget to the "Follow the Meter" Project (G14110300).
- Section 4. The Assistance Agreement described in Section 1 is attached as Exhibit A and made a part of this Resolution.

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Exhibit A - Assistance Agreement No. R11AP20147

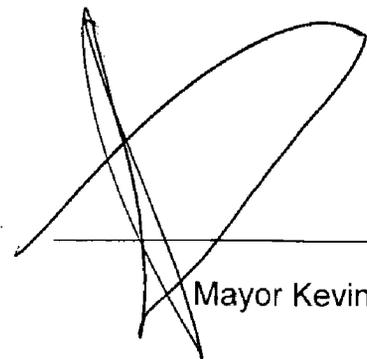
Adopted by the City of Sacramento City Council on October 25, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
ASSISTANCE AGREEMENT**

1A. AGREEMENT NUMBER R11AP20147		1B. MOD NUMBER N/A		2. TYPE OF AGREEMENT <input checked="" type="checkbox"/> GRANT <input type="checkbox"/> COOPERATIVE AGREEMENT		3. CLASS OF RECIPIENT Municipal Government (02)	
4. ISSUING OFFICE U.S. Department of the Interior Bureau of Reclamation Mid-Pacific Region Office 2800 Cottage Way, Room E-1815 Sacramento, California 95825-1898 DUNS: 098865801/EIN: 84-1024566				5. RECIPIENT City of Sacramento Department of Utilities 1395 35 th Ave. Sacramento, California 95822			
				EIN #		94-6000410	County
				DUNS #		127557937	Congress. Dist
						Sacramento	05
6. ADMINISTRATIVE POINT OF CONTACT Robert S. Lowry II, MP-3820 Bureau of Reclamation Mid-Pacific Region Office 2800 Cottage Way, E-1815 Sacramento, California 95825 Email: rlowry@usbr.gov				Phone: (916) 978-5115 Fax: (916) 978-5175		7. RECIPIENT PROJECT MANAGER Ms. Julie Friedman, Water Conservation Coordinator City of Sacramento Department of Utilities 1395 35 th Ave. Sacramento, California 95822 Phone: (916) 808-7898 Email: jfriedman@cityofsacramento.org	
8. GRANTS OFFICER TECHNICAL REPRESENTATIVE Peter Vonich, CC-414 Bureau of Reclamation Central California Area Office 7794 Folsom Dam Road Folsom, CA 95630 Email: pvonich@usbr.gov				Phone: (916) 989-7265		9A. INITIAL AGREEMENT EFFECTIVE DATE See Block 17a	
						9B. MODIFICATION EFFECTIVE DATE N/A	
				10. COMPLETION DATE September 30, 2013			
11A. PROGRAM STATUTORY AUTHORITY Omnibus Public Land Management Act of 2009, Title IX - Bureau of Reclamation Authorizations, Subtitle F - Secure Water, Public Law 111-11, Section 9504(a)						11B. CFDA Number 15.507	
12. FUNDING INFORMATION		- RECIPIENT/OTHER		- RECLAMATION		13. REQUISITION NUMBER 11243000034	
Total Estimated Amount of Agreement		\$123,855.00		\$123,855.00		14A. ACCOUNTING AND APPROPRIATION DATA A 10 1971 1000 000 00 0 0 2430000 411G	
This Obligation		\$123,855.00		\$123,855.00			
Previous Obligation		\$0.00		\$0.00			
Total Obligation		\$123,855.00		\$123,855.00		14B. TREASURY ACCOUNT FUNDING SYMBOL 14X0680	
Cost-Share %		50%		50%			
15. PROJECT TITLE AND BRIEF SUMMARY OF PURPOSE AND OBJECTIVES OF PROJECT Title: CALPED: Homeowner Water Conservation Utilizing the "Follow the Meter" Project City staff will offer homeowners water use survey plumbing kits and rebates on hi-efficiency toilets and washers to conserve water through the use of water saving devices.							
16a. Acceptance of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the above-named recipient BY: <u>Betty Masuoka</u> DATE: <u>9/26/11</u>				17a. Award of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the United States of America, Department of the Interior, Bureau of Reclamation BY: <u>Robert S. Lowry II</u> DATE: <u>9/27/2011</u>			
16b. NAME, TITLE, AND TELEPHONE NUMBER OF SIGNER Betty Masuoka Interim Deputy City Manager 916-808-7942 Additional signatures are attached				17b. NAME OF GRANTS OFFICER Robert S. Lowry, II			

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**Grant Agreement
Between
Bureau of Reclamation
And
City of Sacramento
For
CALFED: Homeowner Water Conservation Utilizing the "Follow the Meter" Project**

I. OVERVIEW AND SCHEDULE

1. AUTHORITY

This Grant Agreement (Agreement) is entered into between the United States of America, acting through the Department of the Interior, Bureau of Reclamation, hereinafter referred to as "Reclamation," and City of Sacramento, hereinafter referred to as the "Recipient" or "Grantee," pursuant to *Omnibus Public Land Management Act of 2009, Title IX - Bureau of Reclamation Authorizations, Subtitle F - Secure Water, Public Law 111-11, Section 9504(a) and (e)*. The following section, provided in full text, authorizes Reclamation to award this financial assistance agreement:

SEC. 9504. WATER MANAGEMENT IMPROVEMENT.

(a) Authorization of Grants and Cooperative Agreements.--

(1) Authority of secretary.--The Secretary may provide any grant to, or enter into an agreement with, any eligible applicant to assist the eligible applicant in planning, designing, or constructing any improvement--

(A) to conserve water;

(B) to increase water use efficiency;

(e) Authorization of Appropriations.--There is authorized to be appropriated to carry out this section \$200,000,000, to remain available until expended.

2. PUBLIC PURPOSE OF SUPPORT OR STIMULATION

The project will benefit the public by: 1) Conserving water through upgrades to interior water conservation devices such as high efficiency toilets and clothes washers as well as through a reduction in exterior water use from the results of irrigation surveys and upgraded hose-end and shut-off valves. 2) Reduced interior water use reduces recoverable flows and reduced applied water for irrigation has both irrecoverable and recoverable savings. Irrecoverable exterior savings occur through a reduction in the amount of evapotranspiration and recoverable savings occur because there will be less runoff and deep percolation. 3) Any water not diverted by the City is available for other beneficial uses in the American and Sacramento rivers and the Delta. The project also allows the City to better manage its infrastructure. 4) This program allows the City to provide additional water conservation services.

3. BACKGROUND AND OBJECTIVES

Public Law 111-11 passed in March of 2009 and authorized Reclamation to provide any grant to, or enter into an agreement with, any eligible applicant to assist the eligible applicant in planning, designing, or constructing any improvement—

- (A) to conserve water;
- (B) to increase water use efficiency;

Public Law 111-11, section 9502(7) defines an eligible applicant as any State, Indian tribe, irrigation district, water district, or other organization with water or power delivery authority.

The California Bay-Delta Memorandum of Understanding (MOU) was signed on September 29, 2009 by six Federal agencies to facilitate and coordinate federal responses to the California water supply crisis. The goal of the MOU is to develop long and short term actions to provide a sustainable water supply and progress ecosystem restoration.

This project is located within the Recipient boundaries, in the County of Sacramento, City of Sacramento, California. A typical neighborhood is located in the Curtis Park – North Oak Park neighborhood, beginning at 12th Ave between Franklin Blvd and Martin Luther King JR Blvd to 8th Ave and Stockton Blvd ending just north of T Street.

To meet California state law, the City is required to install over 60,000 water meters on unmetered single-family connections before 2025. As part of the City of Sacramento's capital improvement program, the City installs between 4,000-7,000 residential water meters per year with a goal to have all connections metered by 2024. The "Follow the Meter" project is a unique opportunity for the City to leverage residential water conservation with the City's meter retrofit program. This program will offer interior and exterior water conservation services and rebates to homeowners receiving a water meter. This program will use the construction disturbance to focus homeowners' attention on water conservation and will be a coordinated effort that coincides with the installation of water meters.

Prior to construction activity the City will advertise the program and during meter installation, City staff will knock on every door in the affected neighborhood and offer on-the-spot interior and exterior water use surveys plumbing kits, and rebates for high efficiency (WaterSense) toilets and clothes washers. Using dedicated City staff this project is expected to provide over 1,600 water wise house calls.

The objectives are:

- a. Water Conservation and Efficiency – conservation of 1,014 acre-feet of recoverable flows (interior use and exterior over watering) and 259 acre-feet of evapotranspiration (outdoor irrigation water) over 25 years. Showerheads and faucet aerators that meet WaterSense Specifications; plumbing kits and hose-end shut off valves are all vital supplies in the water conservation.
- b. Supplemental Water Supply Need – Combined, over 1,274 acre-feet of water will be better managed at an average cost of \$198/acre-foot.

4. PERIOD OF PERFORMANCE AND FUNDS AVAILABILITY

This Agreement becomes effective on the date shown in Block 17a of Form 7-2279, United States of America, Department of the Interior, Bureau of Reclamation, Assistance Agreement. The Agreement shall remain in effect until the date shown in Block 10 of Form 7-2279, United States of America, Department of the Interior, Bureau of Reclamation, Assistance Agreement. The period of performance for this Agreement may only be modified through written modification of the Agreement by a Reclamation Grants Officer (GO).

No legal liability on the part of the Government for any payment may arise until funds are made available, in writing, to the Recipient by the Grants Officer. The total estimated amount of federal funding for this agreement is \$123,855.00 of which the total amount of federal funds available is limited to \$123,855.00 as indicated by "this obligation" within Block 12 of Form 7-2279, United States of America, Department of the Interior, Bureau of Reclamation, Assistance Agreement. Subject to the availability of Congressional appropriations, subsequent funds, if requested and authorized, will be made available for payment through written modifications to this agreement by a Reclamation Grants Officer.

5. SCOPE OF WORK AND MILESTONES

5.1 Project Management: Preparation of invoices and reports of the gathered data and information from monitoring and verifying the surveys.

5.2 Develop Project Theme & Tools: This task will be to prepare and coordinate the media and advertising campaign to implement the program. Brochures and signage will be developed that explain the services. City conservation staff will coordinate with other departments within the City to ensure a unified approach. Outreach will be made to meter installation crews and to the City's 311 customer service operators to explain the program so that they can serve as program representatives.

A second component of this task will be an analysis of the impact of conservation on a customer's bill. This analysis will be based on estimating the change in interior water use in older neighborhoods of Sacramento with high volume toilets, high flow faucets and showerheads and other leaks. Outdoor cost savings will be based on homes without irrigation controllers and homes with irrigation controllers but set to the manufacturer's runtime. Results of this estimate will be used to advertise the program. The following categories will be used to develop the cost savings estimates; showers, toilets, faucets, landscape irrigation controller, pool, and other water features. Cost savings will include both water and energy. A third component of this task will be to develop a spreadsheet calculator to determine sprinkler run-time based on landscape type and area. Typical landscape components and irrigation system characteristics will be combined with local weather data and City ordinances to create the irrigation schedule. The irrigation schedule will be compatible with the City's water waste ordinance. This task will be completed in the first month of the project.

5.3 Field Implementation: One week prior to meter installation, reusable signage, developed under Task 5.2, will be used to advertise the conservation services. The City's 311 customer service phone number will be used to set appointments for residents who request appointments

prior to meter installation. During construction for meter installation, City conservation staff will go door-to-door offering immediate surveys and providing information on residents obtaining toilet and washer rebates. The primary hours for City staff to provide assistance will be from 11-6 during daylight savings time and 12-7 during regular daylight time. A door tag, with program information, plumbing kits (aerators, shower heads, hose-end shut off valves) will be left on all unanswered homes.

Interior and exterior surveys will follow the approach outlined by the California Urban Water Conservation Council (CUWCC). The interior survey will provide site-specific leak detection assistance including, a water conservation survey, water efficiency suggestions, and inspection. Staff will also provide an overview of the City's automated meter infrastructure and ways the technology can be monitored to assist with customer side leak detection. Hardware, such as showerheads and faucet-aerators, that meet the WaterSense Specifications will be offered to the resident. For liability reasons the City staff will not install any hardware.

Exterior surveys will include; checking the irrigation system and timer for maintenance and repairs needed; estimate or measurement of landscaped area; develop customer irrigation schedule based on precipitation rate, local climate, irrigation system performance, and landscape conditions; review the scheduling with customer; provide information packet to customer; and provide customer with evaluation results and water savings recommendations. Hose-end, shut-off valves will be provided to homeowners. For each exterior survey, landscape type and area measurements will be entered into the spreadsheet calculator developed during Task 5.2. The output of the calculator will be used to estimate the run-time for each station. City staff will assist with the programming of the homeowner's irrigation controller if requested by the homeowner. It is estimated that 1,604 interior and exterior surveys will be completed. The lifetime savings resulting from the interior and exterior survey and the installation of showerheads, aerators, and hose-end shut off valves are estimated to be over 750 acre-feet.

Rebates will be offered for high-efficiency clothes washers that meet an average water factor value of 5.0. The homeowner will be responsible for purchasing and installing the washer. The rebate will be \$100 and will follow established City policy for rebates. It is anticipated that 227 washers will be installed. The lifetime savings resulting from the installation of high efficiency clothes washers are estimated to be over 44 acre-feet.

Rebates will be provided for the replacement of existing toilets use 3.5 or more gpf (gallons per flush) with a high-efficiency toilet the uses no more than 1.28 gpf. Rebates will not be provided for ultra low-flow toilets (1.6 gpf). The homeowner will be responsible for purchasing and installing the toilet. The rebate will be limited to \$100 and will follow established City policy for rebates. It is estimated that 566 toilets will be installed. The lifetime savings resulting from the installation of high efficiency toilets are estimated to be over 475 acre-feet.

Implementation will require conservation staff and administration. Staff will be required to be Certified Landscape Irrigation Auditors, and have had training on how to perform interior surveys. Staff will be responsible for the customer service calls, the interior and exterior surveys, processing of rebate applications, field monitoring, verification and follow up. Administration will be responsible for reviewing field staff records and responding to management type issues.

5.4 Monitoring and Verification: The purpose of this effort is to quantify the amount of water conserved through project implementation. This task will build on the tracking tools developed under Task 5.2. There will be four control groups that will be used to compare against the target group. The primary comparison will be between houses that received a survey when the meter was installed and those that did not. The control groups will be used to normalize behavior that is due to external factors such as weather, and social pressure. As the project-tracking sheet is developed under Task 5.2 additional performance measures will be indentified. A database will be developed to track the offer of a survey, the acceptance of the survey, an inventory of interior fixtures, the implementation of interior plumbing changes and exterior characteristics and recommendations. Follow-up phone surveys will be conducted one year after the initial survey. During the follow-up survey, homeowners will be asked to report any changes they made to interior or exterior hardware (aerators, toilets, and irrigation controllers) and any changes made to their irrigation timer settings.

6. RESPONSIBILITY OF THE PARTIES

6.1 Recipient Responsibilities

6.1.1 The Recipient agrees to perform tasks specified in their proposal entitled, *City of Sacramento Follow the Meter – Residential Conservation Makeover*, dated June 20, 2011 (Attachment 1), and the Scope of Work and Milestones, in Section 5.

6.1.2 The Recipient shall adhere to Federal, state, and local laws, regulations, and codes, as applicable, and shall obtain all required approvals and permits. If the Scope of Work contains construction activities, the Recipient is responsible for construction inspection, oversight, and acceptance.

6.1.3 If applicable, the Recipient shall also coordinate and obtain approvals from site owners and operators.

6.1.4 The Recipient must include the number of house visits and rebates issued for the high efficiency toilets and clothes washers within their Semi-Annual Progress and Final Reports.

6.2 Reclamation Responsibilities

6.2.1 Reclamation will monitor activities performed under this Agreement. Monitoring includes review and approval of financial status and performance reports, payment requests, and any other reports identified as part of the Scope of Work. Additional monitoring activities may include site visits, conference calls, and other activities. Reclamation may also provide technical assistance, if needed, to the Recipient in support of the Scope of Work and objectives of this Agreement.

7. BUDGET

7.1 Budget Estimate. The following is the estimated budget for this Agreement. As federal financial assistance agreements are cost-reimbursable, the budget provided is for estimation purposes only. Final costs incurred under the budget categories listed may be either higher or

lower than the estimated costs. All costs incurred by the Recipient under this agreement must be in accordance with any pre-award clarifications conducted between the Recipient and Reclamation, as well as with the terms and conditions of this agreement. Final determination of the allowability, allocability, or reasonableness of costs incurred under this agreement is the responsibility of the Grants Officer. Recipients are encouraged to direct any questions regarding allowability, allocability or reasonableness of costs to the Grants Officer for review prior to incurrence of the costs in question.

City of Sacramento, Labor, Supplies, Rebates for Funding Opportunity #R11AF20019, CALFED Water Use Efficiency Program

Labor Functions

Personnel	function	labor rate	fringe benefits	hours	total
Field Staff	water wise house calls	\$19.5	\$6.7	3,209	\$83,851
Project Manager	water wise house call admin	\$42.3	\$13.1	401	\$22,215
	marketing materials	\$42.3	\$13.1	80	\$4,432
	monitor and verification	\$42.3	\$13.1	280	\$15,512
	project admin	\$42.3	\$13.1	80	\$4,432
sub-total					\$130,443

Supplies

Item	function	Units	Cost/unit	total
Banners and flyers	printing materials - lump sum	1	\$2,000	\$2,000
Mailing service notices		1,800	\$1.5	\$2,700
Aerator .5gpm		1,604	\$1.1	\$1,700
Showerhead Earth 1.5gpm		1,604	\$2.9	\$4,571
Grn hose nozzle		1,604	\$3.6	\$5,839
3.5 gals Bucket		1,604	\$4.5	\$7,218
Water Wise Garden CD		1,604	\$3.6	\$5,774
Practical Plumbing		1,604	\$2.0	\$3,208
Rules of Thumb		1,604	\$1.3	\$2,069
Tipcard & Magnet		1,604	\$0.4	\$561
Sunset Easy Water Wise Gardening		1,604	\$1	\$2,326
sub-total				\$37,967

Note - total hardware packet/kit was estimated to be about \$21/residence

Rebates

Item	function	Units	Cost/unit	total
Clothes washers		227	\$100	\$22,700
Toilets		566	\$100	\$56,600
sub-total				\$79,300

Total \$247,710

7.2 Cost Sharing Requirement

At least 50% non-federal cost-share is required for costs incurred under this Agreement. If pre-award costs are authorized, reimbursement of these costs is limited to federal cost share percentage identified in this agreement.

7.3 Pre-Award Incurrence of Costs

The Recipient is not authorized to incur costs prior to the award of this Agreement. Costs incurred prior to the award of this agreement are not allowable.

7.4 Allowable Costs (2 CFR Part §225)

Costs incurred for the performance of this Agreement must be allowable, allocable to the project, and reasonable. The following Office of Management and Budget (OMB) Circular, codified within the Code of Federal Regulations (CFR), governs the allowability of costs for Federal financial assistance:

2 CFR Part 225 (OMB Circular A-87), "Cost Principles for State, Local, and Indian Tribal Governments"

Expenditures for the performance of this Agreement must conform to the requirements within this Circular. The Recipient must maintain sufficient documentation to support these expenditures. Questions on the allowability of costs should be directed to the GO responsible for this Agreement.

The Recipient shall not incur costs or obligate funds for any purpose pertaining to operation of the program or activities beyond the expiration date stated in the Agreement. The only costs which are authorized for a period of up to 90 days following the project performance period are those strictly associated with closeout activities for preparation of the final report.

7.5 Changes (43 CFR §12.70).

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see 43 §12.62) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes.*

(1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost

categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds \$100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award, *unless included in the initial funding proposal*. This approval requirement is in addition to the approval requirements of 43 §12.76 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.*

(1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see §12.62) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in

writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

7.6 Modifications

Any changes to this Agreement shall be made by means of a written modification. Reclamation may make changes to the Agreement by means of a unilateral modification to address administrative matters, such as changes in address, no-cost time extensions, or the addition of previously agreed upon funding. Additionally, a unilateral modification may be utilized by Reclamation if it should become necessary to suspend or terminate the Agreement in accordance with 43 CFR 12.83.

All other changes shall be made by means of a bilateral modification to the Agreement. No oral statement made by any person, or written statement by any person other than the GO, shall be allowed in any manner or degree to modify or otherwise effect the terms of the Agreement.

All requests for modification of the Agreement shall be made in writing, provide a full description of the reason for the request, and be sent to the attention of the GO. Any request for project extension shall be made at least 45 days prior to the expiration date of the Agreement or the expiration date of any extension period that may have been previously granted. Any determination to extend the period of performance or to provide follow-on funding for continuation of a project is solely at the discretion of Reclamation.

8. KEY PERSONNEL

8.1 Recipient's Key Personnel

The Recipient's Project Manager for this Agreement shall be:

Ms. Julie Friedman
City of Sacramento
1395 35th Ave
Sacramento, California 95822
Phone: (916) 808-7898
Email: jfriedman@cityofsacramento.org

Changes to Key Personnel require compliance with 43 CFR 12.70(d)(3).

8.2 Reclamation's Key Personnel

8.2.1 Grants Officer (GO):

Robert S. Lowry, MP-3820
Bureau of Reclamation
Mid-Pacific Region Office
2800 Cottage Way, E-1815
Sacramento, California 95825
Phone: (916) 978-5155/Fax: (916) 978-5175
Email: rlowry@usbr.gov

(a) The GO is the only official with legal delegated authority to represent Reclamation. The GO's responsibilities include, but are not limited to, the following:

- (1) Formally obligate Reclamation to expend funds or change the funding level of the Agreement;
- (2) Approve through formal modification changes in the scope of work and/or budget;
- (3) Approve through formal modification any increase or decrease in the period of performance of the Agreement;
- (4) Approve through formal modification changes in any of the expressed terms, conditions, or specifications of the Agreement;
- (5) Be responsible for the overall administration, management, and other non-programmatic aspects of the Agreement including, but not limited to, interpretation of financial assistance statutes, regulations, circulars, policies, and terms of the Agreement;
- (6) Where applicable, ensures that Reclamation complies with the administrative requirements required by statutes, regulations, circulars, policies, and terms of the Agreement.

8.2.2 Grants Officer Technical Representative (GOTR):

Mr. Peter Vonich, CC-410
Bureau of Reclamation
Central California Area Office
7794 Folsom Dam Road
Folsom, CA 95630
Phone: (916) 989-7265
Email: pvonich@usbr.gov

(a) The GOTR's authority is limited to technical and programmatic aspects of the Agreement. The GOTR's responsibilities include, but are not limited to, the following:

- (1) Assist the Recipient, as necessary, in interpreting and carrying out the scope of work in the Agreement;
- (2) Review, and where required, approve Recipient reports and submittals as required by the Agreement;
- (3) Where applicable, monitor the Recipient to ensure compliance with the technical requirements of the Agreement;
- (4) Where applicable, ensure that Reclamation complies with the technical requirements of the Agreement;

(b) The GOTR does not have the authority to and may not issue any technical assistance which:

- (1) Constitutes an assignment of additional work outside the scope of work of the Agreement;
- (2) In any manner causes an increase or decrease in the total estimated cost or the time required for performance; or
- (3) Changes any of the expressed terms, conditions, or specifications of the Agreement.

9. REPORTING REQUIREMENTS AND DISTRIBUTION

9.1 Noncompliance. Failure to comply with the reporting requirements contained in this Agreement may be considered a material non-compliance with the terms and conditions of the award. Non compliance may result in withholding of payments pending receipt of required reports, denying both the use of funds and matching credit for all or part of the cost of the activity or action not in compliance, whole or partial suspension or termination of the Agreement, recovery of funds paid under the Agreement, withholding of future awards, or other legal remedies in accordance with 43 CFR §12.83.

9.2 Financial Reports. Financial Status Reports shall be submitted by means of the SF-425 and shall be submitted according to the Report Frequency and Distribution schedule below. All financial reports shall be signed by an Authorized Certifying Official for the Recipient's organization.

9.3 Monitoring and reporting program performance (43 CFR §12.80)

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon

expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.*

(1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

9.4 Report Frequency and Distribution. The following table sets forth the reporting requirements for this Agreement. Please note the first report due date listed for each type of report.

REQUIRED REPORTS	Interim Reports	Final Report
Performance Report		
Format	No specific format required. See content requirements within Section 9.3 (43 CFR 12.80) above.	Summary of activities completed during the entire period of performance is required. See content requirements within Section 9.3 (43 CFR 12.80) above.
Reporting Frequency	Semi-Annual	Final Report due upon completion of Agreement's period of performance
Reporting Period	October 1 through March 31 and April 1 through September 30.	Entire period of performance
Due Date*	Within 30 days after the end of the Reporting Period	Within 90 days after the completion date of the Agreement
First Report Due Date	Period ending March 31, 2012	N/A
Submit to:	GO and GOTR	GO and GOTR
Federal Financial Report		
Format	SF-425 (all sections must be completed)	SF-425(all sections must be completed)
Reporting Frequency	Semi-Annual	Final Report due upon completion of Agreement's period of performance
Reporting Period	October 1 through March 31 and April 1 through September 30.	Entire period of performance
Due Date*	Within 30 days after the end of the Reporting Period	Within 90 days after the completion date of the Agreement
First Report Due Date	Period ending March 31, 2012	N/A
Submit to:	GO and GOTR	GO and GOTR

* If the completion date is prior to the end of the next reporting period, then no interim report is due for that period. Instead, the Recipient is required only to submit the final financial and performance reports, which will cover the entire period of performance including the last abbreviated reporting period.

10. REGULATORY COMPLIANCE

The Recipient agrees to comply or assist Reclamation with all regulatory compliance requirements and all applicable State, Federal, and local environmental and cultural and paleontological resource protection laws and regulations as applicable to this project. These may include, but are not limited to, the National Environmental Policy Act (NEPA), including the Council on Environmental Quality and Department of the Interior regulations implementing NEPA, the Clean Water Act, the Endangered Species Act, consultation with potentially affected Tribes, and consultation with the State Historic Preservation Office.

Certain environmental and other associated compliance are Federal responsibilities, and will occur as appropriate. Reclamation will identify the need for and will obtain any appropriate environmental compliance requirements, as identified above, pertinent to Reclamation, pursuant to activities specific to this assisted activity. Environmental and other associated compliance shall be completed prior to the start of this project. As such, notwithstanding any other provision of this Agreement, Reclamation shall not provide any funds to the Recipient for Agreement purposes, and the Recipient shall not begin implementation of the assisted activity described in this Agreement, until Reclamation provides written notice to the Recipient that all applicable environmental and regulatory compliance analyses and clearances have been completed and that the Recipient may begin implementation of the assisted activity. If the Recipient begins project activities that require environmental and other regulatory compliance approval, such as construction activities, prior to receipt of written notice from Reclamation that all such clearances have been obtained, then Reclamation reserves the right to unilaterally terminate this agreement for cause.

11. AGRICULTURAL OPERATIONS [Public Law 111-11, Section 9504(a)(3)(B)]

The Recipient shall not use any associated water savings to increase the total irrigated acreage of the Recipient or otherwise increase the consumptive use of water in the operation of the Recipient, as determined pursuant to the law of the State in which the operation of Recipient is located.

12. TITLE TO IMPROVEMENTS [Public Law 111-11, Section 9504(a)(3)(D)]

If the activities funded under this Agreement result in an infrastructure improvement to a federally owned facility, the Federal Government shall continue to hold title to the facility and improvements to the facility.

13. OPERATION AND MAINTENANCE COSTS [Public Law 111-11, Section 9504(a)(3)(E)(iv.)]

The non-Federal share of the cost of operating and maintaining any infrastructure improvement funded through this Agreement shall be 100 percent.

14. LIABILITY [Public Law 111-11, Section 9504(a)(3)(F)]

- (a) **IN GENERAL.**—Except as provided under chapter 171 of title 28, United States Code (commonly known as the “Federal Tort Claims Act”), the United States shall not be liable for monetary damages of any kind for any injury arising out of an act, omission, or occurrence that arises in relation to any facility created or improved under this Agreement, the title of which is not held by the United States.
- (b) **TORT CLAIMS ACT.**—Nothing in this section increases the liability of the United States beyond that provided in chapter 171 of title 28, United States Code (commonly known as the “Federal Tort Claims Act”).

II. RECLAMATION STANDARD TERMS AND CONDITIONS - STATES, LOCAL GOVERNMENTS, AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

1. REGULATIONS

The regulations at 43 CFR, Part 12, Subparts A, C, E, and F, are hereby incorporated by reference as though set forth in full text. The following Office of Management and Budget (OMB) Circulars, as applicable, and as implemented by 43 CFR Part 12, are also incorporated by reference and made a part of this Agreement. Failure of a Recipient to comply with any applicable regulation or circular may be the basis for withholding payments for proper charges made by the Recipient and/or for termination of support.

1.1 Colleges and Universities that are Recipients or sub-recipients shall use the following:

2 CFR Parts 215 and 220 (Circular A 21), "Cost Principles for Educational Institutions"

Circular A 110, as amended September 30, 1999, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations" (Codification by Department of Interior, 43 CFR 12, Subpart F)

Circular A-133, revised June 27, 2003, "Audits of States, Local Governments, and Non-Profit Organizations"

1.2 State, Local and Tribal Governments that are Recipients or sub-recipients shall use the following:

2 CFR Part 225 (Circular A 87), "Cost Principles for State, Local, and Indian Tribal Governments"

Circular A 102, as amended August 29, 1997, "Grants and Cooperative Agreements with State and Local Governments" (Grants Management Common Rule, Codification by Department of Interior, 43 CFR 12, Subpart C)

Circular A-133, revised June 27, 2003, Audits of States, Local Governments, and Non-Profit Organizations"

1.3 Nonprofit Organizations that are Recipients or sub-recipients shall use the following:

2 CFR Part 230 (Circular A 122), "Cost Principles for Non-Profit Organizations"

Circular A 110, as amended September 30, 1999, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations" (Codification by Department of Interior, 43 CFR 12, Subpart F)

Circular A-133, revised June 27, 2003, "Audits of States, Local Governments, and Non-Profit Organizations"

1.4 Organizations other than those indicated above that are Recipients or sub-recipients shall use the basic principles of OMB Circular A-110 (Codification by Department of Interior, 43 CFR 12, Subpart F), and cost principles shall be in accordance with 48 CFR Subpart 31.2.

1.5 43 CFR 12.77 sets forth further regulations that govern the award and administration of subawards by State governments.

2. PAYMENT

2.1 Payment Standards. (43 CFR §12.61)

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that

reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.*

- (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.
- (2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.*

- (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—
 - (i) The grantee or subgrantee has failed to comply with grant award conditions, or
 - (ii) The grantee or subgrantee is indebted to the United States.
- (2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with §12.83(c).
- (3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.*

- (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.
- (2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State Agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative expenses.

2.2 Payment Method

Requesting Payments -- Requests for advance or reimbursement may be made by the following methods:

(1) SF-270, Request for Advance or Reimbursement - Recipients may submit an original and properly certified SF-270 form to the GO. Requests for reimbursement may be submitted on a monthly basis or more frequently if authorized by the (GO). Recipients may not request advance payments for anticipated expenses that are greater than one month in advance of the request.

(2) SF-271, Outlay Report and Request for Reimbursement for Construction Programs - The SF-271 shall be used for construction Agreements paid by the reimbursement method, letter of credit, electronic funds transfer, or Treasury check advance, except where the advance is based on periodic requests from the Recipient, in which case the SF-270 shall be used. This request may be submitted on a quarterly basis, but no less frequently than on an annual basis. Recipients may submit an original, properly certified SF-271 form to the GO.

(3) Automated Standard Application for Payments (ASAP) - Recipients may utilize the Department of Treasury ASAP payment system to request advances or reimbursements. ASAP is a Recipient-initiated payment and information system designed to provide a single point of contact for the request and delivery of Federal funds. Recipient procedures must minimize the time elapsing between the drawdown of federal funds and the disbursement for agreement purposes.

Recipients interested in enrolling in the ASAP system, please contact Dee Devillier at 303-445-3461 or Sheri Oren at 303-445-3448.

3. PROCUREMENT STANDARDS (43 CFR §12.76)

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.*

(1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.*

(1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §12.76. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

- (i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and
- (ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed* —(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$150,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in §12.76(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price

or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- (ii) Proposals will be solicited from an adequate number of qualified sources;
- (iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
- (iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

- (i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:
 - (A) The item is available only from a single source;
 - (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (C) The awarding agency authorizes noncompetitive proposals; or
 - (D) After solicitation of a number of sources, competition is determined inadequate.
- (ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.
- (iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
- (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.*

(1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see §12.62). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.*

(1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous

high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance 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 Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

4. EQUIPMENT (43 CFR §12.72)

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow

paragraphs (c) through (e) of this section.

(c) *Use.*

(1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in §12.65(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided Federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow 12.72(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

5. SUPPLIES (43 CFR §12.73)

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition*. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other Federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

6. INSPECTION

Reclamation has the right to inspect and evaluate the work performed or being performed under this Agreement, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If Reclamation performs inspection or evaluation on the premises of the Recipient or a sub-Recipient, the Recipient shall furnish and shall require sub-recipients to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

7. AUDIT (31 U.S.C. 7501-7507)

Non-Federal entities that expend \$500,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133. Federal awards are defined as Federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities. They do not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Non-Federal entities that expend less than \$500,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in A-133, § .215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

8. ENFORCEMENT (43 CFR §12.83)

(a) *Remedies for noncompliance*. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

- (1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,
- (2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,
- (3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
- (4) Withhold further awards for the program, or
- (5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 ((2 CFR 29.5.12 and 2 CFR 1400, Subpart C).

9. TERMINATION FOR CONVENIENCE (43 CFR §12.84)

Except as provided in 43 CFR §12.83 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §12.83 or paragraph (a) of this section.

10. DEBARMENT AND SUSPENSION (2 CFR §1400)

The Department of the Interior regulations at 2 CFR 1400—Governmentwide Debarment and Suspension (Nonprocurement), which adopt the common rule for the governmentwide system of debarment and suspension for nonprocurement activities, are hereby incorporated by reference and made a part of this Agreement. By entering into this grant or cooperative Agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 1400, Subpart C, and agrees to include a similar term or condition in all lower-tier covered transactions. These

regulations are available at <http://www.gpoaccess.gov/ecfr/>.

11. DRUG-FREE WORKPLACE (2 CFR §182 and §1401)

The Department of the Interior regulations at 2 CFR 1401—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), which adopt the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq, as amended) applicable to grants and cooperative agreements, are hereby incorporated by reference and made a part of this agreement. By entering into this grant or cooperative agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 182.

12. ASSURANCES AND CERTIFICATIONS INCORPORATED BY REFERENCE

The provisions of the Assurances, SF 424B or SF 424D as applicable, executed by the Recipient in connection with this Agreement shall apply with full force and effect to this Agreement. All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, and cooperative Agreements, loans, and other forms of Federal assistance. The Recipient shall comply with Title VI or the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and any program-specific statutes with anti-discrimination requirements. The Recipient shall comply with civil rights laws including, but not limited to, the Fair Housing Act, the Fair Credit Reporting Act, the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act.

Such Assurances also include, but are not limited to, the promise to comply with all applicable Federal statutes and orders relating to nondiscrimination in employment, assistance, and housing; the Hatch Act; Federal wage and hour laws and regulations and work place safety standards; Federal environmental laws and regulations and the Endangered Species Act; and Federal protection of rivers and waterways and historic and archeological preservation.

13. COVENANT AGAINST CONTINGENT FEES

The Recipient warrants that no person or 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 offices established and maintained by the Recipient for the purpose of securing Agreements or business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement amount, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

14. TRAFFICKING VICTIMS PROTECTION ACT OF 2000 (2 CFR §175.15)

Trafficking in persons.

(a) *Provisions applicable to a recipient that is a private entity.*

(1) You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not

(i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

(ii) Procure a commercial sex act during the period of time that the award is in effect; or

(iii) Use forced labor in the performance of the award or subawards under the award.

(2) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

(i) Is determined to have violated a prohibition in paragraph a.1 of this award term; or

(ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either

(A) Associated with performance under this award; or

(B) Imputed to you or 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 our agency at 2 CFR part 1400.

(b) *Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

(1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

(2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either

(i) Associated with performance under this award; or

(ii) 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 our agency at 2 CFR part 1400.

(c) *Provisions applicable to any recipient.*

(1) You must inform us immediately of any information you receive from any source

alleging a violation of a prohibition in paragraph a.1 of this award term.

(2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

(i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

(ii) Is in addition to all other remedies for noncompliance that are available to us under this award.

(3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

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

(1) "Employee" means either:

(i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

(ii) 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.

(2) "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 subsection to involuntary servitude, peonage, debt bondage, or slavery.

(3) "Private entity:"

(i) 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.

(ii) 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.

(4) "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).

15. NEW RESTRICTIONS ON LOBBYING (43 CFR §18)

The Recipient agrees to comply with 43 CFR 18, New Restrictions on Lobbying, including the following certification:

- (a) No Federal appropriated funds have been paid 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 an agency, a Member of Congress, and 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.
- (b) 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, an officer or employee of Congress, or an employee of 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.
- (c) The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify 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.

16. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (URA) (42 USC § 4601 *et seq.*)

- (a) The Uniform Relocation Assistance Act (URA), 42 U.S.C. § 4601 *et seq.*, as amended, requires certain assurances for Reclamation funded land acquisition projects conducted by a Recipient that cause the displacement of persons, businesses, or farm operations. Because Reclamation funds only support acquisition of property or interests in property from willing sellers, it is not anticipated that Reclamation funds will result in any "displaced persons," as defined under the URA.
- (b) However, if Reclamation funds are used for the acquisition of real property that results in displacement, the URA requires Recipients to ensure that reasonable relocation payments and other remedies will be provided to any displaced person. Further, when acquiring real property, Recipients must be guided, to the greatest extent practicable, by the land acquisition policies in 42 U.S.C. § 4651.

(c) Exemptions to the URA and 49 CFR Part 24

- (1) The URA provides for an exemption to the appraisal, review and certification rules for those land acquisitions classified as “voluntary transactions.” Such “voluntary transactions” are classified as those that do not involve an exercise of eminent domain authority on behalf of a Recipient, and must meet the conditions specified at 49 CFR § 24.101(b)(1)(i)-(iv).
- (2) For any land acquisition undertaken by a Recipient that receives Reclamation funds, but does not have authority to acquire the real property by eminent domain, to be exempt from the requirements of 49 CFR Part 24 the Recipient must:
 - (i) provide written notification to the owner that it will not acquire the property in the event negotiations fail to result in an amicable agreement, and;
 - (ii) inform the owner in writing of what it believes to be the market value of the property

(d) Review of Land Acquisition Appraisals. Reclamation reserves the right to review any land appraisal whether or not such review is required under the URA or 49 CFR § 24.104. Such reviews may be conducted by the Department of Interior’s Appraisal Services Directorate or a Reclamation authorized designee. When Reclamation determines that a review of the original appraisal is necessary, Reclamation will notify the Recipient and provide an estimated completion date of the initial appraisal review.

17. CENTRAL CONTRACTOR REGISTRATION AND UNIVERSAL IDENTIFIER REQUIREMENTS (2 CFR 25, APPENDIX A)

A. Requirement for Central Contractor Registration (CCR)

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) Numbers

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (*see* definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions

For purposes of this award term:

1. *Central Contractor Registration (CCR)* 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 CCR Internet site (currently at <http://www.ccr.gov>).
2. *Data Universal Numbering System (DUNS) number* means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
3. *Entity*, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
4. *Subaward*:
 - a. 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.
 - b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. 11.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
5. *Subrecipient* means an entity that:
 - a. Receives a subaward from you under this award; and
 - b. Is accountable to you for the use of the Federal funds provided by the subaward.

18. PROHIBITION ON TEXT MESSAGING AND USING ELECTRONIC EQUIPMENT SUPPLIED BY THE GOVERNMENT WHILE DRIVING

Executive Order 13513, *Federal Leadership On Reducing Text Messaging While Driving*, was signed by President Barack Obama on October 1, 2009 (ref: <http://edocket.access.gpo.gov/2009/pdf/E9-24203.pdf>). This Executive Order introduces a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. Additional guidance enforcing the ban will be issued at a later date. In the meantime, please adopt and enforce policies that

immediately ban text messaging while driving company-owned or rented vehicles, government-owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government.