

**CITY OF CORONA  
PROFESSIONAL SERVICES AGREEMENT  
WITH FERGUSON ENTERPRISES, LLC  
(ADVANCED METERING INFRASTRUCTURE TECHNOLOGY – ADVANCED  
METERING INFRASTRUCTURE (AMI) EQUIPMENT PROJECT)**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024 (“Effective Date”) by and between the City of Corona, a municipal corporation organized under the laws of the State of California with its principal place of business at 400 South Vicentia Avenue, Corona, California 92882 (“City”) and Ferguson Enterprises, LLC dba Ferguson Waterworks, a Virginia limited liability company with its principal place of business at 751 Lakefront Commons, Newport News, VA 23606 (“Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

**2. RECITALS.**

**2.1 Consultant.**

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing **Advanced Metering Infrastructure Technology** services to public clients, is licensed in the State of California, and is familiar with the plans of City.

**2.2 Project.**

City desires to engage Consultant to render such services for the **Advanced Metering Infrastructure (AMI) Equipment project, RFP 23-019CA** project (“Project”) as set forth in this Agreement.

**2.3 Integrated Agreement.**

The entire and integrated agreement between City and Consultant related to the Advanced Metering Infrastructure Project shall consist of this Agreement, the Consultant’s Bid Response and the City’s RFP as modified by the Bid Response. In the event of conflict among any of the preceding documents, such documents shall govern in the following order of precedence: (1) this Agreement, (2) the Consultant’s Bid Response, and (3) the RFP.

**2.4 Corona Utility Authority.**

Consultant understands that the City has entered into a Water Enterprise Management Agreement and a Wastewater Enterprise Management Agreement, both dated as of February 6, 2002, with the Corona Utility Authority (“CUA”) for the maintenance, management and operation of those utility systems (collectively, the “CUA Management Agreements”). To the extent that

this Agreement is deemed to be a "material contract" under either of the CUA Management Agreements, City enters into this Agreement on behalf of the CUA and subject to the terms of the applicable CUA Management Agreement(s).

### **3. TERMS.**

#### **3.1 Scope of Services and Term.**

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **Advanced Metering Infrastructure Technology** consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

3.1.2 Term. The term of this Agreement shall be from April 17, 2024 to September 30, 2026 ("Term"), unless earlier terminated as provided herein. Consultant shall complete the Services within the Term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the Term of this Agreement one or more times by executing a written amendment pursuant to Section 3.6.8 below (each a "Renewal Term"). The terms "Term" and "Renewal Term" may sometimes be generally and collectively referred to as "Term" in this Agreement.

#### **3.2 Responsibilities of Consultant.**

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the Term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services within the Term of this Agreement, in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference, and in accordance with any other completion schedule or milestones which may be separately agreed upon in writing by the Parties. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the

Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All Services performed by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows:

Project Manager	Russell Gray
AMI/AMR Specialist	Matt Wilkinson
CA Area Sales Manager	Mike Balla
Field Project Management Support	Wes Hughes
Customer Success Manager	Brad Foster
Integration Specialist	Johnny Ho

3.2.5 City's Representative. The City hereby designates Tom Moody, Director of Utilities, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Jon Price, General Manager, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards

generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant agrees that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the Term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations; Employee/Labor Certifications. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work or Services knowing them to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.9.1 Employment Eligibility; Consultant. By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Consultant. Consultant also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the Term of the Agreement. Consultant shall avoid any violation of any such law during the Term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Consultant shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related

to Consultant's compliance with the requirements provided for in Section 3.2.9 or any of its subsections.

3.2.9.2 Employment Eligibility; Subcontractors, Consultants, Sub-subcontractors and Subconsultants. To the same extent and under the same conditions as Consultant, Consultant shall require all of its subcontractors, consultants, sub-subcontractors and subconsultants performing any work or Services relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.9.1.

3.2.9.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Consultant verifies that they are a duly authorized officer of Consultant, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Consultant or its subcontractors, consultants, sub-subcontractors or subconsultants to meet any of the requirements provided for in Sections 3.2.9.1 or 3.2.9.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Consultant under Section 3.2.9.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.9.4 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.2.9.5 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.2.9.6 Air Quality.

(A) General. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are more broad, Consultant shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine. Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable

laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

(B) CARB Regulations. In addition to the requirements provided for in (A) above, Consultant shall comply, and shall ensure all subconsultants comply, with all applicable requirements of the most current version of the regulations imposed by CARB including, without limitation, all applicable terms of Title 13, California Code of Regulations Division 3, Chapter 9 and all pending amendments (“CARB Regulations”). Throughout the Project, and for three (3) years thereafter, Consultant shall make available for inspection and copying any and all documents or information associated with Consultant’s and its subconsultants’ fleets including, without limitation, the Certificates of Reported Compliance (“CRCs”), fuel/refueling records, maintenance records, emissions records, and any other information the Consultant is required to produce, keep or maintain pursuant to the CARB Regulations upon two (2) calendar days’ notice from the City. Consultant shall be solely liable for any and all costs associated with compliance with the CARB Regulations, as well as for any and all penalties, fines, damages, or costs associated with any and all violations, or failures to comply with the CARB Regulations. Consultant shall defend, indemnify and hold harmless the City, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the CARB Regulations.

### 3.2.10 Insurance.

3.2.10.1 Time for Compliance. Promptly following the Effective Date of this Agreement, but in no event before Consultant commences any Services under this Agreement, Consultant shall provide evidence satisfactory to the City that it has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned); and (3) *Workers’ Compensation and Employer’s Liability*: Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: **\$5,000,000** per occurrence, **\$10,000,000** aggregate for

bodily injury, personal injury, advertising injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: **\$5,000,000** per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of **\$2,000,000** per accident for bodily injury or disease.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to the Services. Such insurance shall be in an amount not less than **\$10,000,000** per occurrence, **\$10,000,000** aggregate.

3.2.10.4 Intentionally deleted.

3.2.10.5 Insurance Endorsements. The insurance policies shall contain or be endorsed (amended) to include the following provisions:

(A) General Liability. The general liability policy shall state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to liability caused in whole or in part by the work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection therewith (the endorsement form shall be at least as broad as ISO Form CG 20 10 12 19 and CG 20 37 12 19; and (2) the insurance coverage shall be primary insurance coverage as respects the City, its directors, officials, officers, employees, agents, and volunteers (the endorsement form shall be at least as broad as ISO CG 20 01 04 13). Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Waiver of Subrogation – Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work or Services performed by the Consultant.

(C) All Coverages. If Consultant maintains higher limits than the minimums shown above, the City is entitled to the higher limits maintained by Consultant. Thus, any available insurance proceeds in excess of the specified minimum limits of insurance shall be available to the City.

3.2.10.6 Other Provisions; Endorsements Preferred. Consultant shall endeavor to provide endorsements regarding the following provisions, but nonetheless understands, acknowledges and agrees that the following provisions shall apply and that failure to comply shall be considered to be a breach of this Agreement by Consultant:

(A) Waiver of Subrogation – All Other Policies. Consultant hereby waives all rights of subrogation any insurer of Consultant’s may acquire against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of any insurance policy which arise from work or Services performed by the Consultant. Consultant understands, acknowledges and agrees that this provision is in full force and effect even if the City does not receive a waiver of subrogation endorsement from the insurer.

(B) Notice. Consultant shall either: (1) require its insurer to provide thirty (30) days prior written notice to the City before coverage is suspended, voided, or canceled; or (2) notify City in writing that such notice is not available and forward any notice of such actions to the City within two (2) business days from date of receipt by Consultant. Consultant understands, acknowledges and agrees that this provision is in full force and effect even if the City does not receive a waiver of subrogation endorsement from the insurer.

3.2.10.7 Claims Made Policies. The following provisions shall apply to all policies that provide coverage on a claims-made basis: (A) the retroactive date must be shown and must be before the date on which any Services under this Agreement commence; (B) the insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Project; and (C) if coverage is canceled or not renewed and is not replaced with another claims-made policy with a retroactive date prior to the date on which any Services under this Agreement commence, Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of Project.

3.2.10.8 Intentionally deleted.

3.2.10.9 Acceptability of Insurers. Unless under the circumstances a different rating is otherwise acceptable to the City in its sole and absolute discretion, insurance is to be placed with insurers which are satisfactory to the City and which meet either of the following criteria : (1) an insurer with a current A.M. Best’s rating no less than A-:VII and licensed as an admitted insurance carrier in California; or (2) an insurer with a current A.M. Best’s rating no less than A-:X and authorized to issue the required policies in California.

3.2.10.10 Verification of Coverage. Consultant shall furnish City with original certificates of insurance, as well as amendatory endorsements or copies of the applicable policy language effecting coverage required by this Agreement. All documents must be received and approved by the City before any Services commence; provided, however, that failure to obtain the required documents prior to the commencement of Services shall not waive Consultant’s obligation to provide them. The City reserves the right to request a review of complete certified copies of all required insurance policies in the event that the City has tendered a claim to Consultant or its insurer, and Consultant or its insurer has denied coverage to the City or has issued a reservation of rights letter. Upon written request of the City, Consultant will furnish all relevant insurance policy or policies, subject to an executed non-disclosure agreement reasonably acceptable to the Parties stating that the City will not disclose the contents of the insurance policy or policies to third parties unless otherwise required by applicable law. Additionally, Consultant



will provide copies of all relevant insurance policy or policies to the City in accordance with a duly issued court order or subpoena.

3.2.10.11 Reporting of Claims. Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.2.10.12 Sub-Consultants. All sub-consultants shall comply with each and every insurance provision of this Section 3.2.10. Consultant shall therefore not allow any sub-consultant to commence work on any subcontract to perform any part of the Services until it has provided evidence satisfactory to the City that the sub-consultant has secured all insurance required under this Agreement.

3.2.10.13 Special Risk or Circumstances. The City reserves the right, in its sole and absolute discretion, to modify the requirements of this Section 3.2.10, including limits, based on any of the following: (A) the nature of the risk of the Services; (B) the prior experience of the insured; (C) the rating or other quality or characteristic of the insurer; (D) any special or unique coverage issues; and (E) any other special or unique circumstances.

3.2.11 Safety. Consultant shall execute and maintain its work and Services so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Services and the conditions under which the Services are to be performed.

3.2.12 Payment Bond. The California Department of Industrial Relations ("DIR") has communicated to the City that there is a possibility that a payment bond may be required for certain services provided in connection with a public works project. Since such a requirement is currently contrary to the industry standard for the services provided by Consultant under this Agreement and since there is no direct legal authority for this position, the City is not requiring Consultant to provide a payment bond at this time. However, the City hereby reserves the right to require the Consultant to obtain and provide a payment bond for some or all of the Services provided by the Consultant under this Agreement.

If the City determines that a payment bond is required for the Services pursuant to Civil Code Section 9550 or any other applicable law, rule or regulation, Consultant shall execute and provide to City a payment bond in an amount required by the City and in a form provided or approved by the City. In the event a payment bond is required, the City agrees to compensate Consultant for all documented direct costs incurred by Consultant for such payment bond. The Parties shall memorialize the terms of such additional compensation and any other terms and conditions associated with the payment bond in an amendment to this Agreement.

3.2.13 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents

created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.2.14 Remote Access. In the event that remote access to the City's computer systems, database and/or servers ("City Systems") is required for Consultant to perform the Services or complete the Project, Consultant and each employee, officer, official, representative or agent of Consultant who will be required to have access to the City Systems (collectively "User") shall execute the most current version of the City Computer System Remote Access Responsibility Form ("Responsibility Form"), which is incorporated herein by reference. The Responsibility Form provides, among other things, that User will be responsible for the care, use, damage and replacement of any security token issued to User to provide secure access to the City Systems, User will not disclose any access codes or passwords used to access the City Systems, User will not disclose any documents, information, data or other material on the City Systems, and User will be responsible for any damage to the City Systems caused by User's remote access to the City Systems.

### **3.3 Fees and Payments.**

3.3.1 Rates & Total Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation, including authorized reimbursements, shall not exceed **FIFTEEN MILLION FORTY-THREE THOUSAND DOLLARS (\$15,043,000)** ("Total Compensation"), without written approval of City's Representative. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 30 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the Term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of Chapter 1 (beginning at Section 1720 et seq.) of Part 7 of Division 2 of the California Labor Code, as well

as Title 8, Section 16000 et seq. of the California Code of Regulations (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. If the Services involve federal funds or otherwise require compliance with the Davis-Bacon Fair Labor Standards Act, the Consultant and its subconsultants shall comply with the higher of the state or federal prevailing wage rates, and the “Prevailing Wage Laws” shall be deemed to include such federal wages laws. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the Total Compensation is \$1,000 or more, Consultant and its subconsultants shall fully comply with the Prevailing Wage Laws for their employees and any others to whom such laws are applicable. Consultant and its subconsultants shall also be responsible for any and all violations and fines imposed on them pursuant to the Prevailing Wage Laws. Pursuant to SB 854, which amended the Prevailing Wage Laws, this Agreement would also be subject to compliance monitoring and enforcement by the California Department of Industrial Relations (“DIR”). Beginning April 1, 2015, no consultant or subconsultant may be awarded this Agreement unless registered with the DIR pursuant to Labor Code Section 1725.5. The City will report all necessary agreements to the DIR as required by the Prevailing Wage Laws. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the Project site. It is most efficient for the Consultant to obtain a copy of the prevailing wages in effect at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the DIR located at [www.dir.ca.gov/dlsr/](http://www.dir.ca.gov/dlsr/). In the alternative, Consultant may obtain a copy of the prevailing wages from the City’s Representative. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.3.6 Apprenticeable Crafts. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, Consultant shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works when Consultant employs workmen in an apprenticeable craft or trade. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Consultant.

### **3.4 Termination of Agreement.**

3.4.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, as well as any authorized reimbursable expenses, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other

information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

### **3.5 Ownership of Materials and Confidentiality.**

3.5.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically, electronically or otherwise recorded or stored, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of five (5) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. In addition, before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.5.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.5.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove

the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.5.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.5.5 Confidentiality. All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

### **3.6 General Provisions.**

3.6.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

**Consultant:**

Ferguson Enterprises, LLC  
11909 Tech Center Ct.  
Poway, CA 92064  
Attn: Mike Balla, Area Sales Manager

**City:**

City of Corona  
400 South Vicentia Avenue  
Corona, CA 92882  
Attn: Tom Moody, Director of Utilities  
Utilities Department

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.6.2 Indemnification. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing that is acceptable to Consultant), indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of, pertaining to, or incident to any alleged willful misconduct or negligent acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all settlement amounts, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers.

3.6.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code Sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

3.6.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6.5 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.6.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.6.6.1 Subconsultants; Assignment or Transfer. Consultant shall not subcontract any portion of the Services required under this Agreement, except as expressly

authorized herein, without the prior written approval of the City. Subcontracts, if any, shall include a provision making them subject to all provisions of this Agreement. Consultant shall also not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to subcontract or take any other action not authorized herein shall be null and void, and any subconsultants, assignees, hypothecates or transferees shall acquire no right or interest by reason of such action.

3.6.6.2 Corona Utility Authority. To the extent that this Agreement is deemed to be a "material contract" under either of the CUA Management Agreements, Consultant has no right to terminate this Agreement, either with or without cause, based upon the existence or non-existence of either or both of the CUA Management Agreements. Therefore, if an applicable CUA Management Agreement expires or terminates for any reason, Consultant shall remain fully obligated to perform under this Agreement with the CUA or another third party contracted by the CUA for the maintenance, management and operation of the applicable utility system.

3.6.7 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.6.8 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.6.9 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.6.10 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.6.6, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.6.11 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6.12 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not

paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the Term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.6.13 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.6.14 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

3.6.15 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.16 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6.17 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.6.18 Federal Provisions. When funding for the Services is provided, in whole or in part, by an agency of the federal government, Consultant shall also fully and adequately comply with the provisions included in Exhibit "D" (Federal Requirements) attached hereto and incorporated herein by reference ("Federal Requirements"). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

**[SIGNATURES ON NEXT 2 PAGES]**



**CITY'S SIGNATURE PAGE FOR**  
**CITY OF CORONA**  
**PROFESSIONAL SERVICES AGREEMENT**  
**WITH FERGUSON ENTERPRISES, LLC**  
**(ADVANCED METERING INFRASTRUCTURE TECHNOLOGY – ADVANCED**  
**METERING INFRASTRUCTURE (AMI) EQUIPMENT PROJECT)**

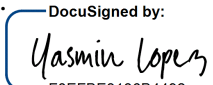
IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

**CITY OF CORONA**

By: \_\_\_\_\_  
Tom Moody  
Director of Utilities

Reviewed By:  
  
\_\_\_\_\_  
Katie Hockett  
Assistant Director of Utilities

Reviewed By:  
  
\_\_\_\_\_  
Jacqueline Zukeran  
Utility Billing & Administration Manager


Reviewed By:  \_\_\_\_\_  
F8EFBE3138B4492...  
Yasmin Lopez  
Purchasing Manager

Attest:  
  
\_\_\_\_\_  
Sylvia Edwards, City Clerk  
City of Corona

**CONSULTANT’S SIGNATURE PAGE FOR**  
**CITY OF CORONA**  
**PROFESSIONAL SERVICES AGREEMENT**  
**WITH FERGUSON ENTERPRISES, LLC**  
**(ADVANCED METERING INFRASTRUCTURE TECHNOLOGY – ADVANCED**  
**METERING INFRASTRUCTURE (AMI) EQUIPMENT PROJECT)**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

**FERGUSON ENTERPRISES, LLC DBA FERGUSON WATERWORKS**  
a VIRGINIA LIMITED LIABILITY COMPANY

By:  \_\_\_\_\_  
A72F5012A70846E...  
Jon Price  
General Manager

## **EXHIBIT “A” SCOPE OF SERVICES**

Consultant shall be responsible for furnishing all materials, transportation, equipment, and any and all services and materials necessary to completely facilitate the comprehensive scope of work.

The scope of services for this project are associated with the Tasks contained in this Exhibit “A” as well as compliance with the technical requirements of the Automated Metering Infrastructure (“AMI”) Request for Proposals, RFP 23-019CA dated May 4, 2023.

### **Section 1. Project Objectives**

Consultant shall provide the following AMI system materials and technical services:

- Completion of detailed site plans to construct an AMI network capable of communicating with 100% of water services
- Greater than 99% read rate performance with sustainable rates no less than 98.5% over a three-day billing window base on current network design.
- Access to near real time data that can notify of abnormal water usage
- Forward compatibility of system for an operational period of no less than 15 years

### **Section 2. Summary of Tasks**

#### **Task 1- Project Management**

- A. Provide a project lead to serve as the point of contact for all project activities and tasks associated with the contracted services
- B. Implement an Initiation process by hosting a series of Planning and Design workshops to establish the project plan
- C. Actively participating in the Project Communication Plan
- D. Actively participate in the development of a project charter and signify acceptance through execution signature
- E. Project Schedule: A detailed project schedule specific to Consultant’s responsibilities that will show start date, completion date, order in which the services shall be performed, the dates of order/receipt/delivery of significant portions or components of deliverables, dates for submittal and approval of any drawings, data, testing or inspection dates, and project milestone dates
- F. Actively participate in all scheduled meetings including weekly progression calls, sub-team assignments and on-demand work sessions
- G. Maintain a current backlog report of all materials ordered and subject to delivery
- H. Provide monthly pay request with full detailed documentation of charges and fees

- I. Maintain and provide, on request, a list of team members utilized under this engagement and ensure all personnel possess proper credentialing while in performance of work
- J. Lead and support quality assurance efforts including team communication, clearly defined roles and responsibilities, responsiveness to issues, testing network and meter connectivity and performance and supporting execution of system acceptance

**Task 2- Design and Implementation of AMI Network Infrastructure and Software**

- A. Provide a lead contact for all activities associated with prescribed software interfaces. Actively participate in all integration sub-team meetings
- B. Assist in quality checks within MDMS, read file, and the synchronization file
- C. Conduct site inspections corresponding to the proposed network design and complete the site plan utilizing the Consultant provided template for each site including power requirements and backhaul
- D. Develop and include a list of materials utilized for all network device locations
- E. Identify and recommend options for service locations (meters) that are not expected to be connected to the network due to coverage limitations
- F. Complete installation of the network according to the proposed propagation study and aligned with the approved collector site plans. Any changes made shall be reflected in revised site plans to be submitted to the City
- G. Consultant retains responsibility for each AMI gateway location until infrastructure installation and City approval are complete. Sign-off will be granted on a location-by-location basis.

**Task 3- Support Testing and Installation of Meters, Registers, and Transmitters**

- A. Collaboration with the City, the City's Project Manager, and the to-be-selected contractor that will be doing the meter installation work ("Installer")
- B. Support proper lid design for AMI transmitter including lid material, lid drilling, and lid brackets to ensure proper RF connectivity
- C. Educate project team on Neptune360 and it's ability to assist with confirming installations are communicating through the AMI network.
- D. Provide proper training of Neptune360 and system troubleshooting
- E. Properly manage warranty replacements/RMAs for proper asset management
- F. Finalize and support Vendor service and support during and after system acceptance to ensure sustainable operation of the AMI system
- G. Assist in identification of system configurations and settings that will assist the City in water resource management and conservation
- H. Assist the City as needed in the incorporation of a customer engagement platform properly configured with the AMI data

### **Section 3. Equipment and Software Specifications**

#### **I. AMI Transmitter (Endpoint) for Water:**

- A. Transmitters will support encrypted data and operate in both fixed network (AMI) and walk-by/drive-by (AMR) modes
- B. Transmitters will be configured to hourly read intervals with all readings containing a time and date stamp
- C. The R900i T10 register battery shall be fully potted and warrantied for 20 years (10 years full, 10 years pro-rated)
- D. The R900i Mach10 register battery shall be fully potted and warrantied for 20 years (10 years full, 10 years pro-rated) for meters sized 5/8-1", meters sized 1-1/2"-2" for 10 years (10 years full) and meters sized 3"+ for 10 years (5 years full, 5 years pro-rated)
- E. Consultant and Installer will work with the City to develop and implement a meter lid replacement estimate and support a field audit to verify estimates
- F. Consultant guarantees forward compatibilities of the transmitter to be supported on the proposed network and applications for a minimum 15-year operational period.

#### **II. Water Meter and Encoded Registers:**

- A. All water meters will be calibrated and tested for accuracy prior to shipment
- B. All water meters shall be capable of registering and reporting 1-hour interval usage data with read resolution set in cubic feet
- C. All water meters (5/8" to 1") shall be solid state/electronic technology with a hermetically sealed register that is capable of displaying icons indicating issues such as continuous consumption, reverse flow, and low battery
- D. New residential water meters (5/8" to 1") shall have a minimum 20-year warranty on register, body, and battery
- E. All water meters shall meet or exceed relevant ANSI/AWWA/NSF standards; and shall comply with IP68 ratings to prevent water, moisture, and dust from entering the registers
- F. The system must be encrypted from register to end user application. Security requirements shall include general best practices and encryption at rest and in motion

#### **III. AMI Software (Head End System and Meter Data Management System)**

- A. Consultant will provide support and support timely resolution of issues with Neptune 360 software

- B. Software will be supported for a minimum of 15 years including enhancements, patches, and corrections of “bugs”, and new product access under existing licensing at no additional cost to the City beyond the annual maintenance fee
- C. Consultant, in cooperation with Neptune, will provide AMI software upgrades, including all security updates and patches
- D. Consultant will maintain responsibility of all installed software and systems under this agreement until execution of the Systems Acceptance Plan (SAP)
- E. Protective cyber-security measures will be in place to protect the network, equipment, software, and customer data and provide compliance with, but not limited to, ISO/IEC 27017 and ISO/IEC 27018
- F. All SaaS shall be accessed using a secure socket layer (SSL) protocol with a trusted certificate from a certification authority (CA) and all SaaS data shall be secured in Tier IV SSAE 16 certified data centers, with data maintained in or replicated to more than one data center
- G. SaaS data file backup shall be properly scheduled and stored in a secure, land-based location inside the United States and the file backup shall be properly scheduled and stored in a secure location. SaaS database shall be fully retrievable by City
- H. Vendor shall promptly notify the utility of any unauthorized access of utility or customer data
- I. Vendor shall have robust data loss prevention measures, a data security plan and Disaster Recovery strategy
- J. The system uptime is 99% with redundancy across AWS Availability Zones for business continuity. Recovery Time Objective (RTO) is 2 hours with Recovery Point Objective (RPO) is 24 hours
- K. The software shall comply with prevailing industry standards for all hardware, software, operating systems, databases, and user interfaces
- L. All software shall be SOC2 compliant and protect against personal identifying information exposure

#### **IV. Other Requirements**

- A. Consultant shall provide training and supporting documentation on the AMI system and all key components and features for City staff proficiencies in obtaining reads and consumption data from the system, transferring reads between N360 and CIS, creating performance reports, diagnosing potential problems with system components, and change or adding customer accounts and meters to the system
- B. Consultant will make available trained personnel for technical assistance with Neptune meter reading software or equipment

- C. Consultant will work closely with the City and Installer to place material orders early with staged deliveries from the Neptune factory. Consultant's team will work closely with Neptune to ensure the timeline of the project is not extended
- D. Prior to ordering material, Consultant agrees to notify City and the City's Project Manager of the recommended ordering quantities and types and receive written authorization to proceed with ordering

**V. Deliverables**

- A. Project Schedule
- B. Certified Propagation Study (Final)
- C. Network Site Plan
- D. Network Acceptance Plan
- E. Systems Acceptance Plan
- F. Inventory and Order Reports
- G. Warranty Return Status Reports

**EXHIBIT "B"**  
**SCHEDULE OF SERVICES**

Consultant shall complete the Services within the Term of this Agreement and shall meet any other established schedules and deadlines.



**EXHIBIT “C”  
COMPENSATION**

Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in the “Ferguson Final Cost Summary Workbook for Corona AMI Project 04-17-2024” which is on file in the office of the Director of Utilities for the City of Corona and, by this reference, is incorporated into this Agreement as though set forth in full.

The pricing set forth in the Ferguson Final Cost Summary Workbook for Corona AMI Project 04-17-2024 shall remain valid through December 31, 2025 and shall be deemed effective as of the date City orders equipment, material or supplies listed in the Ferguson Final Cost Summary Workbook for Corona AMI Project 04-17-2024.

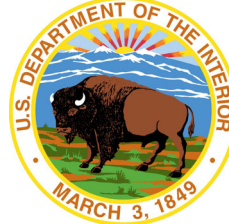
**EXHIBIT “D”  
FEDERAL REQUIREMENTS**

Funding is expected to be provided in full or in part pursuant to the Bureau of Reclamation (“BOR”) in accordance with Section 9504(a) Water Management Improvement of the Omnibus Lands Management Act of 2009, Public Law 111-11. The City executed Assistance Agreement No. R22AP00516 with the BOR for Advanced Metering Infrastructure Program (“Grant Agreement”) in September 2022. Consultant and all subconsultants shall comply with all applicable federal and state laws, rules, regulations, policies or procedures including but not limited to the funding requirements of the Grant Agreement and Code of Federal Regulations (CFR) CFR 200.317 to 2 CFR 200.327.

**[GRANT AGREEMENT ATTACHED ON FOLLOWING PAGES]**

1. DATE ISSUED MM/DD/YYYY 09/08/2022		1a. SUPERSEDES AWARD NOTICE dated except that any additions or restrictions previously imposed remain in effect unless specifically rescinded	
2. CFDA NO. 15.507 - WaterSMART (Sustain and Manage America's Resources for Tomorrow)			
3. ASSISTANCE TYPE Project Grant			
4. GRANT NO. R22AP00516-00 Originating MCA #		5. TYPE OF AWARD Other	
4a. FAIN R22AP00516		5a. ACTION TYPE New	
6. PROJECT PERIOD MM/DD/YYYY From 09/08/2022		Through MM/DD/YYYY 09/30/2025	
7. BUDGET PERIOD MM/DD/YYYY From 09/08/2022		Through MM/DD/YYYY 09/30/2025	
8. TITLE OF PROJECT (OR PROGRAM) Advanced Metering Infrastructure Program			

**NOTICE OF AWARD**



AUTHORIZATION (Legislation/Regulations)

P.L. 111-11 Section 9504(a) Water Management Improvement of the Omnibus Lands Management Act of 2009

9a. GRANTEE NAME AND ADDRESS  
CORONA, CITY OF  
400 S VICENTIA AVE  
CORONA, CA, 92882-2187

9b. GRANTEE PROJECT DIRECTOR  
Ms. Jacqueline Zukeran  
755 Public Safety Way  
CORONA, CA, 92878  
Phone: 951-739-4983

10a. GRANTEE AUTHORIZING OFFICIAL  
Mr. Tom Moody  
755 Public Safety Way  
CORONA, CA, 92878  
Phone: 951-736-2477

10b. FEDERAL PROJECT OFFICER  
Joshua German

**ALL AMOUNTS ARE SHOWN IN USD**

11. APPROVED BUDGET (Excludes Direct Assistance)			
I Financial Assistance from the Federal Awarding Agency Only			
II Total project costs including grant funds and all other financial participation		<b>II</b>	
a. Salaries and Wages	\$ 0.00		
b. Fringe Benefits	\$ 0.00		
c. Total Personnel Costs	\$ 0.00		
d. Equipment	\$ 0.00		
e. Supplies	\$ 0.00		
f. Travel	\$ 0.00		
g. Construction	\$ 22,684,450.00		
h. Other	\$ 0.00		
i. Contractual	\$ 0.00		
j. TOTAL DIRECT COSTS	\$ 22,684,450.00		
k. INDIRECT COSTS	\$ 0.00		
<b>I. TOTAL APPROVED BUDGET</b>	<b>\$ 22,684,450.00</b>		
m. Federal Share	\$ 2,000,000.00		
n. Non-Federal Share	\$ 20,684,450.00		

12. AWARD COMPUTATION			
a. Amount of Federal Financial Assistance (from item 11m)	\$	2,000,000.00	
b. Less Unobligated Balance From Prior Budget Periods	\$	0.00	
c. Less Cumulative Prior Award(s) This Budget Period	\$	0.00	
<b>d. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION</b>	<b>\$</b>	<b>2,000,000.00</b>	
<b>13. Total Federal Funds Awarded to Date for Project Period</b>	<b>\$</b>	<b>2,000,000.00</b>	

14. RECOMMENDED FUTURE SUPPORT  
(Subject to the availability of funds and satisfactory progress of the project):

YEAR	TOTAL DIRECT COSTS	YEAR	TOTAL DIRECT COSTS
a. 2	\$	d. 5	\$
b. 3	\$	e. 6	\$
c. 4	\$	f. 7	\$

15. PROGRAM INCOME SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING ALTERNATIVES:

- a. DEDUCTION
- b. ADDITIONAL COSTS
- c. MATCHING
- d. OTHER RESEARCH (Add / Deduct Option)
- e. OTHER (See REMARKS)

e

16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY, THE FEDERAL AWARDING AGENCY ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:

- a. The grant program legislation
- b. The grant program regulations.
- c. This award notice including terms and conditions, if any, noted below under REMARKS.
- d. Federal administrative requirements, cost principles and audit requirements applicable to this grant.

In the event there are conflicting or otherwise inconsistent policies applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.

REMARKS (Other Terms and Conditions Attached -  Yes  No)  
See next page

**GRANTS MANAGEMENT OFFICIAL:**  
Edmund Weakland, Grants Management Specialist  
Bureau of Reclamation Main Interior Building  
84-27132, PO Box 25007  
Denver, CO, 80225-1000  
Phone: 303-445-3757

17. VENDOR CODE 0071332469		18a. UEI JCVFXGCJ8BK8		18b. DUNS 088513155		19. CONG. DIST. 42	
LINE#	FINANCIAL ACCT	AMT OF FIN ASST	START DATE	END DATE	TAS ACCT	PO LINE DESCRIPTION	
1	0051027698-00010	\$2,000,000.00	09/08/2022	09/30/2025	0680	R-DO-2022-001403 WEEG City of Corona	

## NOTICE OF AWARD (Continuation Sheet)

PAGE 2 of 3	DATE ISSUED 09/08/2022
GRANT NO. R22AP00516-00	

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REMARKS:

PROGRAM INCOME IS NOT ALLOWED

Recipients are NOT required to sign the Notice of Award or any other award document. Recipients indicate their acceptance of an award, including award terms and conditions, by starting work, drawing down funds, or accepting the award via electronic means. Recipient acceptance of an award carries with it the responsibility to be aware of and comply with all terms and conditions applicable to the award. Recipients are responsible for ensuring that their subrecipients and contractors are aware of and comply with applicable award statutes, regulations, and terms and conditions. Recipient failure to comply with award terms and conditions can result in Reclamation taking one or more of the remedies and actions described in 2 CFR 200.339343.

## NOTICE OF AWARD (Continuation Sheet)

PAGE 3 of 3	DATE ISSUED 09/08/2022
GRANT NO. R22AP00516-00	

Federal Financial Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
10/01/2022	03/31/2023	Semi-Annual	04/30/2023
04/01/2023	09/30/2023	Semi-Annual	10/30/2023
10/01/2023	03/31/2024	Semi-Annual	04/30/2024
04/01/2024	09/30/2024	Semi-Annual	10/30/2024
10/01/2024	03/31/2025	Semi-Annual	04/30/2025
04/01/2025	09/30/2025	Final	01/28/2026

Performance Progress Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
10/01/2022	03/31/2023	Semi-Annual	04/30/2023
04/01/2023	09/30/2023	Semi-Annual	10/30/2023
10/01/2023	03/31/2024	Semi-Annual	04/30/2024
04/01/2024	09/30/2024	Semi-Annual	10/30/2024
10/01/2024	03/31/2025	Semi-Annual	04/30/2025
04/01/2025	09/30/2025	Final	01/28/2026

## AWARD ATTACHMENTS

CORONA, CITY OF

R22AP00516-00

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1. Agreement

UNITED STATES DEPARTMENT OF THE INTERIOR

ASSISTANCE AGREEMENT

R22AP00516

Between

Bureau of Reclamation

And

City of Corona

For

Advanced Metering Infrastructure Program

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**Financial Assistance Agreement**  
**Between**  
**Bureau of Reclamation**  
**And**  
**City of Corona**  
**For**  
**Advanced Metering Infrastructure Program**

## **I. OVERVIEW AND SCHEDULE**

### **1. AUTHORITY**

This Financial Assistance Agreement (Agreement) is entered into between the United States of America, acting through the Department of the Interior, Bureau of Reclamation (Reclamation) and City of Corona (Recipient), pursuant to Section 9504(a) of the SECURE WATER ACT, Subtitle F of Title IX of the OMNIBUS PUBLIC LAND MANAGEMENT ACT OF 2009, Public Law 111-11 (42 United States Code 10364) as amended (the “Act”).

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

The Advanced Metering Infrastructure Program project (Project) achieves the public purpose of the Act by conserving water and improving water management.

### **3. BACKGROUND AND OBJECTIVES**

Through WaterSMART (Sustain and Manage America’s Resources for Tomorrow), Reclamation leverages Federal and non-Federal funding to work cooperatively with states, tribes, and local entities as they plan for and implement actions to increase water supply sustainability through investments and attention to local water conflicts.

Through Water and Energy Efficiency Grants, Reclamation provides assistance to states, tribes, irrigation districts, water districts, other entities with water or power delivery authority, and non-profit conservation groups to undertake projects that result in quantifiable and sustained water savings, implement renewable energy components, and support broader water reliability benefits.

The City of Corona, located in Riverside County, California, will install 41,061 advanced metering infrastructure (AMI) meters at residential, multi-family, and commercial properties to fully convert its entire service area to AMI. The project will help the City mitigate water losses monitoring and alert capabilities and will provide customers with real-time information through a customer portal. The project is expected to result in annual water savings of 1,787 acre-feet, reducing the City’s reliance on imported water supplies.

#### 4. PERIOD OF PERFORMANCE AND FUNDS AVAILABILITY

This Agreement becomes effective on the date shown in block 1 of the United States of America, Department of the Interior, Notice of Award (NOA). The Agreement shall remain in effect through the date shown in block 6 of the NOA. The project period for this Agreement may only be changed through written amendment 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 a Reclamation GO. The total estimated project cost for this Agreement is \$22,684,450 and the total estimated amount of Federal funding is \$2,000,000. The initial amount of Federal funds available is limited to \$2,000,000 as indicated by the section titled “Amount of Financial Assistance This Action” within block 12 of the NOA.

#### 5. SCOPE OF WORK AND MILESTONES

Under this Agreement, the Recipient shall install 41,061 AMI meters in residential, multi-family units, and commercial properties. Once installation is complete, the Recipient will also install all necessary software and work with the vendor to develop 24/7 real time computer access for both City staff and water customers.

The proposed project location is in the entire city service area of City of Corona (City), California, which is located approximately 45 miles southeast of Los Angeles in western Riverside County.

After review of the methodology used to estimate water conservation savings, consideration of supporting documentation provided by Recipient, and any adjustments made during the evaluation of the Project, it was determined that these improvements are expected to result in annual water savings of 1,787 acre-feet.

The milestones\* for completing the Project are:

<b>Milestone / Task / Activity</b>	<b>Planned Start Date</b>	<b>Planned Completion Date</b>
Complete environmental and cultural compliance (NEPA compliance document to be completed by the BOR)	BOR to provide	BOR to provide
Metering and Billing Analysis and Design	Feb. 2022	Aug. 2022
Meters and Contractor Procurement	Sept. 2022	Jan. 2023
Project Kick-Off With Selected Contractor	Feb. 2023	Mar. 2023

Milestone / Task / Activity	Planned Start Date	Planned Completion Date
Water Customer Outreach	Feb. 2023	Sept. 2025
Installation and Training	Aug. 2023	Sept. 2025

## 6. RESPONSIBILITY OF THE PARTIES

### 6.1 Recipient Responsibilities

**6.1.1** The Recipient shall carry out the Scope of Work (SOW) 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 SOW 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 Interim Performance Reports.** The Recipient shall prepare and submit to Reclamation interim Project performance reports (Interim Performance Reports) as required by Section I.10 of this Agreement. Each Interim Performance Report will include (but is not limited to) the information identified in paragraph I.10.3 and will discuss the following:

- A comparison of actual accomplishments to the milestones established by the financial assistance agreement for the reporting period
- The reasons why established milestones were not met, if applicable
- The status of milestones from the previous reporting period that were not met, if applicable
- Whether the Project is on schedule and within the original cost estimate
- Any additional pertinent information or issues related to the status of the Project

**6.1.3 Final Project Report.** The Recipient shall prepare and submit to Reclamation a final Project performance report (Final Project Report) as required by Section I.10 of this Agreement. The Final Project Report will include (but is not limited to) the information identified in paragraph I.10.3 and will discuss the following:

- Whether the Project objectives and goals were met
- The amount of water conserved, if applicable, including information and/or calculations supporting that amount
- The amount of energy the renewable energy system is generating annually, if applicable
- How the Project demonstrated collaboration, if applicable

Photographs documenting the project are also appreciated. Recipient understands that Reclamation may print photos with appropriate credit to Recipient. Recipient also understands that the Final Project Report is a public document and may be made available on Reclamation's website, [www.usbr.gov/watersmart/](http://www.usbr.gov/watersmart/).

## 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 SOW. 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 SOW 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 GO. Recipients are encouraged to direct any questions regarding allowability, allocability or reasonableness of costs to the GO for review prior to incurrence of the costs in question.

Summary			
6. Budget Object Category	Total Cost	Federal Estimated Amount	Non-Federal Estimated Amount
a. Personnel	\$0		
b. Fringe Benefits	\$0		
c. Travel	\$0		
d. Equipment	\$0		
e. Supplies	\$0		
f. Contractual	\$0		
g. Construction	\$22,684,450		
h. Other Direct Costs	\$0		
i. Total Direct Costs	\$22,684,450		
i. Indirect Charges	\$0		
<b>Total Costs</b>	<b>\$22,684,450</b>	<b>\$2,000,000</b>	<b>\$20,684,450</b>
<b>Cost Share Percentage</b>		<b>9%</b>	<b>91%</b>

## 7.2 Cost Sharing Requirement

At least 50% non-Federal cost-share is required for costs incurred under this Agreement. Based on the budget estimate reflected in Section 7.1 above, the estimated Federal share of allowable costs is **9% (\$2,000,000)** and the Recipient's estimated non-Federal cost share is **91% (\$20,684,450)**. The Federal share of allowable costs shall not be expended in advance of the Recipient's non-Federal share. It is expected that expenditure of Federal and non-Federal funds based upon the estimated cost share percentages shall occur concurrently. At the end of the period of performance, if the final costs are lower than the original estimate and the 50% non-Federal cost share is met, the final payment and financial report can reflect a lower Recipient cost share than the original budget estimate.

If a bona fide need arises which requires the expenditure of Federal funds in advance of the Recipient share, then the Recipient must request written approval from the Reclamation GO prior to the expenditure. Recipient may not expend their agreed upon share of costs in advance of the expenditure of Federal funds without prior written approval.

## 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

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

2 CFR 200 Subpart E, "Cost Principles"

Expenditures for the performance of this Agreement must conform to the requirements within this CFR. 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 **120 calendar days** following the project performance period are those strictly associated with closeout activities for preparation of the final reports.

## **7.5 Revision of Budget and Program Plans**

In accordance with 2 CFR 200.308(h) the recipient must request prior written approval for any of the following changes:

- (a) A change in the approved scope of work or associated tasks, even if there is no associated budget revisions.
- (b) Revisions which require additional Federal funds to complete the project.
- (c) Revisions which involve specific costs for which prior written approval requirements may be imposed consistent with OMB cost principles listed in 2 CFR 200 Subpart E “Cost Principles”

## **7.6 Amendments**

Any changes to this Agreement shall be made by means of a written amendment. Reclamation may make changes to the Agreement by means of a unilateral amendment to address changes in address, no-cost time extensions, changes to Key Personnel, the addition of previously agreed upon funding, or administrative corrections which do not impact the terms and conditions of this Agreement. Additionally, a unilateral amendment may be utilized by Reclamation if it should become necessary to suspend or terminate the Agreement in accordance with 2 CFR 200.340.

All other changes shall be made by means of a bilateral amendment 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 amend, modify or otherwise effect the terms of the Agreement.

All requests for amendment 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 period extension shall be made at least 45 days prior to the end of the project period of the Agreement or the project period date of any extension that may have been previously granted. Any determination to extend the project period 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:

Jacqueline Zukeran  
Business Manager  
755 Public Safety Way  
Corona, CA 92878-4005  
951-739-4983  
Jacqueline.Zukeran@CoronaCA.gov

Additional key personnel for this Agreement are identified as follows:

Tom Moody  
General Manager  
755 Public Safety Way  
Corona, CA 92878-4005  
951-736-2477  
tom.moody@CoronaCA.gov

## **9. LIMITATION OF AUTHORITIES**

### **9.1 Grants Officer (GO).**

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

- (a) Formally obligate Reclamation to expend funds or change the funding level of the Agreement;
- (b) Approve through formal amendment changes in the scope of work and/or budget;
- (c) Approve through formal amendment any increase or decrease in the project period of the Agreement;
- (d) Approve through formal amendment changes in any of the expressed terms, conditions, or specifications of the Agreement;
- (e) 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; and
- (f) Where applicable, ensures that Reclamation complies with the administrative requirements required by statutes, regulations, circulars, policies, and terms of the Agreement.

### **9.2 Grants Management Specialist.**

The Reclamation Grants Management Specialist (GMS) is the primary administrative point of contact for this Agreement and should be contacted regarding issues related to the day-to-day management of the Agreement. Requests for approval regarding the terms and conditions of the Agreement, including but not limited to amendments and prior approval, may only be granted, in writing, by a Reclamation GO. Please note that for some Agreements, the Reclamation GO and the Reclamation GMS may be the same individual.

## **10. REPORTING REQUIREMENTS AND DISTRIBUTION**

**10.1 Noncompliance.** Failure to comply with the reporting requirements contained in this Agreement may be considered a material noncompliance with the terms and conditions of the award. Noncompliance 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 2 CFR 200.339.

**10.2 Financial Reports.** Federal Financial 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.

### **10.3 Monitoring and Reporting Program Performance**

- (a) Monitoring by the non-Federal entity. The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also 2 CFR 200.332 Requirements for pass-through entities.
- (b) Non-construction performance reports. The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).
  - (1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due **90 calendar days** after the reporting period; quarterly or semiannual reports must be due **30 calendar days** after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due **120 calendar days** after the project period end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.
  - (2) The non-Federal entity must submit performance reports using OMB-approved governmentwide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:
    - (i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of

accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.

- (ii) The reasons why established goals were not met, if appropriate.
  - (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
- (c) Construction performance reports. For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.
- (d) Significant developments. Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity 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 Federal 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 or different beneficial results than originally planned.

Reclamation requires Performance reporting for all financial assistance awards, both Construction and non-Construction. Performance reports for Construction agreements shall meet the same minimum requirements outlined in paragraph (b)(2) above.

**10.4 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.

<b>Required Reports</b>	<b>Interim Reports</b>	<b>Final Report</b>
<b>Performance Report</b>		
Format	No specific format required. See content requirements within Section 10.3 and any program specific reporting requirements identified in Section 6.1 of this Agreement	Summary of activities completed during the entire period of performance is required. See content requirements within Section 10.3 and any program specific reporting requirements identified in Section 6.1 of this Agreement.
Reporting Frequency	<b>Semi-Annual</b>	Final Report due within <b>120 calendar days</b> after the end of the period of performance
Reporting Period	October 1 through March 31 and April 1 through September 30.	Entire period of performance
Due Date	Within <b>30 calendar days</b> after the end of the Reporting Period	Final Report due within <b>120 calendar days</b> after the end of the period of performance <b>or</b> completion of the project
First Report Due Date	The first performance report is due for reporting period ending <b>03/31/2023</b>	N/A
Submit to:	<b>GrantSolutions or <u>sha-dro-faoperations@usbr.gov</u></b>	<b>GrantSolutions or <u>sha-dro-faoperations@usbr.gov</u></b>
<b>Federal Financial Report</b>		
Format	SF-425 (all sections must be completed)	SF-425(all sections must be completed)
Reporting Frequency	<b>Semi-Annual</b>	Final Report due within <b>120 calendar days</b> after the end of the period of performance or completion of the project
Reporting Period	October 1 through March 31 and April 1 through September 30.	Entire period of performance
Due Date	Within <b>30 calendar days</b> after the end of the Reporting Period.	Final Report due within <b>120 calendar days</b> after the end of the period of performance or completion of the project.
First Report Due Date	The first Federal financial report is due for reporting period ending <b>03/31/2023</b> .	N/A
Submit to:	<b>GrantSolutions or <u>sha-dro-faoperations@usbr.gov</u></b>	<b>GrantSolutions or <u>sha-dro-faoperations@usbr.gov</u></b>

## **11. 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. Once regulatory compliance is complete, a Reclamation GO will issue a Notice to Proceed along with the compliance documentation notifying the Recipient that compliance is complete and on-the-ground work can commence on the project. If the Recipient begins project activities that require environmental or other regulatory compliance approval prior to receipt of written notice from the Reclamation GO that all such clearances have been obtained, then Reclamation reserves the right to initiate remedies for non-compliance as defined by 2 CFR 200.339 up to and including unilateral termination of this agreement per 2 CFR 200.340.

## **12. 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.

## **13. 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.

## **14. 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.

## **15. 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”).

## 16. BUY AMERICA DOMESTIC PROCUREMENT PREFERENCE

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit [www.doi.gov/grants/BuyAmerica](http://www.doi.gov/grants/BuyAmerica). Additional information can also be found at the White House Made in America Office website: [www.whitehouse.gov/omb/management/made-in-america/](http://www.whitehouse.gov/omb/management/made-in-america/).

### *Waivers*

When necessary, recipients may apply for, and the Department of the Interior (DOI) may grant, a waiver from these requirements, subject to review by the Made in America Office. The DOI may

waive the application of the domestic content procurement preference in any case in which it is determined that one of the below circumstances applies:

1. Non-availability Waiver: the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality;
2. Unreasonable Cost Waiver: the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent; or
3. Public Interest Waiver: applying the domestic content procurement preference would be inconsistent with the public interest.

There may be instances where an award qualifies, in whole or in part, for an existing DOI general applicability waiver as described at:

[www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers](http://www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers). If the specific financial assistance agreement, infrastructure project, or non-domestic materials meets the criteria of an existing general applicability waiver within the limitations defined within the waiver, the recipient is not required to request a separate waiver for non-domestic materials.

If a general applicability waiver does not already apply, and a recipient believes that one of the above circumstances applies to an award, a request to waive the application of the domestic content procurement preference may be submitted to the financial assistance awarding officer in writing. Waiver requests shall include the below information. The waiver shall not include any Privacy Act information, sensitive data, or proprietary information within their waiver request. Waiver requests will be posted to [www.doi.gov/grants/buyamerica](http://www.doi.gov/grants/buyamerica) and are subject to public comment periods of no less than 15 days. Waiver requests will also be reviewed by the Made in America Office.

1. Type of waiver requested (non-availability, unreasonable cost, or public interest).
2. Requesting entity and Unique Entity Identifier (UEI) submitting the request.
3. Department of Interior Bureau or Office who issued the award.
4. Federal financial assistance listing name and number (reference block 2 on DOI Notice of Award)
5. Financial assistance title of project (reference block 8 on DOI Notice of Award).
6. Federal Award Identification Number (FAIN).
7. Federal funding amount (reference block 11.m. on DO Notice of Award).
8. Total cost of Infrastructure expenditures (includes federal and non-federal funds to the extent known).
9. Infrastructure project description(s) and location(s) (to the extent known).
10. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America requirements. Include the name, cost, countries of origin (if known), and relevant [PSC](#) or [NAICS](#) code for each.
11. A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
12. A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach) by the recipient, in an attempt to avoid the need

for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.

13. Anticipated impact if no waiver is issued.

Approved waivers will be posted at [www.doi.gov/grants/BuyAmerica/ApprovedWaivers](http://www.doi.gov/grants/BuyAmerica/ApprovedWaivers); recipients requesting a waiver will be notified of their waiver request determination by an awarding officer.

Questions pertaining to waivers should be directed to the financial assistance awarding officer.

### *Definitions*

“Construction materials” includes an article, material, or supply that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Construction Materials” does **not** include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States

## **17. DAVIS-BACON WAGE ACT COMPLIANCE**

Section 41101 of the Bipartisan Infrastructure Law requires that all laborers and mechanics employed by contractors or subcontractor in the performance of construction, alteration, or repair work on a project assisted in whole or in part by funding made available under the Bipartisan Infrastructure Law (P.L. 117-58) shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (commonly referred to as the Davis-Bacon Act).

## II. RECLAMATION STANDARD TERMS AND CONDITIONS

### 1. REGULATIONS

The regulations at 2 CFR Subtitle A, Chapter II, Part 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, are hereby incorporated by reference as though set forth in full text. 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.

### 2. PAYMENT

#### 2.1 Federal Payment (2 CFR 200.305).

- (a) For states, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and Treasury Financial Manual (TFM) 4A-2000, “Overall Disbursing Rules for All Federal Agencies”.
- (b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also §200.302(b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved, governmentwide information collection requests to request payment.
  - (1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.
  - (2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.
    - (i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.



- (ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).
- (3) Reimbursement is the preferred method when the requirements in this paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per §200.208, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.
- (4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.
- (5) To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.
- (6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of §200.208, subpart D of this part, including §200.339, or one or more of the following applies:
  - (i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.
  - (ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Circular A-129, "Policies for Federal Credit Programs and Non-Tax

Receivables.” Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for financial obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

- (iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with §200.343.
  - (iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.
- (7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.
- (i) The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for funds received, obligated, and expended.
  - (ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.
- (8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply:
- (i) The non-Federal entity receives less than \$250,000 in Federal awards per year.
  - (ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.
  - (iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
  - (iv) A foreign government or banking system prohibits or precludes interest-bearing accounts.
- (9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS)

through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment.

- (i) For returning interest on Federal awards paid through PMS, the refund should:
  - (A) Provide an explanation stating that the refund is for interest;
  - (B) List the PMS Payee Account Number(s) (PANs);
  - (C) List the Federal award number(s) for which the interest was earned; and
  - (D) Make returns payable to: Department of Health and Human Services.
- (ii) For returning interest on Federal awards not paid through PMS, the refund should:
  - (A) Provide an explanation stating that the refund is for interest;
  - (B) Include the name of the awarding agency;
  - (C) List the Federal award number(s) for which the interest was earned; and
  - (D) Make returns payable to: Department of Health and Human Services.

- (10) Funds, principal, and excess cash returns must be directed to the original Federal agency payment system. The non-Federal entity should review instructions from the original Federal agency payment system. Returns should include the following information:
  - (i) Payee Account Number (PAN), if the payment originated from PMS, or Agency information to indicate whom to credit the funding if the payment originated from ASAP, NSF, or another Federal agency payment system.
  - (ii) PMS document number and subaccount(s), if the payment originated from PMS, or relevant account numbers if the payment originated from another Federal agency payment system.
  - (iii) The reason for the return (e.g., excess cash, funds not spent, interest, part interest part other, etc.)
- (11) When returning funds or interest to PMS you must include the following as applicable:
  - (i) For ACH Returns:
    - Routing Number: 051036706
    - Account number: 303000
    - Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN
  - (ii) For Fedwire Returns<sup>1</sup>:
    - Routing Number: 021030004
    - Account number: 75010501
    - Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY

<sup>1</sup>Please note that the organization initiating payment is likely to incur a charge from their Financial Institution for this type of payment.

- (iii) For International ACH Returns:  
Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)  
Bank: Citibank N.A. (New York)  
Swift Code: CITIUS33  
Account Number: 36838868  
Bank Address: 388 Greenwich Street, New York, NY 10013 USA  
Payment Details (Line 70): Agency Locator Code (ALC): 75010501  
Name (abbreviated when possible) and ALC Agency POC
- (iv) For recipients that do not have electronic remittance capability, please make check<sup>2</sup> payable to: “The Department of Health and Human Services.”  
Mail Check to Treasury approved lockbox:  
HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231  
<sup>2</sup>Please allow 4-6 weeks for processing of a payment by check to be applied to the appropriate PMS account.
- (v) Questions can be directed to PMS at 877-614-5533 or [PMSSupport@psc.hhs.gov](mailto:PMSSupport@psc.hhs.gov).

## **2.2 Payment Method.**

Recipients must utilize the Department of Treasury Automated Standard Application for Payments (ASAP) payment system to request advance or reimbursement payments. 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. ASAP is the only allowable method for request and receipt of payment. Recipient procedures must minimize the time elapsing between the drawdown of Federal funds and the disbursement for agreement purposes.

In accordance with 2 CFR 25.200(b)(2) the Recipient shall “Maintain an active SAM registration with current information, including information on a recipient's immediate and highest level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. If the Recipient allows their SAM registration to lapse, the Recipient’s accounts within ASAP will be automatically suspended by Reclamation until such time as the Recipient renews their SAM registration.

## **3. PROCUREMENT STANDARDS (2 CFR 200.317 through 200.327)**

### **§200.317 Procurements by States**

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by §200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§200.318 through 200.327.

**§200.318 General procurement standards**

- (a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§200.317 through 200.327.
- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c)
  - (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
  - (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must avoid acquisition 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.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity

agreements where appropriate for procurement or use of common or shared goods and services.

- (f) The non-Federal entity is 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.
- (g) The non-Federal entity is 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.
- (h) The non-Federal entity must award contracts 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. See also §200.214.
- (i) The non-Federal entity must maintain records sufficient to detail the history of 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.
- (j) (1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:
  - (i) The actual cost of materials; and
  - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
- (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- (k) The non-Federal entity alone must 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 non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

**§200.319 Competition**

- (a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and §200.320.
- (b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
  - (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
  - (2) Requiring unnecessary experience and excessive bonding;
  - (3) Noncompetitive pricing practices between firms or between affiliated companies;
  - (4) Noncompetitive contracts to consultants that are on retainer contracts;
  - (5) Organizational conflicts of interest;
  - (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
  - (7) Any arbitrary action in the procurement process.
- (c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal 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 criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- (d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
  - (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must 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, must 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 equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

- (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (e) The non-Federal entity must 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, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.
- (f) Noncompetitive procurements can only be awarded in accordance with §200.320(c).

### **§200.320 Methods of procurement to be followed**

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

- (a) Informal procurement methods. When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold (SAT), as defined in §200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:
  - (1) Micro-purchases—(i) Distribution. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of micro-purchase in §200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.
  - (ii) Micro-purchase awards. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.
  - (iii) Micro-purchase thresholds. The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may



establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

- (iv) Non-Federal entity increase to the micro-purchase threshold up to \$50,000. Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with §200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:
    - (A) A qualification as a low-risk auditee, in accordance with the criteria in §200.520 for the most recent audit;
    - (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
    - (C) For public institutions, a higher threshold consistent with State law.
  - (v) Non-Federal entity increase to the micro-purchase threshold over \$50,000. Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.
- (2) Small purchases—
- (i) Small purchase procedures. The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.
  - (ii) Simplified acquisition thresholds. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.
- (b) Formal procurement methods. When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with §200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the

simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

- (1) Sealed bids. A procurement method in which 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 bids method is the preferred method for procuring construction, if the conditions.
  - (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 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) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
    - (B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
    - (C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
    - (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 must 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.

- (2) Proposals. A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:
- (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
  - (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;
  - (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and
  - (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror 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 that are a potential source to perform the proposed effort.
- (c) Noncompetitive procurement. There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:
- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
  - (2) The item is available only from a single source;
  - (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
  - (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
  - (5) After solicitation of a number of sources, competition is determined inadequate.

**§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms**

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
  - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

**§200.322 Domestic preferences for procurements**

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
  - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-

based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

### **§200.323 Procurement of recovered materials**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **§200.324 Contract cost and price**

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract amendments. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The non-Federal entity must 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 must 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.
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

### **§200.325 Federal awarding agency or pass-through entity review**

- (a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a

solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

- (b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
- (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
  - (2) 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;
  - (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
  - (4) The proposed contract 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
  - (5) A proposed contract amendment changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- (c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
- (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
  - (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

### **§200.326 Bonding requirements**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately

protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must 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 the bid, execute such contractual documents as may be required within the time specified.
- (b) 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 requirements under such contract.
- (c) 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.

#### **§200.327 Contract provisions**

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to this part.

#### **4. EQUIPMENT (2 CFR 200.313)**

See also §200.439.

- (a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further obligation to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:
  - (1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.
  - (2) Not encumber the property without approval of the Federal awarding agency or pass-through entity.
  - (3) Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section.
- (b) General. A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.

(c) Use.

- (1) Equipment must be used by the non-Federal entity 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 the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:
  - (i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then
  - (ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.
- (2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally funded programs or projects is also permissible. User fees should be considered if appropriate.
- (3) Notwithstanding the encouragement in §200.307 Program income to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.
- (4) When acquiring replacement equipment, the non-Federal entity 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.

(d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, 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 funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, 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 must be investigated.
  - (4) Adequate maintenance procedures must be developed to keep the property in good condition.
  - (5) If the non-Federal entity 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 Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:
- (1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.
  - (2) Except as provided in §200.312(b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.
  - (3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.
  - (4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75884, Dec. 19, 2014]

## **5. SUPPLIES (2 CFR 200.314)**

See also §200.453.

- (a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other

Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See §200.313(e)(2) for the calculation methodology.

- (b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

## **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 REQUIREMENTS (2 CFR 200.501)**

- (a) Audit required. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.
- (b) Single audit. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with §200.514 except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.
- (c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with §200.507. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.
- (d) Exemption when Federal awards expended are less than \$750,000. A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in §200.503, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

- (e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.
- (f) Subrecipients and Contractors. An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section §200.330 sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.
- (g) Compliance responsibility for contractors. In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.
- (h) For-profit subrecipient. Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also §200.332.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49571, Aug 13, 2020]

## **8. REMEDIES FOR NONCOMPLIANCE (2 CFR 200.339)**

### **§200.339 Remedies for noncompliance**

If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in §200.208. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the

Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances.

- (a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate the Federal award.
- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- (e) Withhold further Federal awards for the project or program.
- (f) Take other remedies that may be legally available.

## **9. TERMINATION (2 CFR 200.340)**

### **§200.340 Termination.**

- (a) The Federal award may be terminated in whole or in part as follows:
  - (1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
  - (2) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
  - (3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
  - (4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety; or
  - (5) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.
- (b) A Federal awarding agency should clearly and unambiguously specify termination provisions applicable to each Federal award, in applicable regulations or in the award, consistent with this section.

- (c) When a Federal awarding agency terminates a Federal award prior to the end of the period of performance due to the non-Federal entity's material failure to comply with the Federal award terms and conditions, the Federal awarding agency must report the termination to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS).
- (1) The information required under paragraph (c) of this section is not to be reported to designated integrity and performance system until the non-Federal entity either—
    - (i) Has exhausted its opportunities to object or challenge the decision, see §200.342; or
    - (ii) Has not, within 30 calendar days after being notified of the termination, informed the Federal awarding agency that it intends to appeal the Federal awarding agency's decision to terminate.
  - (2) If a Federal awarding agency, after entering information into the designated integrity and performance system about a termination, subsequently:
    - (i) Learns that any of that information is erroneous, the Federal awarding agency must correct the information in the system within three business days;
    - (ii) Obtains an update to that information that could be helpful to other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.
  - (3) Federal awarding agencies, must not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the non-Federal entity asserts within seven calendar days to the Federal awarding agency who posted the information, that some of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency who posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.
- (d) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§200.344 and 200.345.

## **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.ecfr.gov/>.

### **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 the 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. SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS (2 CFR 25, APPENDIX A)

### A. Requirement for System for Award Management

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 SAM 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 unique entity identifier

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 unique entity identifier to you.
2. May not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

### C. Definitions

For purposes of this award term:

1. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).
2. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.
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 2 CFR 200.330).
  - 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.

## **19. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (2 CFR 170 APPENDIX A)**

- I. Reporting Subawards and Executive Compensation.
- a. Reporting of first-tier subawards.
    - 1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.
    - i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.
    - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
  3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.
- b. Reporting Total Compensation of Recipient Executives.
1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
    - i. the total Federal funding authorized to date under this award is \$25,000 or more;
    - ii. in the preceding fiscal year, you received—
      - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
      - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
  2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:
    - i. As part of your registration profile at <http://www.ccr.gov>.



d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:
  - i. A Governmental organization, which is a State, local government, or Indian tribe;
  - ii. A foreign public entity;
  - iii. A domestic or foreign nonprofit organization;
  - iv. A domestic or foreign for-profit organization;
  - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
2. Executive means officers, managing partners, or any other employees in management positions.
3. Subaward:
  - i. 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.
  - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. \_\_.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
  - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. *Subrecipient* means an entity that:
  - i. Receives a subaward from you (the recipient) under this award; and
  - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
  - i. *Salary and bonus.*
  - ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
  - v. *Above-market earnings on deferred compensation which is not tax-qualified.*
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

**20. RECIPIENT EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)**

- (a) This award and employees working on this financial assistance agreement will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239).
- (b) The Award Recipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C 4712.



- (c) The Award Recipient shall insert the substance of this clause, including this paragraph (c), in all subawards or subcontracts over the simplified acquisition threshold. 48 CFR 52.203-17 (as referenced in 48 CFR 3.908-9).

## **21. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE (APPENDIX XII TO 2 CFR PART 200)**

### **1. General Reporting Requirement**

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

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

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five-year period; and
- c. Is one of the following:
  - (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
  - (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  - (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
  - (4) Any other criminal, civil, or administrative proceeding if:
    - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
    - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

- (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

### 3. Reporting Procedures

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

### 4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

### 5. Definitions

For purposes of this award term and condition:

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

[80 FR 43310, July 22, 2015, as amended at 85 FR 49582, Aug. 13, 2020]

## 22. CONFLICTS OF INTEREST

### (a) Applicability.

- (1) This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
- (2) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.

### (b) Requirements.

- (1) Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
- (2) In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.
- (3) No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.

### (c) Notification.

- (1) Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflict of Interest.
- (2) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.

(d) Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.

(e) Review Procedures. The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.

(f) Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.339, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

### **23. DATA AVAILABILITY**

(a) Applicability. The Department of the Interior is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.

(b) Use of Data. The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(c) Availability of Data. The recipient shall make the data produced under this award and any subaward(s) available to the Government for public release, consistent with applicable law, to allow meaningful third-party evaluation and reproduction of the following:

- (i) The scientific data relied upon;
- (ii) The analysis relied upon; and
- (iii) The methodology, including models, used to gather and analyze data.

### **24. PROHIBITION ON PROVIDING FUNDS TO THE ENEMY**

- (a) The recipient must—
- (1) Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through [2 CFR 180.300](#) prior to issuing a subaward or contract and;
  - (2) Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of

Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.

- (b) The recipient may include the substance of this clause, including paragraph (a) of this clause, in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.
- (c) The Federal awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the recipient failed to exercise due diligence as required by paragraph (a) of this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

## **25. ADDITIONAL ACCESS TO RECIPIENT RECORDS**

- (a) In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations.
- (b) The substance of this clause, including this paragraph (b), is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

## **26. PROHIBITION ON CERTAIN TELECOMMUNICATION AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

Federal award recipients are prohibited from using government funds to enter contracts (or extend or renew contracts) with entities that use covered telecommunications equipment or services as described in section 889 of the 2019 National Defense Authorization Act. This prohibition applies even if the contract is not intended to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services.

### **III. DEPARTMENT OF THE INTERIOR STANDARD AWARD TERMS AND CONDITIONS**

The Department of the Interior (DOI) Standard Award Terms and Conditions found at <https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf> are hereby incorporated by reference as though set forth in full text. These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions or restrictions reflected on this Agreement. Recipient acceptance of this Agreement carries with it the responsibility to be aware of and comply with all DOI terms and conditions applicable to this Agreement. The Recipient is responsible for ensuring their subrecipients and contractors are aware of and comply with applicable statutes, regulations, and agency requirements.

Recipient and subrecipient failure to comply with the general terms and conditions outlined below and those directly reflected in this Agreement can result in the DOI taking one or more of remedies described in 2 Code of Federal Regulations parts 200.339 and 200.340. The DOI will notify the Recipient whenever terms and conditions are updated to accommodate instances in the passage of a regulation or statute that requires compliance. Also, DOI will inform the Recipient of revised terms and conditions in the action of an Agreement amendment adding additional Federal funds. Reclamation will make such changes by issuing a Notice of Award amendment that describes the change and provides the effective date. Revised terms and conditions do not apply to the Recipient's expenditures of funds or activities the Recipient carries out before the effective date of the revised DOI terms and conditions.



# United States Department of the Interior

BUREAU OF RECLAMATION  
P.O. Box 25007  
Denver, CO 80225-0007



IN REPLY REFER TO:

84-27131

1.3.11

September 8, 2022

VIA ELECTRONIC MAIL ONLY

Jacqueline Zukeran  
Utility Billing & Administration Manager  
City of Corona  
755 Public Safety Way  
Corona, CA 92878-4002

Subject: Notice to Proceed for Agreement No. R22AP00516 with City of Corona for Advanced Metering Infrastructure Program

Dear Ms. Zukeran:

This letter provides formal notice that environmental compliance activities required by Agreement No. R22AP00516 are complete per Terms and Conditions 6.1 and 11. You may now proceed with ground-disturbing activities. This determination in no way alleviates City of Corona from meeting all other applicable Federal, state, or local regulatory or environmental requirements. Any proposed Project modification must be submitted to the Grants Officer prior to implementation, to assess whether further environmental review is necessary.

In accordance with Federal cultural resources laws and regulations, if archeological materials or human remains are discovered during the course of ground-disturbing activities, all work must immediately halt in the area of the materials, and City of Corona must immediately notify the Grants Officer Technical Representative and Grants Officer and take precautions to protect the discovery. City of Corona shall not proceed with any further activities in the area of the find until written notice to proceed is provided by Reclamation.

A completed National Environmental Policy Act (NEPA) Document is enclosed for your records. Please note that the environmental commitments included in the NEPA Document must be met. If you have any questions regarding the NEPA Document, please contact Deb Whitney, Grants Officer Technical Representative, at 951-695-5310 or [dwhitney@usbr.gov](mailto:dwhitney@usbr.gov).

Thank you for your efforts to complete the reviews and consultations.

Sincerely,

Grants Officer



— BUREAU OF —  
RECLAMATION

COPY

National Environmental Policy Act  
Categorical Exclusion Checklist

Categorical Exclusion No.: 22-SCAO-030-CX

DATE: JUL -1 2022

PROJECT: WEEG-057: Advanced Metering Infrastructure Project Phase 1

NATURE OF ACTION:

WaterSMART Water and Energy Efficiency Grant funds are provided to the City of Corona install 41,061 AMI meters in Riverside County, California. The City of Corona will complete a full transition to AMI meters with grant funds by installing 41,061 "smart" meters. The AMI project includes 24/7 monitoring and alert capabilities.

EXCLUSION CATEGORY:

516 DM 14.5 D (1) – Maintenance, rehabilitation, and replacement of existing facilities which may involve a minor change in size, location, and/or operation.

EVALUATION OF EXCEPTIONS TO ACTIONS WITHIN CATEGORICAL EXCLUSION

Would the action:	No	Uncertain	Yes
1. Have significant impacts on public health or safety?	X	_____	_____
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas?	X	_____	_____
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102(2)(E)]?	X	_____	_____
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?	X	_____	_____
5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects?	X	_____	_____
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects?	X	_____	_____
7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office?	X	_____	_____
8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species?	X	_____	_____




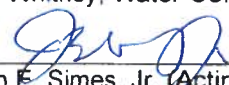
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|---|---|-------|-------|
| 9. Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment?  | X | _____ | _____ |
| 10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898)?  | X | _____ | _____ |
| 11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007)?   | X | _____ | _____ |
| 12. Adversely affect Indian Trust Assets?   | X | _____ | _____ |
| 13. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112)? | X | _____ | _____ |

**EXPLANATION/REMARKS**

The federal funds will be used to replace existing water meters. Impacts will be negligible and located at existing developed properties in an urban/suburban setting. Removing equipment or materials from buildings and structures when the equipment or materials are not original and do not contribute to the historic significance of the building or structure is an activity with no potential to affect historic properties.<sup>1</sup>

**COMMITMENTS:**

None

Preparer's Signature:	<b>JESSICA CRAINE</b>	Digitally signed by JESSICA CRAINE Date: 2022.06.23 10:14:33 -07'00'	Date: _____
	Jessica Craine, Program Support Assistant		
Reviewed By:	<b>DOUGLAS MCPHERSON</b>	Digitally signed by DOUGLAS MCPHERSON Date: 2022.06.23 13:07:35 -07'00'	Date: _____
	Doug McPherson, Environmental Protection Specialist		
Concurrence with Item 7:	n/a. NoPE List #25		Date: _____
	Regional Archeologist		
Concurrence with Item 12:			Date: <u>7/11/22</u>
	Regional Director or ITA designee		
Recommended:	<b>DEBRA WHITNEY</b>	Digitally signed by DEBRA WHITNEY Date: 2022.06.27 14:24:53 -07'00'	Date: _____
	Deb Whitney, Water Conservation Specialist		
Approved:			Date: <u>7/11/22</u>
	John E. Simes, Jr. (Acting) Area Manager Southern California Area Office		

<sup>1</sup> Final Guidance - List of Undertakings that have No Potential to Cause Effects on Historic Properties, Office of Program and Policy Services, September 18, 2007 (NoPE list).