



## City of Sacramento City Council

915 I Street, Sacramento, CA, 95814  
[www.CityofSacramento.org](http://www.CityofSacramento.org)

**Meeting Date:** 10/23/2012

**Report Type:** Consent

**Title:** Agreement: Water Meter Installation

**Report ID:** 2012-00811

**Location:** District 8

**Recommendation:** Pass 1) a Motion authorizing the City Manager or the City Manager's designee to execute an Agreement with the Regional Water Authority (RWA) allocating U.S. Bureau of Reclamation funds to the City and 2) a Resolution authorizing the City Manager or City Manager's designee to take the necessary budget actions.

**Contact:** Bill Busath, Interim Engineering Manager, (916) 808-1434; Michelle Carrey, Senior Engineer, (916) 808-1438, Department of Utilities

**Presenter:** None

**Department:** Department Of Utilities

**Division:** Fiscal and Administration Svcs

**Dept ID:** 14001611

### Attachments:

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- 1-Description/Analysis
- 2-Background
- 3-Resolution
- 4-Location Map
- 5-Exhibit A - Agreement with RWA
- 6-Exhibit B - Agreement between SSWD and U.S. Bureau of Reclamation

### City Attorney Review

Approved as to Form  
 Joe Robinson  
 10/17/2012 9:39:28 AM

### City Treasurer Review

Reviewed for Impact on Cash and Debt  
 Russell Fehr  
 10/8/2012 3:03:17 PM

### Approvals/Acknowledgements

~~Department Director or Designee:~~ Dave Brent - 10/16/2012 1:30:00 PM

## Description/Analysis:

**Issue:** The CALFED Bay-Delta Authorization Act funds grants and cooperative agreements with agencies in the State of California for water conservation projects. Administered by the Department of Interior, US Bureau of Reclamation (USBR), an annual competitive process is used to award funding appropriated for the program. In 2012, the Regional Water Authority (RWA) coordinated a grant application and Sacramento Suburban Water District (SSWD) applied on behalf of four RWA members: SSWD, Sacramento County Water Agency and the Cities of Sacramento and West Sacramento.

The application was selected to receive a total of \$1 million to enhance water efficiency projects in the Sacramento Region. This funding, along with \$5.2 million of local matching funds, will allow water agencies to accelerate the installation of residential water meters throughout the region. Of the \$1 million in grant funding, the City of Sacramento will receive \$200,000 with the requirement for a City cost match of \$821,440.

The proposed project agreement with RWA identifies the respective responsibilities of the parties to the agreement and provides for RWA's management of the grant on behalf of the recipients. The Agreement includes a provision to pay administrative expenses in the amount of \$2,000 to RWA. Funding provided by this grant will be used to offset costs for the Parkway Water Meter Retrofit Project. This project includes the installation of new water meters and transmitters to an estimated 1,010 existing residential water services.

**Policy Considerations:** Entering into the Project agreement with RWA to receive CALFED grant funds will assist the City in complying with Assembly Bill 2572, which requires the City to install water meters on all existing water service connections by 2025. Water meter installation is consistent with the City Council focus areas of expanding public safety, and achieving sustainability and livability.

**Economic Impacts:** Entering into this Project Agreement has no economic impact. Construction on this project is not scheduled to begin until April, 2013. When the construction contract is awarded economic impacts will be estimated.

## Environmental Considerations:

**California Environmental Quality Act (CEQA):** Water meter retrofit projects are categorically exempt from the California Environmental Quality Act (CEQA) under Class 1, Section number 15301 (b) and (c) and Class 3 Section number 15303(d) of the CEQA Guidelines. Projects exempt under Class 1, Section 15301(b) and (c) consist of minor alteration or repair of existing utility facilities and sidewalks. Projects exempt under Class 3, Section number 15303(d) consist of installation and location of new, small utility facilities.

In addition, per the USBR CALFED grant requirements, National Environmental Policy Act (NEPA) compliance is necessary prior to any ground disturbing activities. The NEPA compliance was coordinated by RWA and has been completed, reviewed, and approved by USBR under a Categorical Exclusion.

**Sustainability:** Entering into the agreement with RWA to receive CALFED grant funding for the City's water meter program is consistent with the City's Sustainability Master Plan as the installation of water meters will allow the City to provide a monthly statement of water usage to customers and metered billing will improve water conservation. Water meter installation also furthers the City's progress in implementing the Water Forum Agreement and the California Urban Water Conservation Council Best Management Practices (BMPs) 1, 4, and 7.

**Commission/Committee Action:** None

**Rationale for Recommendation:** This Agreement will provide the Department with a \$200,000 grant from CALFED Bay Delta water efficiency funding that will be used to install water meters in the area identified on the Location Map attached.

With additional funding provided by this Agreement, the City can accelerate the installation of residential water meters which will facilitate water conservation that typically occurs with consumption based on metered billing.

**Financial Considerations:** The USBR funding will provide funds for the Residential Water Meter Installation Project (Z14010000) in the amount of \$200,000. The City pledged a cost-share in the amount of \$821,440. The Water Meter Retrofit Project budget will be amended to reflect the grant funding revenue and expenditure authority.

**Emerging Small Business Development (ESBD):** The City's ESBD requirements do not apply to the proposed project agreement with RWA.

## Background

In July 2001, the City of Sacramento joined the Regional Water Authority (RWA). The RWA's mission is to represent regional water supply interests and to assist its members in protecting and enhancing the reliability, availability, affordability and quality of water resources. The RWA provides assistance to achieve water efficiency on a regional scale by assisting member agencies with meeting Best Management Practice (BMP) commitments and soliciting grant funding for conservation efforts. Today, RWA represents 22 water purveyor and affiliated agency members in Sacramento, Placer, El Dorado, and Yolo Counties. The City of Sacramento has been an active member, which has provided the City a better opportunity to meet its BMP commitments under the Water Forum Agreement (WFA) and the California Urban Water Conservation Council(CUWCC) Memorandum of Understanding.

In March 2012, RWA facilitated a grant application for four agencies in the Sacramento region which requested funding for residential water meter installations. The application was approved, and the City will receive \$200,000 of the \$1,000,000 awarded from the U.S Department of Interior, Bureau of Reclamation (Reclamation) under the CALFED Water Use Efficiency Grant Program for installation of residential water meters.

The RWA project agreement being considered identifies the respective responsibilities of the parties to the agreement and provides for RWA's management of the grant on behalf of the participants. The cost to the City for RWA to manage this grant is a not-to-exceed amount of \$2,000. Grant funds will be used to offset costs for the Residential Water Meter Replacement project. Project Z14010000 will be amended to reflect the grant funding revenue and expenditure authority.

The project will include abandoning and replacing a small portion of aging water mains in backyard easements and includes placing new meter boxes, setters, and meters on both the new and existing water service locations. Fire protection will also be improved. Completion of this project will assist the City in complying with Assembly Bill 2572 which requires the City to install water meters on all existing water service connections by 2025.



## **RESOLUTION NO.**

Adopted by the Sacramento City Council

### **AUTHORIZING BUDGET ACTIONS FOR ACCEPTANCE OF CALFED WATER USE EFFICIENCY GRANT FUNDING FOR RESIDENTIAL WATER METER INSTALLATION PROJECT (Z14010000)**

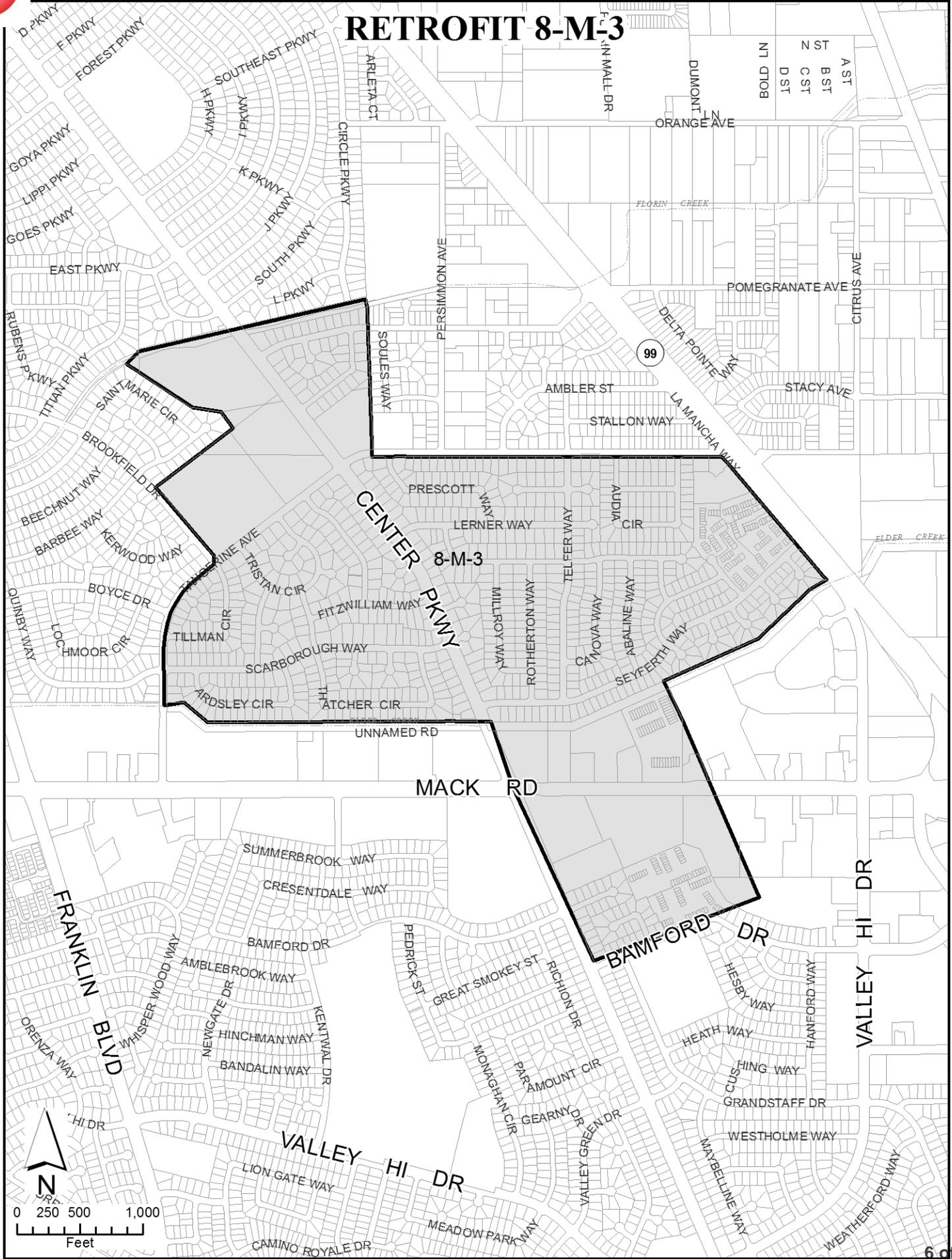
#### **BACKGROUND**

- A. The Regional Water Authority (RWA) coordinated a grant application that has been awarded to Sacramento Suburban Water District (SSWD). The grant funding provided by the U.S. Bureau of Reclamation (USBR) under the CALFED Water Use Efficiency Grant Program will provide funding to four different agencies, including the City of Sacramento, to enhance water efficiency projects in the Sacramento Region.
- B. Participating in this grant opportunity allows the City to accelerate the installation of residential water meters. The City is required to meter all existing water service connections by the year 2025 per State Assembly Bill 2572.
- C. The proposed project agreement with RWA will allow the City to receive up to \$200,000 of the \$1,000,000 awarded to SSWD. The Agreement requires a pledged match of \$821,440

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

- Section 1. The City Manager or the City Manager's designee is authorized to establish revenue and expenditure budgets within the reimbursable water fund (Fund 6205) for the Residential Water Meter Retrofit project (Z14010000): of \$200,000. The pledged match of \$821,440 is available in the project.

# RETROFIT 8-M-3





## REGIONAL WATER AUTHORITY PROJECT AGREEMENT

### SACRAMENTO REGIONAL RESIDENTIAL WATER METER INSTALLATION PROJECT

This Agreement is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2012, by and between the Regional Water Authority (“RWA”), a joint exercise of powers authority formed under California Government Code section 6500, and following, and the Members and Contracting Entities of RWA listed in **Exhibit 1** to this Agreement, upon their execution of this Agreement (who are collectively referred to in this Agreement as “Participants”), to provide for carrying out a project or program that is within the authorized purposes of RWA, and sharing in the cost and benefits by the Participants.

#### RECITALS

A. RWA is a joint powers authority, formed to serve and represent regional water supply interests and to assist its members in protecting and enhancing the reliability, availability, affordability and quality of water resources.

B. The joint powers agreement (“RWA JPA”) pursuant to which RWA was formed and operates, authorizes RWA to enter into a “Project or Program Agreement,” which is defined in the RWA JPA as an agreement between RWA and two or more of its Members or Contracting Entities to provide for carrying out a project or program that is within the authorized purposes of RWA, and sharing in the cost and benefits by the parties to the Project or Program Agreement.

C. Article 21 of the RWA JPA states: “The Regional Authority’s projects are intended to facilitate and coordinate the development, design, construction, rehabilitation, acquisition or financing of water-related facilities (including sharing in the cost of federal, State or local projects) on behalf of Members and/or Contracting Entities. The Regional Authority may undertake the development, design, construction, rehabilitation, acquisition or funding of all or any portion of such projects on behalf of Members and/or Contracting Entities in the manner and to the extent authorized by such Members and/or Contracting Entities as provided in this Agreement, but shall not accomplish these functions, nor acquire or own water-related facilities in its own name.”

D. Article 22 of the RWA JPA states: “Prior to undertaking a project or program, the Members and/or Contracting Entities who elect to participate in a project or program shall enter into a Project or Program Agreement. Thereafter, all assets, benefits and obligations attributable to the project shall be assets, benefits and obligations of those Members and/or Contracting Entities that have entered into the Project or Program Agreement. Any debts, liabilities, obligations or indebtedness incurred by the Regional Authority in regard to a particular project or program, including startup costs advanced by the Regional Authority, shall be obligations of the participating Members and/or Contracting Entities, and shall not be the debts, liabilities, obligations and indebtedness of those Members and/or Contracting Entities who have not executed the Project or Program Agreement.”

E. RWA and the Participants desire to carry out a project and share in the costs and benefits of the project, as a Project or Program Agreement as provided for in Articles 21 and 22 of the RWA JPA.

In consideration of the promises, terms, conditions and covenants contained herein, the parties to this Agreement hereby agree as follows:

**1. Recitals Incorporated.** The foregoing recitals are hereby incorporated by reference.

**2. Defined Terms.** Terms defined in the RWA JPA will have the same meaning in this Agreement.

**3. Description of the Project.** This is a collaborative project between four water supply agencies (see **Exhibit 1** for a list of participants) in the Sacramento region to use a \$1 million grant award from the U.S. Bureau of Reclamation (Reclamation) Bay-Delta Restoration Program: CALFED Water Use Efficiency Grants. Sacramento Suburban Water District (SSWD) acted as the lead agency. RWA will serve as the grant manager on behalf of the collaborating agencies.

The proposed project will install an estimated 4,021 residential water meters by September 30, 2014. Participants have committed \$5,295,592 million in direct and in-kind funding to the project to be matched by \$1 million in Reclamation grant funds. The project duration is to run from October 1, 2012 through September 30, 2014.

**4. Project Committee.** The Participants hereby form a Project Committee consisting of one representative (and one or more alternates) designated by each Participant. The Project Committee will meet as necessary from time to time to administer and implement this Agreement on behalf of the Participants. A majority of the members of the Project Committee will constitute a quorum, and a majority of the members of the Project Committee will be required for an affirmative vote to take action on behalf of the Participants. Actions that could result in fiscal changes will require unanimous consent of the Participants.

**5. Sharing in Project Costs and Benefits.** Subject to the provisions of Articles 9 and 11 of this Agreement, four RWA members will participate in the Project as listed in **Exhibit 1**. Each Participant will ensure that it meets its obligation for its identified local cost share portion.

As the grant awardee, SSWD may be subject to additional audit requirements and administrative expenses associated with processing and distributing payments to each of the collaborating agencies. SSWD estimates the cost of these activities at \$7,240 over the term of the grant. The cost estimate for required accounting and auditing functions by SSWD as the lead agency are included as **Exhibit 2**. The Participants agree to fund these expenses in an amount proportionate to their shares of the grant award. Additionally, each Participant will pay an equal share for the project management costs identified in Article 8 of this Agreement..

Reclamation has indicated that it will reduce the overall grant award to fund Reclamation's

internal project management expenses. Reclamation has estimated this fee at \$10,000, including administrative fee and an environmental review fee. The Participants agree to share in this expense by reducing their shares of the grant award in the same proportion as each Participant's share of the grant award. **Exhibit 3** provides the required local cost share of each Participant and an estimate of the grant benefit for each of the Participants. If Reclamation determines that additional project management expenses are required, the participants agree to reduce their grant awards using the same formula agreed to in this Article. If, after completion of environmental review, Reclamation has excess funds, it will obligate those funds to the grant and such additional moneys will be apportioned to each Participant proportionately to its grant award.

The Project Committee will determine the use of any surplus funds, including any excess project management fees charged in accordance with Article 8 of this Agreement. In accordance with the provisions of Articles 21 and 22 of the RWA JPA, any debts, liabilities, obligations or indebtedness incurred by RWA in regard to the Project will be the obligations of the Participants, and will not be the debts, liabilities, obligations and indebtedness of those Members and/or Contracting Entities who have not executed this Agreement.

**6. Role of RWA.** The Executive Director of RWA will ensure that the interests of Members and Contracting Entities of RWA who do not participate in this Project are not adversely affected in performing this Agreement. The RWA Project Manager will (a) provide information to the Participants on the status of implementation of the Project, (b) assist the Project Committee in carrying out its activities under this Agreement, and (c) administer the grant on behalf of the Participants consistent with the determinations of the Project Committee and the provisions of this Agreement.

**7. Role of Participants.** SSWD is considered the grant awardee, and is the only Participant to execute the funding agreement with Reclamation. However, all Participants must ensure that they implement their portions of the project consistent with the Reclamation funding agreement included as **Exhibit 4**. The Reclamation grant is a Federal award so it is subject to the Davis-Bacon Act for labor standards. Project participants agree to submit information associated with fulfilling the statement of work in a timely fashion to allow RWA and SSWD to meet reporting requirements and to notify RWA regarding any delays in the project that could result in meeting the overall goal of installing 4,021 meters in the region by September 30, 2014. No funds will be disbursed to any Participant that is not current with all compliance and reporting obligations.

**8. RWA Project Management Fee.** The RWA and SSWD management fee to administer the Project is estimated at \$25,176 and is included as **Exhibit 5**. Each Participant will be assessed an equal portion of this fee. Project management activities include development of project agreements, project guidance, semi-annual reporting and semi-annual invoice processing, and interim and final project reports as required by the Reclamation funding agreement.

**9. Authorization to Proceed with the Project.** The Project is authorized to proceed upon the commitment of all Project Participants to fund Project costs by each Participant's approval and execution of this Agreement. Upon execution of this Agreement, the Participants agree to make their payments to cover their shares of the management fees as required by

Articles 5 and 8, respectively, which are estimated to total \$6,294.00 per Participant. Payments will be due and payable upon RWA's presentation of an invoice to each Participant.

**10. Term.** This Agreement will remain in effect for so long as any obligations under this Agreement remain outstanding.

**11. Withdrawal.** A Participant may withdraw from this Agreement without requiring termination of this Agreement, effective upon ninety days' notice to RWA and the other Participants, provided that, the withdrawing Participant will remain responsible for any indebtedness incurred by the Participant under this Agreement prior to the effective date of withdrawal.

**12. Amendments.** This Agreement may be amended from time to time only with the written approval of all of the Participants and RWA.

**13. General Provisions.** The provisions of Articles 37 through 41, inclusive, of the RWA JPA, and the provisions of Article 13 ("General Provisions") of any Participation Agreement entered into between RWA and a Participant, will apply to this Agreement.

The foregoing Sacramento Regional Residential Water Meter Installation Project Agreement is hereby consented to and authorized by RWA and the Participants.

Dated: \_\_\_\_\_, 2012

Dated: \_\_\_\_\_, 2012

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

Regional Water Authority

\_\_\_\_\_  
Agency

**EXHIBIT 1**

**REGIONAL WATER AUTHORITY**

**SACRAMENTO REGIONAL RESIDENTIAL  
WATER METER INSTALLATION PROJECT**

**PROJECT PARTICIPANTS**

**Agency**

City of Sacramento

City of West Sacramento

Sacramento County Water Agency

Sacramento Suburban Water District

**EXHIBIT 2**

**REGIONAL WATER AUTHORITY**

**SACRAMENTO REGIONAL RESIDENTIAL  
WATER METER INSTALLATION PROJECT**

**ESTIMATE OF EXPENSES FOR ACCOUNTING AND AUDIT REQUIREMENTS**

<b>Descriptions</b>	<b>Quantity</b>	<b>Unit cost</b>	<b>Total</b>
<b>Setup Cost</b>			
Banking Fee (separate bank account)	24 Months	60.00	\$ 1,440.00
<b>Admin. Hours</b>			
Review 4 invoices reimbursement for USBR	4 Hours	100.00	\$ 400.00
Prepare 4 grant disbursements to participants	4 Hours	100.00	\$ 400.00
<b>Federal Single Audits</b>			
Calendar year 2013	1 Audit	5,000.00	\$ 5,000.00
<b>Total Estimated Cost</b>			<b>\$ 7,240.00</b>

**EXHIBIT 3**

**REGIONAL WATER AUTHORITY**

**SACRAMENTO REGIONAL RESIDENTIAL  
WATER METER INSTALLATION PROJECT**

**LOCAL COST SHARE AND  
ESTIMATED BENEFITS**

Agency	Local Share	Initial Grant Share	USBR Project Management Fee Deduction	Net Estimated Grant Share
City of Sacramento	\$821,440	\$200,000	\$2,000	\$198,000
City of West Sacramento	\$446,540	\$200,000	\$2,000	\$198,000
Sacramento County Water Agency	\$2,411,610	\$400,000	\$4,000	\$396,000
Sacramento Suburban Water District	\$1,616,002	\$200,000	\$2,000	\$198,000
Total	\$5,295,592	\$1,000,000	\$10,000	\$990,000

**EXHIBIT 4**

**REGIONAL WATER AUTHORITY**

**SACRAMENTO REGIONAL RESIDENTIAL  
WATER METER INSTALLATION PROJECT**

**BUREAU OF RECLAMATION  
FUNDING ASSISTANCE AGREEMENT**

**EXHIBIT 5**

**REGIONAL WATER AUTHORITY**

**SACRAMENTO REGIONAL RESIDENTIAL  
WATER METER INSTALLATION PROJECT**

**ESTIMATE OF RWA AND SSWD PROJECT MANAGEMENT EXPENSES**



UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
ASSISTANCE AGREEMENT

1A. AGREEMENT NUMBER R12AP20029		1B. MOD NUMBER		2. TYPE OF AGREEMENT <input checked="" type="checkbox"/> GRANT <input type="checkbox"/> COOPERATIVE AGREEMENT		3. CLASS OF RECIPIENT Special District Government (12)	
4. ISSUING OFFICE U.S. Department of the Interior Bureau of Reclamation Mid-Pacific Region 2800 Cottage Way, Room E-1815 Sacramento, California 95825  Duns: 098865801    EIN: 841024566				5. RECIPIENT Sacramento Suburban Water District 3701 Marconi Avenue, Suite 100 Sacramento, California 95821			
				EIN #:		800002258	
				County:		Sacramento	
				DUNS #:		798624201	
				Congress. Dist:		3	
6. ADMINISTRATIVE POINT OF CONTACT Beverly S. Breen, MP-3828    Phone: (916) 978-5146 U.S. Department of the Interior Bureau of Reclamation Mid-Pacific Region 2800 Cottage Way, Room E-1815 Sacramento, California 95825 Email: <a href="mailto:bbreen@usbr.gov">bbreen@usbr.gov</a>				7. RECIPIENT PROJECT MANAGER Robert J. Swartz    Phone: (916) 967-7692 Regional Water Authority    Fax: (916) 967-7322 5620 Birdcage Street, Suite 180 Citrus Heights, California 95610 Email: <a href="mailto:rswartz@rwah2o.org">rswartz@rwah2o.org</a>			
8. GRANTS OFFICER TECHNICAL REPRESENTATIVE Peter Vonich, U.S. Department of the Interior    Phone: (916) 989-7265 Bureau of Reclamation    Fax: (916) 989-7208 Central California Area Office 7794 Folsom Dam Road Folsom, California 95630 Email: <a href="mailto:pvonich@usbr.gov">pvonich@usbr.gov</a>				9A. INITIAL AGREEMENT EFFECTIVE DATE: See Block 17a		9B. MODIFICATION EFFECTIVE DATE: N/A	
				10. COMPLETION DATE September 30, 2014			
11A. PROGRAM STATUTORY AUTHORITY: Water Management Improvement, Public Law 111-11, Section 9504.						11B. CFDA Number 15.533	
12 FUNDING INFORMATION		RECIPIENT OTHER		RECLAMATION		13. REQUISITION NUMBER 12243000027	
Total Estimated Amount of Agreement		\$4,724,465.00		\$1,000,000.00		14A. ACCOUNTING AND APPROPRIATION DATA N12 243000 411G 18527901 3000000	
This Obligation		\$4,724,465.00		\$990,000.00			
Previous Obligation		\$0.00		\$0.00			
Total Obligation		\$4,724,465.00		\$990,000.00		14B. TREASURY ACCOUNT FUNDING SYMBOL 14X0680	
Cost-Share %		82.5%		17.5%			
15. PROJECT TITLE AND BRIEF SUMMARY OF PURPOSE AND OBJECTIVES OF PROJECT Title: Sacramento Regional Residential Water Meter Installation Project Summary: This project will install 4,021 residential water meters to achieve water savings estimated at 554 acre-feet per year or 11,074 acre-feet over the 20-year expected lifetime of the improvements.							
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>Edward H. Formosa</u> DATE: <u>9/13/2012</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>Maria E. Castaneda</u> DATE: <u>9/21/2012</u>			
16b. NAME, TITLE, AND TELEPHONE NUMBER OF SIGNER Edward H. Formosa, Asst. General Manager 916.679.3973 <input type="checkbox"/> Additional signatures are attached				17b. NAME OF GRANTS OFFICER Maria E. Castaneda			

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**Grant Agreement  
Between  
Bureau of Reclamation  
And  
Sacramento Suburban Water District  
For  
Sacramento Regional Residential Water Meter Installation Project**

## **I. OVERVIEW AND SCHEDULE**

### **I. 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 Sacramento Suburban Water District (SSWD), hereinafter referred to as the "Recipient" or "Grantee," pursuant to Water Management Improvement, Public Law 111-11, Section 9504. The following section, provided in full text, authorizes Reclamation to award this financial assistance agreement:

#### **Public law 111-11 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;
  - (C) to facilitate water markets;
  - (D) to enhance water management, including increasing the use of renewable energy in the management and delivery of water;
  - (E) to accelerate the adoption and use of advanced water treatment technologies to increase water supply;
  - (F) to prevent the decline of species that the United States Fish and Wildlife Service and National Marine Fisheries Service have proposed for listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (or candidate species that are being considered by those agencies for such listing but are not yet the subject of a proposed rule);
  - (G) to accelerate the recovery of threatened species, endangered species, and designated critical habitats that are adversely affected by Federal reclamation projects or are subject to a recovery plan or conservation plan under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) under which the Commissioner of Reclamation has implementation responsibilities; or

(H) to carry out any other activity—

(i) to address any climate-related impact to the water supply of the United States that increases ecological resiliency to the impacts of climate change; or

(ii) to prevent any water-related crisis or conflict at any watershed that has a nexus to a Federal reclamation project located in a service area.

(2) APPLICATION – To be eligible to receive a grant, or enter into an agreement with the Secretary under paragraph (1), an eligible applicant shall—

(A) be located within the States and areas referred to in the first section of the Act of June 17, 1902 (43 U.S.C. 391); and

(B) submit to the Secretary an application that includes a proposal of the improvement or activity to be planned, designed, constructed, or implemented by the eligible applicant.

(3) REQUIREMENTS OF GRANTS AND COOPERATIVE AGREEMENTS.—

(A) COMPLIANCE WITH REQUIREMENTS - Each grant and agreement entered into by the Secretary with any eligible applicant under paragraph (1) shall be in compliance with each requirement described in subparagraphs (B) through (F).

(B) AGRICULTURAL OPERATIONS - In carrying out paragraph (1), the Secretary shall not provide a grant, or enter into an agreement, for an improvement to conserve irrigation water unless the eligible applicant agrees not—

(i) to use any associated water savings to increase the total irrigated acreage of the eligible applicant; or

(ii) to otherwise increase the consumptive use of water in the operation of the eligible applicant, as determined pursuant to the law of the State in which the operation of the eligible applicant is located.

(C) NONREIMBURSABLE FUNDS - Any funds provided by the Secretary to an eligible applicant through a grant or agreement under paragraph (1) shall be non-reimbursable.

(D) TITLE TO IMPROVEMENTS - If an infrastructure improvement to a federally owned facility is the subject of a grant or other agreement entered into between the Secretary and an eligible applicant under paragraph (1), the Federal Government shall continue to hold title to the facility and improvements to the facility.

(E) COST SHARING.—

(i) FEDERAL SHARE - The Federal share of the cost of any infrastructure improvement or activity that is the subject of a grant or other agreement entered into between the Secretary and an eligible applicant under paragraph (1) shall not exceed 50 percent of the cost of the infrastructure improvement or activity.

(ii) CALCULATION OF NON-FEDERAL SHARE - In calculating the non-Federal share of the cost of an infrastructure improvement or activity proposed by an eligible applicant through an application submitted by the eligible applicant under paragraph (2), the Secretary shall

(I) consider the value of any in-kind services that substantially contributes toward the completion of the improvement or activity, as determined by the Secretary; and

(II) not consider any other amount that the eligible applicant receives from a Federal agency.

(iii) MAXIMUM AMOUNT - The amount provided to an eligible applicant through a grant or other agreement under paragraph (1) shall be not more than \$5,000,000.

(iv) OPERATION AND MAINTENANCE COSTS - The non-Federal share of the cost of operating and maintaining any infrastructure improvement that is the subject of a grant or other agreement entered into between the Secretary and an eligible applicant under paragraph (1) shall be 100 percent.

(F) LIABILITY.—

(i) 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 section, the title of which is not held by the United States.

(ii) 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”).

## **2. PUBLIC PURPOSE OF SUPPORT OR STIMULATION**

The project conserves water through less use, it reduces energy use by pumping less water through their distribution system, and it reduces irrigation run-off water containing pesticides, herbicides, and fertilizer from flowing into local creeks and waterways. This will indirectly benefit any endangered species of birds, amphibians, and reptiles that visit and live in the service-area, while increasing urban habitat for a large variety of wildlife.

## **3. BACKGROUND AND OBJECTIVES**

The intent of this cost share grant is to promote water conservation activities by assisting SSWD in meeting various requirements of their water contract. Implementing the Best Management Practices (BMPs) is required in their federal water services contract. By issuing these rebates in this project, the SSWD will meet its contract requirements with Reclamation to conserve water and implement their BMPs. Additionally, the general public will continue to learn about Reclamation’s role in promoting water conservation by developing partners such as SSWD to assist in the process. SSWD will promote our partnership in direct mailings, on their Web site, signage and through public meetings.

## **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 September 30, 2014. 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 \$990,000.00 of which the initial amount of federal funds available is limited to \$990,000.00 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 will be made available for payment through written modifications to this agreement by a Reclamation Grants Officer.

## 5. SCOPE OF WORK AND MILESTONES

The project includes installation of 4,021 water meters on existing service connections. A current standard detail for a ¾-inch (in) or 1-in residential meter is shown in Attachment 1. The majority of residential customers have either a ¾-in or 1-in service, with some connections up to 2-inches. The project includes the following tasks:

**Task 1. Project Management:** The Regional Water Authority (RWA) project manager will oversee all aspects of the grant requirements on behalf of the participants to ensure they are in full compliance with funding terms. This will include coordination with Reclamation staff and ensuring that the participants complete their respective tasks as described below in compliance with applicable terms.

**Task 2. Environmental Documentation:** A categorical exemption will be prepared per California Environmental Quality Act (CEQA) requirements by each of the participants prior to commencement of the construction element of the project. Each participant will provide a detailed plan map of their respective project areas to Reclamation for completion of the appropriate level of National Environmental Policy Act (NEPA) compliance prior to any ground disturbing activities.

**Task 3. Final Design:** Each participating agency will utilize in-house staff to finalize the plans and details required for their respective project areas to go out to bid for the project. The standard meter installation detail specifications for the participating agencies are provided for reference in Attachment 1. Final design will include specifying the type of installation appropriate for a specific area (e.g., meters in sidewalk, landscaping, driveway, etc.).

**Task 4. Contractor Selection:** Upon design completion, each participant will prepare bid documents, advertise the project, solicit bids to install meters, and identify a contractor through a competitive selection process consistent with funding agreement criteria.

**Task 5. Meter Installation:** The selected contractor will install the meters on existing service connections as shown on the service area figures provided in Attachment 1 for each of the participants. Each participant will perform its own construction installation inspections.

**Task 6. Performance Reporting:** RWA staff will compile information submitted by participating agencies and prepare consolidated reports for submission to Reclamation. Specific reporting includes:

- a. prepare annual (or other frequency as specified by Reclamation) reports and reimbursement invoices of the combined participants for submission to Reclamation;
- b. preparation of the final project report at conclusion of the project;
- c. preparation of a minimum of two annual post-project reports to track expected versus actual water savings (described in Performance Measures and Project Monitoring section of the application below). Note that this is not included in the project schedule or budget, because it will extend beyond the project agreement deadline.

The project schedule described below and a detailed graphical schedule is included as Attachment 1. Project management tasks would commence immediately upon award notification and continue throughout the duration of the two-year project schedule. Upon award, all participants will provide information necessary for Reclamation to prepare a NEPA analysis and each participant will complete CEQA by December 2012.

Because of differences in when the participants will complete their installations, the final design, contractor selection and installation tasks are shown as two phases. The City of West Sacramento and Sacramento County Water Agency will complete their installations in 2013. To do this, they will complete final design by January 2013 and select a contractor by March 2013. Installations will occur between April 2013 and November 2013.

Sacramento Suburban Water District and the City of Sacramento will complete their installations in 2014. To do this, they will complete final design by November 2013 and select a contractor by January 2014. Installations will occur between February 2014 and September 2014. Semi-annual reports and invoices would begin in March 2013 and continue every six months for the duration of the project. A final project report would be prepared upon project completion in September 2014, unless otherwise specified in the funding agreement. Finally, as noted above, the participants will continue post-project monitoring beyond the project schedule, but this task was not depicted on the schedule.

There are no expected deviations from the assumed Reclamation project schedule commencing on October 1, 2012 and completing by September 30, 2014. The schedule assumes that NEPA will be completed by January 2013. This estimate is based on our experience with Reclamation on the 2009 WaterSMART ARRA Grant awarded to SSWD. That project was very similar in nature to the current proposed project. However, sufficient flexibility exists in the project to ensure that construction activities will be completed within the 24-month project duration even in the event that NEPA compliance were to take up to 6 months as was indicated in the funding opportunity announcement.

Sample specifications for residential meter installations of each of the participants are included in Attachment 1 of this application. As previously noted the participants have extensive experience with planning and design on such projects having completed nearly 50,000 residential meter installations since 2004.

## 6. RESPONSIBILITY OF THE PARTIES

### 6.1 Recipient Responsibilities

**6.1.1** The Recipient shall carry out the Scope of Work in accordance with the terms and conditions stated herein. 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. If applicable, the Recipient shall also coordinate and obtain approvals from site owners and operators.

**6.1.2** When making payment requests for reimbursement, the recipient shall provide documentation summarizing the total expenditures for the project and the amount requested.

### 6.2 Reclamation Responsibilities

**6.2.1** Reclamation will monitor and provide federal oversight of activities performed under this Agreement. Monitoring and oversight includes review and approval of financial status and performance reports, payment requests, and any other deliverables identified as part of the Scope of Work. Additional monitoring activities may include site visits, conference calls, and other on-site and off-site monitoring activities. At the Recipient's request, Reclamation may also provide technical assistance 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.

### Budget Proposal and Narrative

Table A

BUDGET ITEM DESCRIPTION	COMPUTATION		TOTAL COST
	S/Unit and Unit	Quantity	
1. SALARIES AND WAGES --Position title x hourly wage/salary x est. hours for assisted activity. Describe this information for each position.			

Project Manager	\$58/hr.	160	\$9,280.00
Project Engineer	\$50/hr.	672	\$33,600.00
Project Inspector	\$30/hr. @ 30 minutes/meter	4,021	\$60,315.00
2. FRINGE BENEFITS - Explain the type of fringe benefits and how are they applied to various categories of personnel.			
			\$0.00
N/A			
3. TRAVEL—dates; location of travel; method of travel x estimated cost; who will travel			
			\$0.00
N/A			
4. EQUIPMENT—Leased Equipment use rate + hourly wage/salary x est. hours for assisted activity—Describe equipment to be purchased, unit price, # of units for all equipment to be purchased or leased for assisted activity: Do not list contractor supplied equipment here.			
			\$0.00
N/A			
5. SUPPLIES/MATERIALS--Describe all major types of supplies/materials, unit price, # of units, etc., to be used on this assisted activity.			
Meters, meter boxes, meter lid, and meter setter.	\$536.821686/unit	4,021	\$2,158,560.00
6. CONTRACTUAL/CONSTRUCTION—Explain any contracts or sub-Agreements that will be awarded, why needed. Explain contractor qualifications and how the contractor will be selected.			
Contractor installation of meters			\$858.669485/unit 4,021 \$3,452,710.00
7. ENVIRONMENTAL and REGULATORY COMPLIANCE COSTS - Reference cost incurred by Reclamation or the applicant in complying with environmental regulations applicable to this Program, which include NEPA, ESA, NHPA etc.			
NEPA	\$10,000/analysis	1	\$10,000.00
8. OTHER -List any other cost elements necessary for your project; such as extra reporting, or contingencies in a construction contract.			
Contingency		1	\$5,724,465.00
<b>TOTAL DIRECT COSTS--</b>			
9. INDIRECT COSTS - What is the percentage rate % . If you do not have a Federally-approved Indirect Cost Rate Agreement or if unapproved rates are used - Explain Why.			
N/A			\$0.00
<b>TOTAL PROJECT/ACTIVITY COSTS</b>			\$5,724,465.00

## 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, subcontracting (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:

Robert J. Swartz  
Regional Water Authority  
5620 Birdcage Street, Suite 180  
Citrus Heights, California 95610  
Phone: (916) 967-7692

Email: [rswartz@rwah2o.org](mailto:rswartz@rwah2o.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):

U.S. Department of the Interior  
Bureau of Reclamation  
Mid-Pacific Region  
Attn: Maria E. Castaneda  
2800 Cottage Way, Room 1815  
Sacramento, California 95825  
Phone: (916) 978-5148  
Email: [mcastaneda@usbr.gov](mailto:mcastaneda@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):

Peter Vonich,  
U.S. Department of the Interior  
Bureau of Reclamation  
Central California Area Office

Phone: (916) 989-7265  
Fax: (916) 989-7208

7794 Folsom Dam Road  
Folsom, California 95630  
Email: [pvonich@usbr.gov](mailto: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
<b>Performance Report</b>		
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	Annual	Final Report due upon completion of Agreement's period of performance
Reporting Period	<b>Annual Reporting:</b> October 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	The first performance report is due for reporting period ending September 30, 2013	N/A
Submit to:	Admin POC and GOTR	Admin POC and GOTR
<b>Federal Financial Report</b>		
Format	SF-425 (all sections must be completed)	SF-425(all sections must be completed)
Reporting Frequency	Annual	Final Report due upon completion of Agreement's period of

Reporting Period	<b>Annual Reporting:</b> October 1 through September 30.	performance 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	The first Federal financial report is due for reporting period ending September 30, 2013	N/A
Submit to:	Admin POC and GOTR	Admin POC 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 complete 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.

### 10.1. 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.

**10.2. 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.

**10.3. 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.

**10.4. 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/ecfi/>.

## **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 subjection 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.