



REQUEST FOR QUALIFICATIONS (RFQ)

ENGINEERING DESIGN AND CONSTRUCTION SERVICES

FRIANT-KERN CANAL REVERSE PUMP-BACK PROJECT

November 2016

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PUBLIC NOTICE

Request for Qualifications (RFQ)

THE FRIANT WATER AUTHORITY IS INVITING CONSULTANTS
TO SUBMIT "STATEMENTS OF QUALIFICATIONS" (SOQ)
FOR
ENGINEERING DESIGN AND CONSTRUCTION SERVICES
FOR
THE FRIANT-KERN CANAL REVERSE PUMP-BACK PROJECT

The Friant Water Authority (Friant) desires to select a qualified a consultant (Consultant) to provide professional engineering design and construction support services for its Reverse Pump-Back Project (Project), which will be a modification to its facilities related to the Friant-Kern Canal, a federally-owned facility, which Friant operates on behalf of the Bureau of Reclamation. Qualified engineering firms are invited to submit a Statement of Qualifications (SOQ) to provide consulting services for the Project.

Qualified firms interested in proposing, can download a RFQ package by visiting www.friantwater.org and selecting RFQ Opportunities. For questions contact Stephen H. Ottemoeller via email at sottemoeller@friantwater.org, or by calling (559) 562-6305, or by visiting the Friant Water Authority office, located at 854 N. Harvard Ave., Lindsay, CA 93247.

SOQs are due no later than 5 p.m. (PST) on December 7, 2016 to the address noted above. Friant reserves the right to reject any and all SOQs.

FRIANT WATER AUTHORITY REQUEST FOR QUALIFICATIONS (RFQ)

THE FRIANT WATER AUTHORITY IS INVITING CONSULTANTS
TO SUBMIT “STATEMENTS OF QUALIFICATIONS” FOR
THE FRIANT-KERN CANAL REVERSE PUMP-BACK PROJECT

A. INTRODUCTION

The Friant Water Authority (Friant) desires to select a qualified consultant (Consultant) to provide professional engineering design and construction support services for its Friant-Kern Canal Reverse Pump Back Project (Project). Qualified engineering firms are invited to submit a Statement of Qualifications (SOQ) for the Project as described in this RFQ.

B. BACKGROUND

Friant is a Joint Powers Authority whose members include various irrigation and water districts and the City of Fresno. Friant is part of the Friant Division of the Central Valley Project and operates the Friant-Kern Canal under a contract with the United States Bureau of Reclamation (Reclamation). The Friant-Kern Canal (FKC) stretches approximately 151 miles from the Millerton Reservoir behind the Friant Dam to the Kern River in the City of Bakersfield. See www.friantwater.org for further information about Friant and the FKC.

C. PROJECT DESCRIPTION

The San Joaquin River Settlement Act directs Reclamation to study reverse pump-back facilities on the FKC as part of the San Joaquin River Restoration Program (SJRRP). Friant has previously installed temporary pumping facilities from time to time to convey water in the FKC at the Shafter-Wasco Check Structure and the Poso Creek Check Structure. Friant is proposing to increase pumping capacities at the Shafter-Wasco Check Structure, the Woollomes Check Structure and Deer Creek Check Structure to provide the additional benefit of accessing water banks or other water supplies available via the California aqueduct during times of drought and to recirculate water recaptured after release to the San Joaquin River pursuant to the San Joaquin River Restoration Program. This proposal has been evaluated to an appraisal level in Reclamation’s Water Management Goal Investment Strategy Draft Report, December 2014. A map of the project area is provided in Figure 1.

Reclamation has acquired some pumping equipment that potentially could be modified and re-used at the proposed pump-back facility sites. The potential re-use of this equipment will be evaluated during the Project design phase as it is not known whether the equipment can be modified to meet the desired design conditions.

The Project is partially funded through a grant agreement with Reclamation and Reclamation owns the FKC, so coordination with Reclamation staff and compliance with the grant program will be a critical component of the Project. A copy of the Grant Agreement is attached as Exhibit C

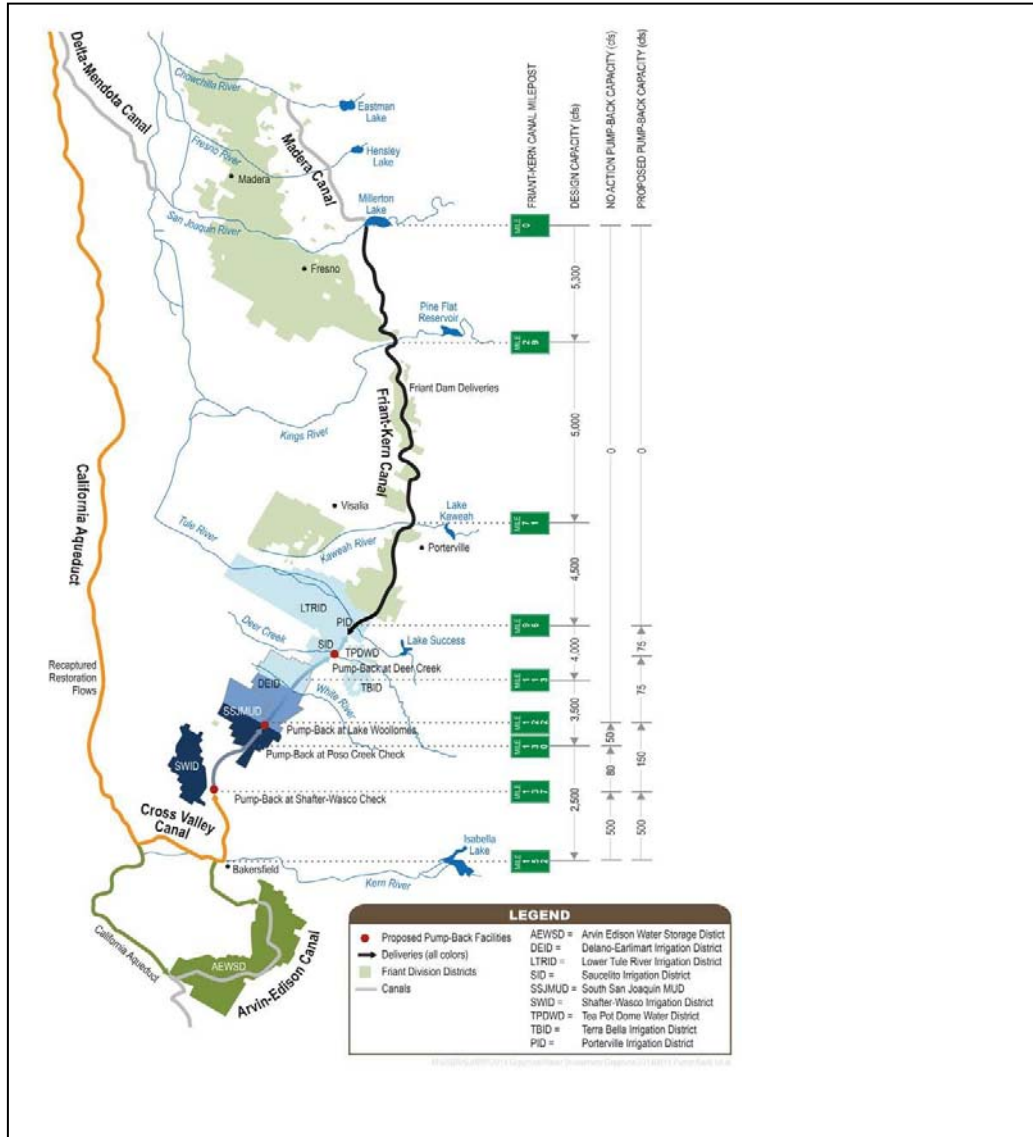


Figure 1. Project Schematic

D. SCOPE OF SERVICES

The selected Consultant for the Project will be required to provide the following services in coordination with the Friant Project Manager and Reclamation consistent with the terms and Scope of Work described in Exhibit C:

1. Development of a Project Management Plan consistent with the requirements of Exhibit C. Project management will involve close coordination with the Friant Project Manager, Friant member agencies and Reclamation, as appropriate. The PMP shall include provisions for Friant review of draft products and deliverables at appropriate stages of development.
2. Development and evaluation of planning scenarios that characterize the projects or programs that are identified by FWA Staff or member agencies that would make use of pump-back facilities. Each scenario will include points of delivery, volumes, conditions under which deliveries are desired, and other relevant information. In close coordination with FWA Staff, the Consultant will use these scenarios to propose locations and capacities of pump-back facilities that best meet Friant Contractor long-term needs.
3. Development of a plan for managing and/or mitigating the negative effects of salinity loading for districts that receive water from the Cross-Valley Canal as a result of long-term pump-back operations that benefit Friant Division contractors other than those experiencing increases in salinity.
4. Assist in the preparation of a Project alternatives for the purposes of environmental compliance.
5. Coordinate with and assist environmental consultant, to be selected through a separate competitive process, in the preparation of applicable NEPA/CEQA documentation.
6. Develop engineering designs for the Project, including planning, surveying, geotechnical investigations, estimating, preparation of construction documents (30%, 60%, 90% and 100% (bid ready), and engineering services during construction and project close out.
7. Develop the Project and all related documents in a manner that complies with all federal, state and local codes and regulations including plan check.
8. Preparation and processing of permit copies of plans and details in compliance with permit processes and plan check requirements, as required.
9. Assist Friant in planning and managing construction as necessary in consideration of the potential mixed use of Friant forces and contractors.

E. RESPONSE- STATEMENT OF QUALIFICATIONS

The SOQ must include at a minimum the information listed in this part; incomplete or unclear information may be grounds for rejection. The SOQ must be organized as follows:

1. Cover Letter

The SOQ must be submitted with a cover letter. The letter accompanying the SOQ must provide the name, title, address, telephone number, and signature of the individual(s) authorized to negotiate and bind the consultant contractually.

2. Project Understanding

Provide a brief description (less than 4 pages) of the Consultant's understanding of this project, including any special considerations or unique qualifications that selection of the Consultant would provide to FWA.

3. Experience and Qualifications

- a. Provide a brief history of the firm, include: name of the firm, the year the firm was established under the current name, the principal place of business, and the location of all its offices. Indicate any other previous names for the firm during the last five years and the year any name change was effective.
- b. Provide a list of at least three prior assignments within the last five years that best illustrate the firm's relevant qualifications for this Project. The performed services should be similar to those outlined in this RFQ. The list must include the following information for each assignment:
 - i. Name of client
 - ii. Location (city and state)
 - iii. Name and brief description of the project
 - iv. Duration of assignment
 - v. Respondent's scope and role in the project (include explanation of methodologies and approaches used)
 - vi. Outcome of the assignment (completion relative to schedule and budget; client satisfaction, etc.)
- c. Provide three clients as a reference, including at least two for whom services were rendered during the past twelve months, preferably for services similar to those outlined in this RFQ; include contact information for each reference.
- d. Identify the personnel that will be assigned to key positions necessary to complete the Scope of Services; provide a brief résumé and highlight

special qualifications for each of the key personnel. The résumés must include:

- i. Total years of experience, including number of years with the current firm.
 - ii. Education (for individuals who hold current professional registration identify the registration number, state, and discipline).
 - iii. Work experience of up to five recent relevant projects. Include a brief description of the project (scope, size, cost, etc.), the individual's specific role on the assignment, the year the individual's work on the assignment was completed, and the individual's employer for the assignment.
 - iv. Names, titles, and contact information of at least three references.
- e. Provide a list of any proposed sub-consultants that you may work with to complete the services.

4. Fee Schedule

Provide a current fee schedule, include at a minimum, staff who would be assigned. Provide a standard labor rate schedule.

5. Contract Requirements

Friant will be utilizing a Standard Professional Services Agreement, which is attached as Exhibit B. The terms of Agreements are not subject to change. The Consultant must comply with applicable local, State, and Federal laws including prevailing wage rates and their payment in accordance with California Labor Code section 1775.

6. Licensures/Certifications

Provide a list of applicable licenses and certifications held by the Consultant.

7. Disclosure of Conflict of Interest Statement

The Disclosure of Conflict of Interest Statement attached as Exhibit "A" must be completed and submitted as part of the response to the RFQ.

8. Quality Assurance/Quality Control

Provide a brief description of in-place and proposed Quality Assurance & Quality Control practices applicable for this Project.

9. Acknowledgement of Addendums

Respondents must acknowledge receipt of any addendum to this RFQ by the time and date specified for receipt of SOQs.

F. COMMUNICATION

1. Restrictions On Communications

Respondents or their representatives are prohibited from communicating with any Friant employees not expressly noted in this RFQ. This communication restriction applies from the time the public notice is published until any contract award has been approved by the Friant Board of Directors or there has been a rejection of all SOQs or this RFQ has been canceled.

Generally, a Respondent or its representatives are prohibited from communicating with Friant officials and employees except as provided under part F.2 below. This includes “thank you” letters, phone calls, e-mails, and any contact that results in the direct or indirect discussion of the RFQ and/or SOQ submitted by Respondents.

Violation of this provision by the Respondent and/or their agent may lead to disqualification of the Respondent’s SOQ from consideration.

2. Questions

- a. Respondents may submit questions concerning this RFQ in writing only to the following contact: Stephen H. Ottemoeller via email at sottemoeller@friantwater.org. Verbal questions are not permitted other than as described by this section and during interviews, if any.
- b. No inquiries/questions regarding this RFQ will be accepted after 5 p.m. (PST) on November 15, 2016. Responses to questions that may impact or cause amendment to this RFQ will be summarized and distributed by November 21, 2016, to those interested parties requesting an RFQ package.
- c. The Friant reserves the right to contact any Respondent for clarification after responses are opened if such is deemed desirable by the Friant.

G. CONSULTANT SELECTION

This solicitation for a SOQ does not commit Friant to enter a contract or to pay any costs incurred in the preparation of the SOQ.

Friant reserves the right to accept or reject any and all SOQs, and to negotiate with any and all qualified Consultants, or to cancel in part or in its entirety this RFQ for SOQs.

The scope of services for this Project may be task based, phased, increased, decreased, or modified by Friant to bring it into its budgetary capabilities.

The Friant reserves the right to accept any SOQ received, to reject any or all SOQ submittals, in whole or in part, to waive irregularities, formalities, or both, as deemed

appropriate, to request clarification of any qualification submittal, and to negotiate with the preferred firm to provide the requested services. If contract negotiations with the preferred firm are at an impasse as deemed by Friant, Friant reserves the right to contact other firms to negotiate a contract to provide the requested services.

Friant hereby notifies all Consultants that no person will be excluded from participation in, denied any benefits of, or otherwise discriminated against in connection with the award and performance of any contract on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, or veteran status.

H. SUBMISSION OF RESPONSES -SOQS

SOQs must be submitted in an envelope clearly marked "Request for Qualifications for Engineering Design and Construction Services, Friant-Kern Canal Reverse Pump-Back Project." SOQs must be sealed and submitted prior to 5:00 PM (PST), December 7 2016. Late SOQs will not be accepted.

1. Respondents to this Request for Qualifications must submit five (5) SOQ hard copies and one (1) copy on CD/DVD to:

Stephen H. Ottemoeller, P.E.
Water Resources Manager
Friant Water Authority
854 N. Harvard Ave.
Lindsay, CA 93247

2. Responses submitted via any other form of electronic transmission not listed above (i.e. electronic mail or facsimile) will not be considered.
3. If the submittal is by any means other than personal delivery, then it is the Consultant's sole responsibility to ensure the submittals are delivered to the exact location by the time specified.
4. Responses should be clear, concise, and complete. They should be submitted using an 8 1/2" by 11" portrait format. Illustrations, if required, may be submitted on 11"x17" sheets, but should be folded to fit within the 8 1/2" x 11" format.
5. SOQ responses may not exceed 30 pages (single sided) of written material, including the transmittal letter. SOQs failing to comply with the page limitation will be considered non-responsive to the submittal requirements and disqualified from the selection process, and will not be evaluated. The page limitation includes any written, photographic, or graphic material contained in the body of the SOQ and any appendices, brochures, or pamphlets.

6. The page limitation does not include the cover of the proposal, title page, table of contents, resumes, blank pages, Disclosure of Conflict of Interest.
7. Responses may be bound by any means except by 3-ring binders and paper/binder clips.
8. By submission of a response, the Respondent acknowledges that it has read and thoroughly understands the Scope of Services, agrees to all terms and conditions stated herein, and acknowledges that it can perform all tasks, as required.
9. Submittal will not be opened publicly, and Friant will not issue a list of Respondents.

I. ANTICIPATED SCHEDULE

The anticipated schedule is summarized as follows:

Milestone	Date
Issuance of Request for Qualifications Package	November 4, 2016
Last day to submit written requests for clarification	November 15, 2016
Last day for Friant to provide response to questions	November 21, 2016
Deadline to submit Statement of Qualification	December 7, 2016
Consultant Selection	Week of December 19, 2016

Note: The above process activities and dates may change any time during this selection process due to submittals and/or negotiation process at the sole discretion of the Friant.

J. RESERVATION OF RIGHTS

1. The Friant reserves the right to:
 - a. Reject any and all SOQ responses received.
 - b. Issue a subsequent RFQ.
 - c. Cancel the entire RFQ.
 - d. Remedy technical errors in the RFQ process.
 - e. Negotiate with any, all, or none of the Respondents to the RFQ.

- f. Waive informalities and irregularities.
 - g. Accept multiple responses.
 - h. Make multiple recommendation(s) to the Friant Board of Directors.
 - i. Request additional information or clarification.
 - j. All responses and their contents will become the property of the Friant.
2. Friant will not reimburse Consultants or sub-consultants for any costs associated with any travel and/or per diem incurred in any presentations or for any costs in preparing and submitting a SOQ response.
 3. The Friant reserves the right to end, in its sole discretion, negotiations at any time with any or all Consultants. This RFQ does not commit Friant to enter into a contract, nor does it obligate it to pay any costs incurred in the preparation and submission of responses or in anticipation of a contract.

K. PUBLIC RECORDS ACT

All SOQs submitted in response to this RFQ will become the property of Friant upon submission and a matter of public record pursuant to applicable law (including the California Public Records Act, Government Code section 6250 and following). Friant reserves the right to make copies of all SOQs available for inspection and copying by interested members of the public as records of Friant and Friant will be under no obligation to the Consultant to withhold such records. Insofar as a SOQ contains information that the Consultant regards as proprietary and confidential, it is the responsibility of the Consultant (and not Friant) to specifically identify which items of information are proprietary and clearly identify in writing which specific pieces of information are proprietary. It will be insufficient for the Consultant to merely identify the entire SOQ or an entire page or set of pages of proprietary information. Not-to-exceed sums, hourly rates and the like that may be set forth in the SOQ will not constitute proprietary information nor will any information readily available to the general public or any other information not regarded as proprietary and confidential under federal or state law.

L. ATTACHMENTS

Exhibit A - Conflict of Interest Form

Exhibit B – Standard Form of Friant Professional Services Agreement

Exhibit C - Grant Agreement with Reclamation for the Project

EXHIBIT A

Conflict of Interest Form

[Attached]

EXHIBIT "A"
CONFLICT OF INTEREST FORM

Friant Water Authority (Friant) prohibits its Directors and staff from making decision in which they may have certain financial or personal relationships with a contracting party. The questions that follow are intended to alert Friant to potential code of conduct conflicts. If conflicts of only a remote interest exist, a contract may nonetheless be awarded as disclosure allows Friant to choose processes for negotiation, award, and administration of contracts to avoid such conflicts. However, Friant reserves the right to review and make a final determination regarding whether any actual or potential conflicts would violate Friant's policies or California law and thus preclude a contracting party's participation in this contract. All proposed contracting parties and proposed sub-consultants must respond to each of the following questions. For responses answered "yes," Friant may require additional information to evaluate potential conflicts prior to award of the contract. Failure to fully disclose conflicts will result in rejection of the proposal or immediate termination of any contract awarded, if the conflict is material.

1. To the best of your knowledge, do any current Friant Board members or employees have any of the following financial relationships with your firm or with proposed sub-consultants?

Owner	[Yes] [No]
Member	[Yes] [No]
Partner	[Yes] [No]
Officer	[Yes] [No]
Employee	[Yes] [No]
Contractor; Consultant	[Yes] [No]
Broker	[Yes] [No]
Major Stockholder:	[Yes] [No]

(Major stockholder means ownership of 3% or more of firm stock.)

If "Yes" to any of the above, did this Board member or employee participate in formulating your submittal?

[Yes] [No]

2. Are you or, to the best of your knowledge, are any officers or key employees of your firm or proposed sub-consultants an immediate family member of any current Friant Board member or employee?

[Yes] [No]

3. To the best of your knowledge, is a Friant employee or Board member seeking or being considered for employment by your firm or by proposed sub-consultants?

[Yes] [No]

4. To the best of your knowledge, have you or any officers or key employees of your Firm or any proposed sub-consultants provided contributions directly or indirectly to a Board member while this potential new contract is pending before the Authority?

[Yes] [No]

5. To the best of your knowledge, have you or any officers or key employees of your firm or any proposed sub-consultants ever served on Friant’s Board?

[Yes] [No]

6. Have any of your current employees been employed by the Authority in the past five years?

[Yes] [No]

7. On a separate sheet, identify and disclose any business relationship(s), direct or indirect, past, present, or pending, with any of the members of the Authority, any public or private water agency, purveyor/pumper, or any associated entity in the Friant service area, or any such entity which has engaged in past or present litigation against the Friant Water Authority.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Name (type or print)

Signature

Title

Date

Firm Name: _____

THIS COMPLETED FORM MUST INCLUDED WITHIN THE PROPOSAL SUBMITTED TO THE FRIANT WATER AUTHORITY

EXHIBIT B

Standard Form of Friant Professional Services Agreement

[Attached]

[FORM - PLEASE DUPLICATE]



***FRIANT WATER AUTHORITY
PROFESSIONAL SERVICES AGREEMENT***

With

Effective Date: _____

[FORM - PLEASE DUPLICATE]

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PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (“**Agreement**”) is effective as of _____, 20__ (“**Effective Date**”), and is between the Friant Water Authority, a California joint powers authority (“**Friant**”) and _____, a [California corporation, partnership, LLC or LLP, or individual] (“**Consultant**”).

Section 1. Term of Agreement.

Subject to the provisions of Section 20 (“**Termination of Agreement**”), the term of this Agreement will be for a period commencing on the Effective Date and will terminate upon the completion of Consultant’s services.

Section 2. Scope and Performance of Services.

- 2.1** Consultant agrees to perform the services set forth in Exhibit A (“**Scope of Services**”), which is made a part of this Agreement.
- 2.2** Consultant will furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculations, and all other means whatsoever, except as otherwise expressly specified in this Agreement, necessary to perform the services required of Consultant under this Agreement.
- 2.3** Consultant’s designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement are listed in Exhibit B (“**Key Personnel & Compensation**”), which is made a part of this Agreement.
- 2.4** Consultant must make every reasonable effort to maintain the stability and continuity of Consultant’s key personnel and subcontractors, if any, listed in Exhibit B to perform the services required under this Agreement. Consultant must notify Friant and obtain Friant’s written approval with respect of any changes in key personnel prior to the performance of any services by replacement personnel.
- 2.5** Consultant must obtain Friant’s prior written approval before utilizing any subcontractors to perform any services under this Agreement. This written approval must include the identity of the subcontractor and the terms of compensation.
- 2.6** Consultant represents that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant will at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described in this Agreement. In meeting its obligations under this Agreement, Consultant must employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.
- 2.7** Friant may inspect and accept or reject any of Consultant’s work under this Agreement, either during performance or when completed. Acceptance of any of Consultant’s work by Friant will not constitute a waiver of any of the provisions of this Agreement.

- 2.8 The Consultant must maintain any work site on Friant property in a safe condition, free of hazards to persons and property resulting from Consultants services and operations.

Section 3. Additional Services and Changes in Services.

- 3.1 Consultant will not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to or outside of those set forth in the Scope of Services or otherwise required by this Agreement, unless such additional services are authorized in advance and in writing by Friant.
- 3.2 If Consultant believes that additional services are needed to complete the Scope of Services, Consultant will provide Friant with written notification describing the proposed additional services, the reasons for such services, and a detailed proposal regarding cost.
- 3.3 Friant may order changes to the Scope of Services, consisting of additions, deletions, or other revisions, and the compensation to be paid Consultant will be adjusted accordingly. All such changes must be authorized in writing, and executed by Consultant and Friant. The cost or credit to Friant resulting from changes in the services will be determined by the written agreement between the parties.

Section 4. Familiarity with Services and Site.

- 4.1 By executing this Agreement, Consultant represents that Consultant:
- (a) has thoroughly investigated and considered the Scope of Services to be performed;
 - (b) has carefully considered how the services should be performed;
 - (c) understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement; and
 - (d) possesses all licenses required under local, state or federal law to perform the services contemplated by this Agreement, and will maintain all required licenses during the performance of this Agreement.
- 4.2 If services involve work upon any site, Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, before commencing its services. Should Consultant discover any latent or unknown conditions that may materially affect the performance of services, Consultant will immediately inform Friant of such fact and will not proceed except at Consultant's own risk until written instructions are received from Friant.

Section 5. Compensation and Payment.

- 5.1 Subject to any limitations set forth in this Agreement, Friant agrees to pay Consultant the amounts specified in Exhibit B ("**Key Personnel & Compensation**"). The total compensation, including reimbursement for actual expenses, may not exceed the amount set forth in Exhibit B, unless additional compensation is approved in writing by Friant.
- 5.2 The use of subconsultants will not be considered a reimbursable expense, and such costs must be applied towards the approved budgeted amount.

- 5.3** Each month during the term of this Agreement, Consultant must furnish Friant with an original invoice for all services performed and expenses incurred during the preceding month in accordance with the fee schedule set forth in Exhibit B. The invoice must detail charges by the following categories, as applicable: labor (by subcategory), reimbursable costs, subcontractor contracts and miscellaneous expenses. The invoice must list, as applicable, the hours worked and hourly rates for each personnel category, the tasks performed, the percentage of the task completed during the billing period, the cumulative percentage completed for each task, and the total cost of the services. If applicable, the invoice must also provide a budget summary including the total amounts previously invoiced and paid, the current invoice amount and the budget remaining.
- 5.4** Friant will review each invoice submitted by Consultant to determine whether the work performed and expenses incurred are in compliance with this Agreement. In the event that no charges or expenses are disputed, the invoice will be approved and paid. In the event any charges or expenses are disputed by Friant, the invoice will be returned by Friant to Consultant for correction and resubmission.
- 5.5** Except as to any charges for work performed or expenses incurred by Consultant that are disputed by Friant, Friant will cause Consultant to be paid within 30 days of receipt of Consultant's invoice.
- 5.6** Payment to Consultant for services performed under this Agreement may not be deemed to waive any defects in the services performed by Consultant, even if such defects were known to Friant at the time of payment.
- 5.7** Friant reserves the right to withhold future payment to Consultant if any aspect of the Consultant's work is found substantially inadequate.

Section 6. Required Documentation Prior to Performance.

- 6.1** Consultant may not perform any services under this Agreement until:
- (a) Consultant furnishes proof of insurance as required under Exhibit C;
 - (b) Consultant provides Friant with a Taxpayer Identification Number;
 - (c) Friant gives Consultant a written notice to proceed.
- 6.2** The Friant will have no obligation to pay for any services rendered by Consultant in advance of receiving written authorization to proceed, and Consultant acknowledges that any such services are at Consultant's own risk.

Section 7. Time of Performance; Excusable Delays; Extensions.

- 7.1** Consultant must adhere to all schedules and deadlines set forth in this Agreement.
- 7.2** Consultant will not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Consultant. Such causes include, but are not limited to, acts of God, acts of terrorism, acts of federal, state or local governments, acts of Friant, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather.

- 7.3** If Consultant is delayed by any cause beyond Consultant's control, Friant may grant, but is not required to, a time extension for the completion of services. If delay occurs, Consultant must notify Friant within 48 hours, in writing, of the cause and the extent of the delay and how such delay interferes with Consultant's performance of services.

Section 8. Cooperation by Friant.

All public information, data, reports, records, and maps as are existing and available to Friant as public records, and which are necessary for carrying out the Scope of Services will be furnished to Consultant in every reasonable way to facilitate, without undue delay, the services to be performed under this Agreement.

Section 9. Project Documents.

9.1 All original computer programs, data, designs, drawings, files, maps, memoranda, models, notes, photographs, reports, studies, surveys and other documents (collectively, "**Project Documents**") prepared, developed or discovered by Consultant in the course of providing services under this Agreement will become the sole property of Friant and may be used, reused or otherwise disposed of by Friant without the permission of Consultant. Consultant will take such steps as are necessary to perfect or protect the ownership interest of Friant in such Project Documents. Upon completion, expiration or termination of this Agreement or upon request by Friant, Consultant must turn over to Friant all such original Project Documents in its possession; provided, however, that Consultant may retain copies of Project Documents. Friant acknowledges and agrees that use of Consultant's completed work product, for purposes other than identified in this Agreement, or use of incomplete work product, is at Friant's own risk. If necessary, Consultant agrees to execute all appropriate documents to assign to Friant the copyright or intellectual property rights to the Project Documents created pursuant to this Agreement.

9.2 Except as necessary for the performance of services under this Agreement, no Project Documents prepared under this Agreement, will be released by Consultant to any other person or entity without Friant's prior written approval.

Section 10. Confidential Information; Release of Information.

10.1 All information gained or work product produced by Consultant in performance of this Agreement will be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant may not release or disclose any such information or work product to persons or entities other than Friant without prior written authorization from Friant, except as may be required by law.

10.2 Consultant, its officers, employees, or agents, may not, without prior written authorization from Friant or unless requested by Friant's general counsel or attorneys, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the services performed under this Agreement. Response to a subpoena or court order will not be considered "voluntary" provided Consultant gives Friant notice of such court order or subpoena.

10.3 If Consultant, or any officer, employee, or agent of Consultant, provides any information or work product (including Project Documents) in violation of this Agreement, then Friant will have the right to reimbursement and indemnity from Consultant for any damages, costs and

fees, including attorneys fees, to the extent caused by or incurred as a result of Consultant's conduct.

- 10.4** Consultant must promptly notify Friant should Consultant, its officers, employees, or agents be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the services performed under this Agreement. Friant retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with Friant and to provide Friant with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by Friant to control, direct, or rewrite such response.
- 10.5** All media and press releases, including graphic display information, must be approved and distributed solely by Friant, unless otherwise agreed to in writing by Friant. All media interviews regarding the performance of services under this Agreement are prohibited unless expressly authorized by Friant.

Section 11. Consultant's Books and Records.

- 11.1** Consultant must maintain all documents and records demonstrating or relating to Consultant's performance of services under this Agreement, including ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to Friant under this Agreement. All financial documents or records must be maintained in accordance with generally accepted accounting principles and all other documents must be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consultant under this Agreement. All such documents or records must be maintained for at least three years following the final payment under this Agreement.
- 11.2** Any and all records or documents required to be maintained by this section must be made available for inspection, audit and copying, at any time during regular business hours, upon written request by Friant or its designated representative. Copies of such documents or records must be provided directly to Friant for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records must be made available at Consultant's address indicated for receipt of notices in this Agreement.
- 11.3** Where Friant has reason to believe that any of the documents or records required to be maintained by this section may be lost or discarded due to dissolution or termination of Consultant's business, Friant may, by written request, require that custody of such documents or records be given to a person or entity mutually agreed upon and that such documents and records thereafter be maintained by such person or entity at Consultant's expense. Access to such documents and records must be granted to Friant, as well as to its successors-in-interest and authorized representatives.

Section 12. Status of Consultant.

- 12.1** Consultant is and will at all times remain a wholly independent contractor and not an officer or employee of Friant. Consultant has no authority to bind Friant in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against Friant, whether by contract or

otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by Friant.

- 12.2** The personnel performing the services under this Agreement on behalf of Consultant will at all times be under Consultant's exclusive direction and control. Neither Friant, nor any elected or appointed boards, officers, officials, employees or agents of Friant, will have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as provided in this Agreement. Consultant agrees that it will not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, or employees of Friant.
- 12.3** Neither Consultant, nor any of Consultant's officers, employees or agents, will obtain any rights to retirement, health care or any other benefits which may otherwise accrue to Friant's employees. Consultant expressly waives any claim to any such rights or benefits.

Section 13. Compliance with Applicable Laws.

- 13.1 In General.** Consultant must use the standard of care in its profession to keep itself informed of and comply with all federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement that apply to the services performed by Consultant.
- 13.2 Professional Licenses and Approvals.** Consultant agrees that it will, at its sole cost and expense, obtain and maintain in effect at all times during the term of this Agreement any licenses, permits, insurance and approvals that are legally required for Consultant to practice its profession.
- 13.3 Employment Laws.** Consultant agrees to comply with all applicable federal and state employment laws including those that relate to minimum hours and wages, occupational health and safety, and workers compensation insurance. Consultant further represents that it is an equal opportunity employer and in performing services under this Agreement agrees to comply with all applicable federal and state laws governing equal opportunity employment, and further agrees that it will not discriminate in the employment of persons to perform services under this Agreement on the basis of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any such person, except as may be permitted by California Government Code section 12940.

Section 14. Unauthorized Aliens.

Consultant agrees to comply with all of the applicable provisions of the Federal Immigration and Nationality Act (8 U.S.C. § 1101 *et seq.*), as it may be amended, and further agrees not to employ unauthorized aliens as defined under the Act. Should Consultant employ any unauthorized aliens for the performance of any work or services covered by this Agreement, and should any liability or sanctions be imposed against Friant for the use of unauthorized aliens, Consultant agrees to reimburse Friant for the amount of all such liabilities or sanctions imposed, together with any and all related costs, including attorneys' fees, incurred by Friant.

Section 15. Conflicts of Interest.

- 15.1** Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner

with the interests of Friant or that would in any way hinder Consultant's performance of services under this Agreement. Consultant's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 and following) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 and following), and California Government Code section 1090.

- 15.2** Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm will make, participate in the making, or in any way attempt to use the position of Consultant to influence any decision of the Friant in which Consultant knows or has reason to know that Consultant, or any officer, principal or employee of Consultant has any of the financial interests listed in Government Code section 87103.
- 15.3** If Consultant discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant must promptly disclose the relationship to Friant and take such action as Friant may direct to remedy the conflict.
- 15.4** Friant understands and acknowledges that Consultant is, as of the Effective Date, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant represents that, except as otherwise disclosed to Friant, it is unaware of any stated position of Friant relative to these projects. Any future position of Friant on these projects will not be considered a conflict of interest for purposes of this section.

Section 16. Indemnification.

- 16.1** The parties agree that Friant should, to the fullest extent permitted by law, be defended, indemnified, and held harmless from all Services Claims and Operations Claims (defined below) related to the performance by Consultant of this Agreement. Accordingly, the provisions of this section are intended by the parties to be interpreted and construed to provide the Friant with the fullest protection possible under the law. Consultant acknowledges that Friant would not enter into this Agreement in the absence of Consultant's commitment to defend, indemnify, and hold harmless Friant as set forth in this section.
- 16.2** For the purposes of this section, "Friant" includes Friant's officers, officials, employees, agents and volunteers, and "Consultant" includes Consultant's officers, officials, employees, agents and subcontractors and any other persons for whom Consultant is legally responsible.
- 16.3** With respect to the performance of professional services under this Agreement where the law establishes a professional standard of care for such services, Consultant agrees to indemnify, and hold harmless Friant from and against all liabilities, damages, losses, and costs, including but not limited to reimbursement of reasonable attorney's fees and all other costs of defense, to the extent caused by the negligence, recklessness, or willful misconduct of Consultant (collectively, "**Services Claims**").
- 16.4** With respect to the acts and operations of Consultant under this Agreement other than the performance of professional services, Consultant agrees to defend, indemnify, and hold harmless Friant from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees and all other costs of defense, to the extent caused, in whole or in part, by the negligence, recklessness, or willful misconduct of Consultant, and excepting only those claims, damages, liabilities, losses, and costs caused by Friant's sole negligence or willful misconduct (collectively, "**Operations Claims**").

- 16.5** Consultant must notify Friant within five days of receipt of notice of any Operations Claims or Services Claims made or legal action initiated that arises out of or pertains to Consultant's performance of services under this Agreement.
- 16.6** Consultant's duty to defend Operations Claims is a separate and distinct obligation from Consultant's duty to indemnify Friant for any Services Claims. Consultant is obligated to defend Friant in all legal, equitable, administrative, or special proceedings, with counsel approved by Friant, immediately upon tender to Consultant of an Operations Claim in any form or at any stage of an action or proceeding, whether or not liability is established.
- 16.7** Consultant agrees that settlement of any Operations or Services Claim against Friant requires the consent of Friant. Friant agrees that its consent will not be unreasonably withheld provided that Consultant is financially able (based on demonstrated assets including insurance) to fulfill its obligation to indemnify Friant for the costs of any such settlement as required under this Agreement.
- 16.8** The insurance required to be maintained by Consultant under this Agreement is intended to ensure Consultant's obligations under this section, but the limits of such insurance do not limit the liability of Consultant.
- 16.9** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required, Consultant will be fully responsible for all obligations under this section. Friant's failure to monitor compliance with this requirement imposes no additional obligations on Friant and will in no way act as a waiver of any rights under this Agreement.
- 16.10** The provisions of this section will survive the expiration or earlier termination of this Agreement in accordance with the applicable provisions of Exhibit C ("**Insurance**").

Section 17. Insurance.

Consultant agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance coverages listed in Exhibit C ("**Insurance**"), which is made a part of this Agreement. All insurance policies are subject to approval by Friant as to form and content. These requirements are subject to amendment or waiver if so approved in writing by Friant.

Section 18. Assignment.

The expertise and experience of Consultant are material considerations for this Agreement. Friant has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon Consultant under this Agreement. In recognition of that interest, Consultant may not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of Friant, which may be withheld in the Friant's sole discretion. Any attempted assignment will be null and void, and will constitute a material breach of this Agreement entitling Friant to any and all remedies at law or in equity, including summary termination of this Agreement.

Section 19. Default; Limitations on Liability.

- 19.1** In the event that Consultant is in default under the terms of this Agreement, Friant will have no obligation or duty to continue compensating Consultant for any services performed after Friant provides written notice to Consultant of such default.
- 19.2** Consultant agrees that no Friant official, officer, employee or agent will be personally liable to Consultant in the event of any default or breach of Friant, or for any amount which may become due to Consultant, or for any obligations directly or indirectly incurred under this Agreement.
- 19.3** Friant's liability under this Agreement is limited to payment of Consultant in accordance with the terms of this Agreement and excludes any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

Section 20. Termination of Agreement.

- 20.1** Friant may terminate this Agreement, with or without cause, at any time by written notice of termination to Consultant. In the event such notice is given, Consultant must cease immediately all work and services in progress.
- 20.2** Consultant may terminate this Agreement at any time upon 30 days' prior written notice of termination to Friant.
- 20.3** Upon termination of this Agreement by either Consultant or Friant, all property belonging to Friant that is in Consultant's possession must be returned to Friant. Consultant must promptly deliver to Friant a final invoice for all outstanding services performed and expenses incurred by Consultant as of the date of termination. Compensation for work in progress not based on an hourly rate will be prorated based on the percentage of work completed as of the date of termination.
- 20.4** Consultant acknowledges Friant's rights to terminate this Agreement as provided in this section, and hereby waives any and all claims for damages that might otherwise arise from Friant's termination of this Agreement.

Section 21. Notices.

- 21.1** All written notices required or permitted to be given under this Agreement will be deemed made when received by the other party at its respective address as follows:

To Friant:	Friant Water Authority 854 N. Harvard Ave. Lindsay, CA 93247 Attention: _____
	(Tel.) 559-562-6305
	(Fax) 559-562-3496
	(Email) _____@friantwater.org

To Consultant:

Attention: _____

(Tel.) _____
(Fax) _____
(Email) _____

- 21.2 Notice will be deemed effective on the date personally delivered or electronically transmitted by facsimile. If the notice is mailed, notice will be deemed given three days after deposit of the same in the custody of the United States Postal Service, postage prepaid, for first class delivery, or upon delivery if using a major courier service with tracking capabilities.
- 21.3 Any party may change its notice information by giving notice to the other party in compliance with this section.

Section 22. General Provisions.

- 22.1 **Authority to Execute; Counterparts.** Each party represents and warrants that all necessary action has been taken by such party to authorize the undersigned to execute this Agreement and to bind it to the performance of its obligations hereunder. This Agreement may be executed in several counterparts, each of which will constitute one and the same instrument and will become binding upon the parties when at least one copy has been signed by both parties.
- 22.2 **Entire Agreement.** This Agreement, including the attached Exhibits A through C, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed in this Agreement and supersedes all other agreements or understandings, whether oral or written, between Consultant and Friant prior to the execution of this Agreement.
- 22.3 **Binding Effect.** This Agreement is binding upon the heirs, executors, administrators, successors and assigns of the parties.
- 22.4 **Modification of Agreement.** No amendment to or modification of this Agreement will be valid unless made in writing and approved by Consultant and by the Friant Council or Friant Manager, as applicable. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver will be void.
- 22.5 **Electronic Signatures.** This Agreement and any amendment will be considered executed when the signature page of a party is delivered by electronic transmission. Such electronic signatures will have the same effect as an original signature.
- 22.6 **Waiver.** Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement will not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement will not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by Friant of any services by Consultant will not constitute a waiver of any of the provisions of this Agreement.

22.7 Interpretation. This Agreement will be interpreted, construed and governed according to the laws of the State of California. Each party has had the opportunity to review this Agreement with legal counsel. The Agreement will be construed simply, as a whole, and in accordance with its fair meaning. It will not be interpreted strictly for or against either party.

22.8 Severability. If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement will not be affected and the Agreement will be read and construed without the invalid, void or unenforceable provision.

22.9 Venue. In the event of litigation between the parties, venue in will be exclusively in a state court in the County of Tulare, California.

22.10 Audit. Consultant acknowledges and agrees that under Government Code section 8546.7, this Agreement is subject to the examination and audit of the California State Auditor, at the request of Friant or as part of any audit of Friant, for a period of three years after final payment under this Agreement.

[Signatures on the following page.]

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES OF the parties hereby execute this Agreement as follows:

FRIANT WATER AUTHORITY

, Chief Operating Officer

Kathryn Bennett, Business Administration Manager

APPROVED AS TO FORM:

Donald M. Davis, General Counsel

CONSULTANT:

_____, a _____

By _____
Name:
Title:

By _____
Name:
Title:

EXHIBIT A

SCOPE OF SERVICES

[Attached]

EXHIBIT B

KEY PERSONNEL & COMPENSATION

1. Consultant's designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement are:
_____.

2. Total compensation under this Agreement, including reimbursement for actual expenses, may not exceed: \$_____.

FEE SCHEDULE

(Complete or attached Separate Schedule)

KEY PERSONNEL:

Name	Title/Position	Rate (Per Hour)

SUBCONSULTANTS:

Name	Title/Position	Rate (Per Hour)

EXHIBIT C

INSURANCE

- A. **General Requirements.** Before commencing the performance of services under this Agreement, and at all other times this Agreement is effective, Consultant must procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

<u>Type of Insurance</u>	<u>Limits (combined single)</u>
Commercial General Liability:	\$1,000,000
Business Automobile Liability	\$1,000,000
Professional Liability	\$1,000,000
Workers Compensation	Statutory Requirement.

- B. **Commercial General Liability Insurance.** Commercial general liability insurance must have coverage at least as broad as Insurance Services Office (ISO) CGL Form No. CG 00 01. The amount of insurance set forth above must be a combined single limit per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability for the policy coverage. The insurance must be on an “occurrence” not a “claims made” basis.
- C. **Business Automobile Insurance.** Automobile insurance must have coverage at least as broad as ISO Business Auto Coverage Form CA 00 01, covering bodily injury and property damage, including coverage for any owned, hired, non-owned or rented vehicles. If Consultant or Consultant’s employees will use personal autos in connection with the provision of services under this Agreement, Consultant will provide evidence of personal auto liability coverage for each such person.
- D. **Professional Liability (Errors & Omissions) Insurance.** This coverage must be on a “claims made” basis, including coverage for contractual liability. The Professional Liability Insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of Consultant’s services. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the Effective Date, Consultant must purchase extended period coverage for a minimum of three years after completion of services.
- E. **Workers Compensation.** Consultant must have a State of California approved policy form providing the statutory benefits required by law with employer’s liability limits of no less than \$1,000,000 per accident for all covered losses, or Consultant must provide evidence of an approved self-insurance program. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for worker’s compensation or to undertake self-insurance in accordance with the Labor Code. Consultant certifies that it will comply with such provisions before commencing performance of services under this Agreement and thereafter maintain such coverage as required by the Labor Code.
- F. **Additional Insureds.** Each Commercial General Liability Insurance policy and Business Auto Insurance policy must provide that Friant, its officials, officers, employees, agents and volunteers are “additional insureds” under the terms of the policy, and must provide that an act or omission of one the insureds will not reduce or avoid coverage to the other insureds.

- G. **Deductibles and Self-Insured Retention.** Any deductibles or self-insured retentions applicable to the insurance policies required under this Agreement must be declared to and approved by Friant. In no event may any required insurance policy have a deductible, self-insured retention or other similar policy provision in excess of \$50,000 without prior written approval by Friant in its sole discretion. At the option of Friant, either the insurer will reduce or eliminate such deductibles or self-insured retentions with respect to the Friant's additional insureds or Consultant will procure a bond guaranteeing payment of any losses, damages, expenses, costs or settlements up to the amount of such deductibles or self-insured retentions.
- H. **Primary Insurance.** Each of the commercial general liability and business auto insurance policies maintained by Consultant under this Agreement must state that such insurance will be deemed "primary" so that any insurance that may be carried by Friant will be deemed excess to that of Consultant. This endorsement must be reflected on ISO Form No. CG 20 01 04 13, or current equivalent form acceptable to Friant.
- I. **Certificates of Insurance and Endorsements; Notice of Termination or Changes to Policies.** Prior to commencing any services under this Agreement, Consultant must file with Friant certificates of insurance and endorsements evidencing the existence of all insurance required by this Agreement, along with such other evidence of insurance or copies of policies as may reasonably be required by Friant. These certificates of insurance and endorsements must be in a form approved by Friant. Consultant must maintain current certificates and endorsements on file with Friant during the term of this Agreement reflecting the existence of all required insurance. Each of the certificates must expressly provide that no termination or cancellation of the required coverage will be effective except upon 30 days' prior written notice to Friant. The delivery to Friant of any certificates of insurance or endorsements that do not comply with the requirements of this Agreement will not waive the Friant's right to require compliance. In the event that Consultant's policies are materially changed, Consultant must provide the Friant with at least 30 days' prior written notice of the applicable changes.
- J. **Insurance Rating.** All insurance required to be maintained by Consultant under this Agreement must be issued by companies licensed by or admitted to conduct insurance business in the State of California by the California Department of Insurance and must have a rating of A or better and Class VII or better by the latest edition of A.M. Best's Key Rating Guide.
- K. **Aggregate Limits.** The aggregate limits for each insurance policy required under this Agreement must apply separately and solely to the services performed under this Agreement. If the required policies do not have an endorsement providing that the aggregate limit applies separately to the services being performed, or if defense costs are included in the aggregate limit, then the required aggregate limits must be increased to an amount satisfactory to Friant.
- L. **Excess or Umbrella Liability Insurance (Over Primary).** If an excess or umbrella liability policy is used to meet limit requirements, the insurance must provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an excess or umbrella liability policy must include a "drop-down provision" providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage must be provided on a "pay-on-behalf" basis, with defense costs payable in addition to policy limits. There may be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. Coverage must be applicable to Friant for injury to employees of Consultant, its subcontractors or others performing work to satisfy Consultant's obligations under this Agreement. The scope of coverage provided is subject to approval of Friant following receipt of proof of insurance as required herein. Limits are subject to review, but in no event may be less than \$4,000,000 per occurrence and aggregate.

- M. **Waiver of Subrogation Rights.** Consultant and each insurer providing any insurance required by this Agreement must waive all rights of subrogation against Friant, its officials, officers, employees, agents and volunteers, and each insurer must issue a certificate to the Friant evidencing this waiver of subrogation rights.
- N. **Subcontractor Insurance.** Should the Consultant subcontract out any of the work or services required under this Agreement, it must include all subcontractors as insured's under its policies or maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Exhibit C. If this option is exercised, both Friant and Consultant must be named as additional insureds under the subcontractor's general liability policy. All coverages for subcontractors will be subject to all the requirements of this Exhibit C. Friant reserves the right to perform an insurance audit during the term of this Agreement to verify compliance with requirements.
- O. **Failure to Maintain Required Insurance.** If Consultant, for any reason, fails to obtain and maintain the insurance required by this Agreement, Friant may obtain such coverage at Consultant's expense and deduct the cost of such insurance from payments due to Consultant under this Agreement or may terminate the Agreement.
- P. **Effect of Coverage.** The existence of the required insurance coverage under this Agreement will not be deemed to satisfy or limit Consultant's indemnity obligations under this Agreement. Consultant acknowledges that the insurance coverage and policy limits set forth in this Agreement constitute the minimum coverage and policy limits required. Any insurance proceeds available to Friant in excess of the limits and coverage required by this Agreement, and which is applicable to a given loss, must be made available to Friant to compensate it for such losses.
- Q. **Higher Limits of Insurance.** If Consultant maintains higher limits of insurance than the required amounts shown in Section A above, then such amounts will be the minimum required under this Agreement.
- R. **Evaluation and Revision of Coverage.** Friant retains the right to modify, delete, alter or change the insurance requirements set forth in this Exhibit C upon not less than 90 days' prior written notice. If any such change results in a substantial additional cost to Consultant, the Friant and Consultant may renegotiate Consultant's compensation under this Agreement.

EXHIBIT C

Grant Agreement with Reclamation For FKC Pump Back Project

[Attached]

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

1A. AGREEMENT NUMBER R16AC00106		1B. MOD NUMBER N/A		2. TYPE OF AGREEMENT <input type="checkbox"/> GRANT <input checked="" type="checkbox"/> COOPERATIVE AGREEMENT		3. CLASS OF RECIPIENT Special District Government					
4. ISSUING OFFICE U.S. Department of the Interior Bureau of Reclamation Mid Pacific Region Office 2800 Cottage Way, Room E-1815 Sacramento, California 95825-1898 DUNS: 098865801 / EIN: 84-1024566				5. RECIPIENT Friant Water Authority 854 N. Harvard Ave. Lindsay, California 93247-1715 Phone: (559) 562-6305 Fax: (559) 562-3496							
				EIN #:		721578579		County:		Tulare	
				DUNS #:		780148842		Congress. Dist:		CA-22	
6. GRANTS MANAGEMENT SPECIALIST Christina A. Muñoz, MP-3812 U.S. Department of the Interior Bureau of Reclamation Mid Pacific Region Office 2800 Cottage Way, Room E-1815 Sacramento, California 95825-1898 E-mail: cmunoz@usbr.gov				7. RECIPIENT PROJECT MANAGER Stephen Ottemoeller 854 N. Harvard Ave. Lindsay, California 93247-1715 E-mail: sottemoeller@friantwater.org Phone: (559) 306-9986							
8. GRANTS OFFICER TECHNICAL REPRESENTATIVE Kellye Kennedy U.S. Department of the Interior Bureau of Reclamation Mid Pacific Region Office, San Joaquin River Restoration Program Office 2800 Cottage Way, Room W-1927 Sacramento, California 95825-1898 E-mail: kkennedy@usbr.gov				9A. INITIAL AGREEMENT EFFECTIVE DATE: See Block 17a		9B. MODIFICATION EFFECTIVE DATE: N/A					
				10. COMPLETION DATE September 30, 2019							
11A. PROGRAM STATUTORY AUTHORITY Public Law 111-11, Title IX, Subtitle F - Secure Water, Section 9504 Water Management Improvement (a)(1)(C) and (D)						11B. CFDA Number 15.555					
12. FUNDING INFORMATION		<u>RECIPIENT/OTHER</u>		<u>RECLAMATION</u>		13. REQUISITION NUMBER 20092778					
Total Estimated Amount of Agreement		\$6,006,747		\$3,300,000		14A. ACCOUNTING AND APPROPRIATION DATA Cost Center: RR02013000 Fund: 16XR0680A3 (\$1,001,925) / 15XR0680A3 (\$2,298,075) WBS: RA.17852300.16000000					
This Obligation		\$6,006,747		\$3,300,000							
Previous Obligation		\$0.00		\$0.00							
Total Obligation		\$6,006,747		\$3,300,000							
Cost-Share %		65%		35%							
						14B. TREASURY ACCOUNT FUNDING SYMBOL 14X0680					
15. PROJECT TITLE Friant-Kern Canal (FKC) Reverse Flow Pump-Back Project											
16a. Acceptance of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the above-named recipient BY: _____ DATE: _____				17a. Award of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the United States of America, Department of the Interior, Bureau of Reclamation BY: _____ DATE: _____							
16b. NAME, TITLE, AND TELEPHONE NUMBER OF SIGNER <input type="checkbox"/> Additional signatures are attached				17b. NAME OF GRANTS OFFICER Christina A. Muñoz							

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**Cooperative Agreement
Between
Bureau of Reclamation
And
Friant Water Authority
For
Friant-Kern Canal (FKC) Reverse Flow Pump-Back Project**

I. OVERVIEW AND SCHEDULE

1. AUTHORITY

This Cooperative Agreement (Agreement) is entered into between the United States of America, acting through the Department of the Interior, Bureau of Reclamation, hereinafter referred to as “Reclamation,” and Friant Water Authority, hereinafter referred to as the “Recipient” or “Grantee,” pursuant to Title IX, Subtitle F – Secure Water of Public Law 111-11, Omnibus Public Land Management Act of 2009, Section 9504 (a)(1)(C) and (D). The following section, provided in full text, authorizes Reclamation to award this financial assistance agreement:

SEC. 9504. WATER MANAGEMENT IMPROVEMENT.

(a) AUTHORIZATION OF GRANTS AND COOPERATIVE AGREEMENTS.-

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

- (A) to conserve water;
- (B) to increase water use efficiency;
- (C) to facilitate water markets;
- (D) to enhance water management, including increasing the use of renewable energy in the management and delivery of water;

(3) REQUIREMENTS OF GRANTS AND COOPERATIVE AGREEMENTS.-

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

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

- (i) to use any associated water savings to increase the total irrigated acreage of the eligible applicant;
- or
- (ii) to otherwise increase the consumptive use of water in the operation of the eligible applicant, as determined pursuant to the law of the State in which the operation of the eligible applicant is located.

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

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

(E) **COST SHARING.**-

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

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

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

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

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

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

(F) **LIABILITY.**-

(i) **IN GENERAL.**-Except as provided under chapter 171 of title 28, United States Code (commonly known as the "Federal Tort Claims Act"), the United States shall not be liable for monetary damages of any kind for any injury arising out of an act, omission, or occurrence that arises in relation to any facility created or improved under this section, the title of which is not held by the United States.

(ii) **TORT CLAIMS ACT.**- Nothing in this section increases the liability of the United States beyond that provided in chapter 171 of title 28, United States Code (commonly known as the "Federal Tort Claims Act").

2. PUBLIC PURPOSE OF SUPPORT OR STIMULATION

The Friant-Kern Canal Reverse Pump Project (Reverse Pump Project) provides a benefit to the public in that it will lessen the impacts to local infrastructure and economies attributed to the over reliance on groundwater supplies. As a result of four years of drought conditions in California, the over pumping of groundwater by water districts in the San Joaquin Valley has escalated. With such large volumes of water being removed from the groundwater basin, compaction of the overlying soils is occurring causing subsidence-an actual drop in the land's elevation. Land surface elevation changes can have serious consequences for infrastructure,

diminished levee effectiveness, and damage to roads, bridges, building foundations, and pipelines. Additional indirect economic losses occur from a more unreliable water supply. The Reverse Pump Project will facilitate bringing new water supplies into the region reducing the dependence on groundwater and slowing the effects of land subsidence.

3. BACKGROUND AND OBJECTIVES

In 2015, Reclamation began implementing the Drought Response Program; a comprehensive new approach to drought. Relying on existing authorities, it takes a proactive approach by providing assistance to water users for drought contingency planning and to take action that will build long-term resiliency to droughts. The program objective is to help communities cope with and respond to drought.

Decreased reliability of surface water deliveries combined with four years of drought conditions in California have resulted in the over pumping of groundwater by water districts in the San Joaquin Valley. With such large volumes of water being removed from the groundwater basin, compaction of the overlying soils is occurring causing subsidence—an actual drop in the land’s elevation. Land surface elevation changes can have serious consequences for infrastructure, including the loss of conveyance capacity in canals, diminished levee effectiveness, and damage to roads, bridges, building foundations, and pipelines.

The Friant-Kern Canal (FKC) is a Reclamation facility, operated and maintained by the Recipient pursuant to Contract No. 8-07-20-X0356, as amended and supplemented, dated March 1, 1998. The Canal carries water over 151.8 miles in a southerly direction from Millerton Lake on the San Joaquin River (25 miles northeast of Fresno) to the Kern River, four miles west of Bakersfield, for agricultural and urban uses. The Recipient has installed temporary pumping facilities which are used to deliver water purchased during dry years on the open market, deliver Kern River and State Water Project (SWP) water under a Warren Act contract, or convey water recovered from banking projects on the Kern River fan. The temporary pump-back facilities are 80 cfs at the Shafter-Wasco Check Structure and 50 cfs at the Poso Creek Check Structure.

Reclamation has studied permanent pump-back facilities along the southern portion of the FKC as part of the San Joaquin River Restoration Program (SJRRP). The San Joaquin River Settlement Act directs Reclamation to explore the feasibility of “reverse flow pump-back facilities on the Friant-Kern Canal, with reverse-flow capacity of approximately 500 cubic feet per second at the Poso and Shafter Check Structures and approximately 300 cubic feet per second at the Woollomes Check Structure. Water supply and economic analyses were performed for this option in 2011 and show that much of the pump-back capacity was unused due to limited conveyance capacity, availability of recaptured Restoration Flows, demands, or downstream pump-back capacities.

The Recipient proposed an alternative that would permanently increase the pumping capacities to 200 cfs at the Shafter Check Structure and 75 cfs at the Lake Woollomes and Deer Creek Check Structures for the additional benefit of accessing water banks or other water supplies available via the California Aqueduct during times of drought, such as is being experienced currently. This alternative was evaluated to an appraisal level as part of the SJRRP Water Management Goal Investment Strategy using all new facilities (ID 504 – Reverse Flow Pump-Back Facilities on the Friant-Kern Canal, Draft Investment Strategy, December 2014). A map of the project area is provided in Figure 1.

In 2014 Reclamation acquired some pumping equipment (pumps, motors and electrical control panels) from the Red Bluff Diversion Dam Interim Pumping Facility that potentially could be modified and used at any or all of the Pump-Back facility sites instead of purchasing all new equipment. The potential use of the Red Bluff pumping equipment will be evaluated in the Preliminary Design phase, as currently it is not known whether the Red Bluff equipment can be modified to meet the desired design conditions.

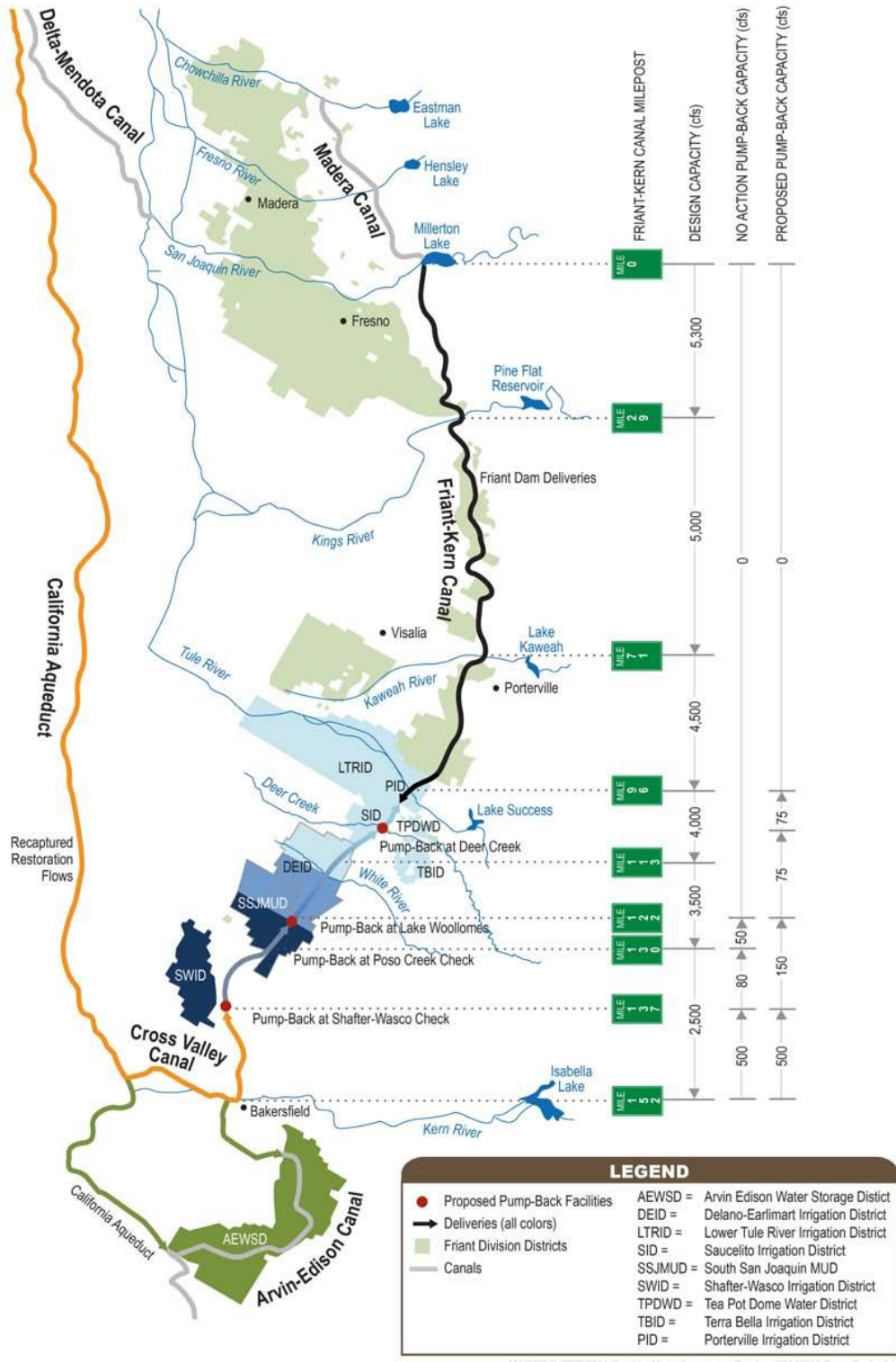


Figure 1 Project Schematic

4. PERIOD OF PERFORMANCE AND FUNDS AVAILABILITY

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

No legal liability on the part of the Government for any payment may arise until funds are made available, in writing, to the Recipient by the Grants Officer. The total estimated amount of federal funding for this agreement is **\$3,300,000.00**, of which the initial amount of federal funds available is limited to **\$3,300,000.00** as indicated by “this obligation” within Block 12 of Form 7-2279, United States of America, Department of the Interior, Bureau of Reclamation, Assistance Agreement. Subject to the availability of Congressional appropriations, subsequent funds will be made available for payment through written modifications to this agreement by a Reclamation Grants Officer.

5. SCOPE OF WORK AND MILESTONES

The Scope of Work includes the following: the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA), (if necessary) process including the anticipated development of an Environmental Assessment and Finding of No Significant Impact (as compared to an Environmental Impact Statement), permitting and other technical assistance, design and construction and related support for the Project. The necessary environmental documents shall be prepared in compliance with NEPA and CEQA, including the Council on Environmental Quality’s (CEQ) Regulations Implementing NEPA (40 CFR Part 1502), Department of Interior Implementation of the National Environmental Policy Act Regulation (43 CFR Part 46), Reclamation NEPA Guidelines, and the CEQA Guidelines. All Project activities shall be planned and implemented consistent with all applicable federal, state and local laws and regulations.

Objective 1 – Project Management

The Recipient shall provide project management/administration activities in support of this Agreement including but not limited to the following:

- Coordination of daily Project activities by the Recipient’s staff and consultant team, document review, and quality assurance/quality control of work prepared for this Project.
- Scheduling, planning, and conducting meetings and presentations.
- Preparation and reproduction of meeting notes, handouts, and deliverables.
- Coordination and communication with the Implementing Agencies.
- Management and maintenance of a document library.
- Attendance and participation in monthly Progress Meetings with Reclamation and other Implementing Agency staff as scheduled to report on Project progress, agreement/Project issues and concerns, and other matters related to the administration and execution of this agreement.

For briefing purposes, the Recipient shall prepare presentation materials describing Project progress typically in the format of presentation slides (PowerPoint) and/or 1-2 page fact sheets at critical milestones in the study process.

Subtask 1.1. Project Management Plan: The Recipient shall develop and maintain a Project Management Plan that outlines the following: the Recipient's understanding and approach to the deliverables outlined in this Scope of Work (SOW) by sub-task, the Recipient's approach to completing the Project within schedule, key staff and contact information, and a master schedule of activities by Sub-Task identified in this SOW including work product milestones. The Project Management Plan shall be updated on an annual basis.

Subtask 1.2 Project Schedule: The project schedule shall be in a Gantt chart format and use the Critical Path Method. The schedule shall contained necessary predecessor/successor logic, clearly show the project's critical path and show planned and actual durations. Updated schedules shall show actual progress and be delivered to Reclamation in an MS Project format no less than once a Quarter or at the request of Reclamation's point of contact.

Subtask 1.3. Team Meetings and Coordination Activities: Throughout the development of the environmental documentation, the Recipient's Project Manager shall assume the following team meetings and coordination activities:

- The Recipient's Project Manager and Project Coordinator shall attend weekly Agreement Status and Coordination Meetings to review progress and plan for upcoming activities with the Reclamation Project Manager and other Reclamation staff as appropriate. Coordination Meetings shall occur primarily by phone or at Friant Water Authority (FWA) facilities.
- The Recipient's Project Manager and/or Project Coordinator shall attend periodic meetings at Reclamation's Mid-Pacific Regional Office or other agreed upon location on an as needed basis, to review progress and plan for upcoming activities with the Reclamation Project Manager and other Reclamation staff or other parties as appropriate. An average of one (1) additional meeting every two (2) months or up to six (6) meetings per year shall be assumed.

For each meeting, the Recipient shall provide meeting notes that summarize action items and decision points. Draft meeting notes shall be delivered within three (3) days of the meeting. Final notes, incorporating comments and suggested changes, shall be provided within two (2) days of receipt of all comments.

Objective 1 Deliverables

The following are the Objective 1 Deliverables:

- Initial Project Management Plan
- Monthly Progress Reports
- Annual Updates to the Recipient's Project Management Plan
- Quarterly (or more frequent) updates to the Project Schedule
- Draft and Final meetings notes for each meeting attended
- Draft and Final Presentation materials, visual aids, and handouts, as needed.

Objective 2 Formulate and Evaluate Alternatives

The Recipient will develop not less than two project alternatives, including the No-Action Alternative. A brief discussion of alternatives considered and rejected will be analyzed and included as appropriate in the environmental documentation.

The Recipient will conduct pre-field investigations and reconnaissance field surveys to become familiar with the resources within the project study area and to assist with the formulation and evaluation of project alternatives. Such investigations and surveys that may be performed include, but are not limited to, the following:

- Biological field surveys of the project sites, as needed, to evaluate the existing biological resources.
- Cultural resources research and field survey, as needed, to comply with Section 106 of the National Historic Preservation Act.
- Evaluate pump-back capacities and potential locations of facilities.
- Evaluate operational constraints including water rights, institutional agreements, water quality, and drought mitigation alternatives.
- Evaluate water supply availability for delivery; available capacity in the California Aqueduct, San Luis Reservoir, Cross Valley Canal, and Friant-Kern Canal; groundwater banking recovery, transfer and exchange opportunities, and ability of the Friant Division to accept the available water when it can be conveyed.
- Identify potential project proponents/beneficiaries and the potential benefits they could receive.

Subtask 2.1. Pre-field and Reconnaissance Biological and Cultural Surveys: The Recipient shall conduct literature research and perform reconnaissance biological and cultural surveys, as needed at each project site, to evaluate the existing biological resources that may be impacted by construction and to comply with Section 106 of the National Historic Preservation Act.

Subtask 2.2 Refine Appraisal Level Design, evaluate Opportunities and Constraints: Pump-Back Facilities on the FKC at three locations was evaluated to an appraisal level as part of the SJRRP Water Management Goal Investment Strategy using all new facilities (ID 504 – Reverse Flow Pump-Back Facilities on the Friant-Kern Canal, Draft Investment Strategy, December 2014). It did not, however, fully evaluate the benefits associated with accessing water banks or other water supplies available via the California Aqueduct during times of drought, such as is being experienced currently. This task will evaluate pump-back capacities and potential locations of facilities (from two up to potentially four locations), evaluate operational constraints and water supply availability, potential project proponents/beneficiaries and potential benefits received, refine the appraisal level design and select the preferred alternative.

Objective 2 - Deliverables:

Project Alternatives Descriptions Technical Memorandum identifying preferred alternative and location of pumpback facilities – One electronic copy

Objective 3 - Environmental Compliance

Since construction of the Reverse Flow Pump-Back Facilities on the FKC is expected to occur along existing water conveyances and rights of way, neither significant effects to the human environment nor significant and unavoidable environmental impacts are anticipated. Based on an appraisal-level evaluation of potential project effects, it is assumed an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) would be sufficient to meet NEPA requirements. Similarly, an Initial Study (IS) and a Mitigated Negative Declaration (MND) should be sufficient to meet CEQA requirements. It is further assumed that a joint document covering both NEPA and CEQA can be prepared. Biological and cultural survey information obtained in Objective 2 will be incorporated in the EA/IS. If a higher level of environmental compliance is deemed appropriate (an EIS/EIR), this task and its associated scope of work, budget and schedule will need to be amended.

Objective 3 Deliverables

The following are the anticipated Objective 3 Deliverables:

- Administrative Draft EA-FONSI/IS-MND
- Public Draft EA-FONSI/IS-MND
- Administrative Final EA-FONSI/IS-MND
- Final EA-FONSI/IS-MND

Objective 4 - Engineering and Design

The Recipient shall provide all required engineering designs and drawings for the Project. This effort includes all activities necessary to complete the design, including coordination with Reclamation, data collection, and similar. The Recipient will complete 30 percent, 60 percent, and 90 percent design documents. The 100 percent (bid ready) design packages will be prepared under Objective 5. At this time it is assumed there will be three Pump-Back Facility sites (Shafter-Wasco check, Lake Woollomes check and Deer Creek check) as presented in the appraisal level design of reverse flow pump-back facilities on the FKC that was included as part of the SJRRP Water Management Goal Investment Strategy, but FWA may evaluate up to four pump-back sites. Alternatives to his configuration will be analyzed as part of alternative development under Objective 2.

The Recipient will meet on a regular basis with Reclamation during the design efforts to discuss progress, challenges, and opportunities. For each set of designs, the Recipient will provide Reclamation with 30% and 60% design, plans, drawings, specifications and cost estimates. Reclamation will provide comments within 14 days of receiving the 30% and 60% plans, specs and cost estimates, after which the Recipient shall incorporate Reclamations comments and make design changes as necessary.

The Recipient shall also provide Reclamation with 90% design, plans, drawings, specifications and cost estimates. Reclamation will provide comments within 14 days of receiving the 90% plans, specs and cost estimates, after which the Recipient shall incorporate Reclamations comments and make design changes as necessary. Reclamation approval must be obtained before moving to the next level of design.

The design team must include a registered Professional Engineer that stamps all final plans and specifications. The Recipient shall conduct final design in accordance with Reclamation's Final Design Process.

Cost estimates shall be developed in accordance with Reclamation estimating directives and standards or industry standards may be used with prior Reclamation approval.

SubTask 4.1 Geotechnical Investigation: A geotechnical investigation for the design and construction of the Pump-Back facilities at the three locations will be performed to evaluate soil conditions under and around the proposed facilities and develop parameters for design and construction. The geotechnical investigation will consist of field investigation, laboratory testing and a report summarizing the findings. Approximately three soil borings are anticipated at each location and lateral earth pressures will be determined along with recommendations for backfill and pipe bedding.

SubTask 4.2 Survey: Surveying for the project will consist of a topographic survey at each Pump-Back facility site to gather additional information for project design, and a boundary survey at each site to establish the limits of existing right-of-way. Survey control will be established at each site for use in the topographic and boundary surveys. At this time it is assumed that all construction work will occur within the existing FKC right-of-way and no additional right-of-way will need to be acquired, with the exception of acquiring an assumed small temporary construction easement at each site.

SubTask 4.3 Preliminary (30%) Design: The preliminary design will incorporate the findings of the Project Alternatives Descriptions Technical Memorandum that was developed in Objective 2 to optimize and further develop the appraisal level design that was included as part of the SJRRP Water Management Goal Investment Strategy. An evaluation will be made to determine if the pumping equipment that the Recipient acquired from the Red Bluff Diversion Dam Interim Pumping Facility can be modified for use at any or all of the Pump-Back facility sites. If the Red Bluff pumping equipment can be modified and used, then the Investment Strategy appraisal level designs will be modified accordingly.

A Basis of Design Report will be developed, containing the design criteria, operating water levels and flow conditions, data requirements, and information related to development of the 30% design such as structural and other applicable codes and any identified constraints. After the topographic survey information is gathered and the Basis of Design Report has been accepted, the 30% design drawings will be developed, along with a conceptual level opinion of probable construction cost that will be developed based on a combination of experience with similar facility work and available construction cost resources.

SubTask 4.4 60% Design: After Reclamation has reviewed and commented on the 30% level design, necessary design changes will be incorporated and the drawings will be further developed to the 60% design level. For the 60% design effort, the design concept and intent will be clearly indicated on the design drawings, however, some details for construction of the project may be lacking. Required design calculations will be completed. Generally, the structures will be sized, earthwork quantities calculated, and materials determined. The quantities for the major work items will be known and will be incorporated into a refined estimate of probable construction cost.

Draft technical specifications and contract documents will be developed and submitted to Reclamation for review. The draft documents will comply with the California Public Contract Code requirements for procuring construction bids as applicable to a water district. The project schedule will be reviewed and revised as needed to reflect the planned schedule of activities from this milestone through project completion.

SubTask 4.5 90% Design: After Reclamation has reviewed and commented on the 60% documents, necessary design changes will be incorporated and the drawings will be further developed to the 90% design level. In order to keep the project on schedule and control project costs, it is imperative that comments and any design revisions be received prior to initiating the 90% design phase. For the 90% design effort, the plans will be expanded to include additional information and details for the project's construction. Generally at the end of this stage, the Project is "essentially buildable" but is not "biddable".

The draft technical specifications and contract documents will be refined to a near-final level of completion based on comments received and finalizing the design. The expanded draft contract documents will be submitted to Reclamation for review. The construction cost estimate will be further refined based on the 90% level to a Class 1 estimate level with an anticipated accuracy level of approximately 10% of final construction cost. The project schedule will be reviewed and revised as needed to reflect the planned schedule of activities from this milestone through project completion.

Objective 4 Deliverables

The following are the anticipated Objective 4 Deliverables:

- Geotechnical Investigation Report
- Definition of existing property and right-of-way locations
- Basis of Design Report
- 30 percent concept drawings and estimate of probable construction cost (two paper copies and one electronic copy of each shall be submitted)
- 60 percent level drawings, design documents and estimate of probable construction cost (two paper copies and one electronic copy of each shall be submitted)
- 90 percent level drawings, design documents and estimate of probable construction cost (two paper copies and one electronic copy of each shall be submitted)

Objective 5 - Final Design and Bidding:

The Recipient shall present a proposed bid process to Reclamation for their review and approval for each construction contract (if multiple are proposed). The bid process shall follow the Recipient's procurement rules and be in accordance with applicable Federal procurement requirements. The Recipient shall comply with all requirements for competition in the bidding and selection process. Any construction contractor receiving a contract award must be a registered contractor in the state of California. The Recipient shall be the contracting entity and Reclamation will provide the necessary staff to support the bidding and evaluation of proposal process. Reclamation shall be involved and approve any contract that is awarded.

SubTask 5.1 Final Design: The final design phase will begin upon receipt of Reclamation's 90% design review comments. The plans will be further expanded to include additional information and details for the Project's construction and allow for the Project to be bid by qualified contractors. The technical specifications and contract documents will be completed to a level by which a qualified contractor could bid and build the project. The construction specifications shall specify materials, equipment, construction standards and or methods, required submittals, etc. A construction contract shall be included in the construction documents that specifies all legal terms of the contract. The construction cost estimate will be further refined as needed based on the 100% level to a Class 1 estimate level with an accuracy level of 10% or less of final construction cost. The project schedule will be reviewed and revised as needed to reflect the planned schedule of activities from this milestone through project completion. A Final Design Report will be prepared based on the Basis of Design Report, summarizing the design criteria and incorporating decisions made through the design process.

SubTask 5.2 Bidding Assistance: Bid packages will be prepared for prospective bidders, keeping records of the potential bidders who have obtained the bid documents. A mandatory pre-bid meeting will be held with potential bidders to brief the bidders on the proposed design and construction, and show the site and key facilities. Questions raised by potential bidders during the bid process will be answered through Addenda issued to all prospective bidders. Upon receipt of the bids, a Bid Summary will be prepared.

Objective 5 Deliverables

The following are the anticipated Objective 5 Deliverables:

- Proposed Bid Process
- Final Design Report
- Proposed bid document package to be submitted to Reclamation for approval, including, at a minimum, the following:
 - ◆ 100% stamped drawings that incorporate all previous revisions
 - ◆ Construction specifications that specify materials, equipment, construction standards and or methods, required submittals, etc.
 - ◆ Construction contract that specifies all legal terms of the contract.
- Notice Advertising Bid
- Pre-bid meeting
- Addenda as required
- Bid Summary

Objective 6 - Construction

The Recipient shall submit a notification to Reclamation 15 days prior to when Notice to Proceed will be issued for any construction contract. The notification shall show compliance with all environmental protective measures or other environmental compliance and permitting restrictions, and completion of the project agreement. Reclamation shall approve prior to construction of the project. The Recipient or the Recipient's contractor shall construct the project according to design documents and all applicable construction requirements and regulations.

SubTask 6.1 Construction Documents: Any necessary revisions or clarifications identified through Addenda issued during the bid process shall be incorporated into the final drawings and contract documents, and these final signed contract documents will be issued to the successful bidder for construction.

SubTask 6.2 Construction Support: During construction a detailed technical review of submittals will be performed to ensure that each submittal complies with the design requirements and meets all applicable design standards as presented in the specifications and drawings. During construction it is expected that the Contractor will submit Requests for Information (RFIs) for any work areas that require additional clarification. RFIs will be responded to in a timely manner so the Contractor does not encounter any delays. If significant revisions are required that necessitate a contract change order, support will be provided to justify or revise the requested contract change order.

SubTask 6.3 Record Drawings: The recipient shall submit final record drawings no more than 30 days after testing of the system is complete and flows have risen to the next constriction. (1 set of paper copies, 1 set of electronic copies)

Objective 6 Deliverables

The following are the anticipated Objective 6 Deliverables:

- Notice of Award
- Notice to Proceed
- Construction documents incorporating any addenda revisions
- Pre-construction meeting
- Submittal review
- Address Requests for Information (RFIs)
- Address Contract Change Orders
- Prepare record drawings

Objective 7 - Construction Management and Observation

Reclamation envisions that each party (Recipient and Reclamation) will jointly manage the construction (i.e. perform construction management and contract administration activities) as deemed appropriate by both parties. To further develop this plan, during the general timeframe of when the 60 percent and 90 percent design phases are being developed, Reclamation and the Recipient will develop a Construction Management Plan (CMP) that is mutually agreeable to both parties.

SubTask 7.1: Construction Management Plan: The Recipient in conjunction with Reclamation shall develop a Construction Management Plan (CMP). The plan will detail the roles and responsibilities for the recipient and Reclamation thru design, procurement and construction.

SubTask 7.2: Construction Quality Assurance and Quality Control Plan: In addition to developing the CMP, Reclamation and the Recipient will jointly develop a Construction Quality Assurance (QA) and Quality Control (QC) Plan. The purpose of this document is to clearly define the various management and inspection staff personnel directly responsible for the control quality control activities as well as control quality assurance activities. In addition this plan shall list testing requirements and frequencies for each of the various stages of components of construction.

SubTask 7.3: Construction Management Activities: Recipient will provide support during procurement and construction based on the roles and responsibilities for the Recipient identified during preparation of the Construction Management Plan (Subtask 7.1) and the Construction QA/QC Plan (Subtask 7.2).

Objective 8 - Permits

Based on an appraisal-level evaluation of potential project effects, the Reverse Flow Pump-Back Facilities on the Friant-Kern Canal is expected to have moderate permitting requirements and, if needed, a Section 7 Consultation. Surveys by a qualified wetland specialist would be needed to document presence or absence of wetlands or Waters of the US. Surveys by a qualified biologist were completed in Objective 2 for special status species/habitat in the project area.

Under this objective, the Recipient shall provide permitting assistance to Reclamation to prepare and obtain all permits (including any required surveys) necessary to implement the Project. For the purposes of this SOW, permits and approvals include regulatory permits, approvals by other agencies, and any necessary agreements to implement the Project. Specific permits and other required agreements that may be needed for construction and/or implementation of this are detailed below.

- Biological Resources
 - Federal Endangered Species Act Section 7 Compliance, Biological Assessment
 - Fish and Wildlife Coordination Act
 - California Endangered Species Act Section 2081 and 2080.1 Compliance
- Clean Water Act
 - Section 401 Water Quality Certificate
 - Section 402 NPDES General Discharge Permit
 - Section 404 Permit
- Clean Air Act
 - Compliance with General Conformity Rules
 - Compliance with California Clean Air Act Requirements
- National Historic Preservation Act Section 106 and State Historic Preservation Office Compliance
- State and Local Facility-Specific Permits
 - Section 1600 Permit (Stream Alteration Agreement)
 - Construction Storm Water General Permit and SWPPP
 - County Road Encroachment Permit(s)
 - Grading Permit(s)
 - Air Quality Management District Approvals/Reviews
 - Other Permits and Approvals

Milestone / Task / Activity	Planned Start Date	Planned Completion Date
Objective 1: Project Management	6/01/2016	9/30/2019
Objective 2: Formulate and Evaluate Alternatives	7/01/2016	9/30/2016
Objective 3: Environmental Compliance	7/01/2016	5/31/2017
Objective 4: Engineering and Design	10/1/2016	5/31/2017
Objective 5: Final Design and Bidding	6/01/2017	9/30/2017
Objective 6: Construction	10/01/2017	12/31/2018
Objective 7: Construction Management	2/01/2017	12/31/2018
Objective 8: Permitting	9/01/2016	5/31/2018

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. The Recipient will:

- Conduct regular meetings with Reclamation to review project status, discuss designs, and other aspects.
- Be responsible for NEPA compliance, and any necessary state and local permits for completion of this work.
- Execute the Preferred Alternative: Design-completion of design work following Reclamation's identification of a project as necessary to develop the final plans, specifications, and cost estimates. Reclamation will review and provide final approval to designs, plans, specifications and cost estimates prior to construction.
- Comply with all contracting requirements for competition in the bidding process and selection.
- Construct the pump back projects, including putting the final designs out to bid and overseeing the construction of the projects, ensuring quality of work to Reclamation's standards, and allowing Reclamation review, approval and inspection.

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.

6.2.1 Substantial involvement by Reclamation is anticipated during the performance of activities funded under this cooperative agreement. In support of this Agreement, Reclamation will be responsible for the following:

- NEPA Lead Agency for the Project
- Coordinating with the Recipient to ensure compliance with the National Environmental Policy Act, Endangered Species Act, and National Historic Preservation Act.
- Finalize the Findings of No Significant Impact (FONSI).
- Applying for and obtaining all necessary Federal permits and approvals for the project.
- Review and approval of all Designs delivered.
- Approve the project for construction after receiving environmental compliance and permits.
- Providing additional review and coordination with the Recipient as described in the Scope of Work.
- Reviewing and accepting final construction and installation.

7. BUDGET

7.1 Budget Estimate. The following is the estimated budget for this Agreement. As Federal financial assistance agreements are cost-reimbursable, the budget provided is for estimation purposes only. Final costs incurred under the budget categories listed may be either higher or lower than the estimated costs. All costs incurred by the Recipient under this agreement must be in accordance with any pre-award clarifications conducted between the Recipient and Reclamation, as well as with the terms and conditions of this agreement. Final determination of the allowability, allocability, or reasonableness of costs incurred under this agreement is the responsibility of the Grants Officer. Recipients are encouraged to direct any questions regarding allowability, allocability or reasonableness of costs to the Grants Officer for review prior to incurrence of the costs in question.

BUDGET ITEM DESCRIPTION	COMPUTATION		TOTAL COST
	Price/Unit	Quantity	
SALARIES AND WAGES --Position title x hourly wage/salary x est. hours for assisted activity. Describe this information for each position.			
Water Resources Manager	\$71.10/hr	1	\$35,550
Business Administration Manager	\$50.27/hr	1	\$5,027
FRINGE BENEFITS – Explain the type of fringe benefits and how applied to various categories of personnel.			
	49.54%	1	\$20,102
TRAVEL —dates; location of travel; method of travel x estimated cost; who will travel			
N/A			
EQUIPMENT —Leased Equipment use rate + hourly wage/salary x est. hours for assisted activity—Describe equipment to be purchased, unit price, # of units for all equipment to be purchased or leased for assisted activity: Do not list contractor supplied equipment here.			
N/A			
SUPPLIES/MATERIALS --Describe all major types of supplies/materials, unit price, # of units, etc., to be used on this assisted activity.			
N/A			
CONTRACTUAL/ CONSTRUCTION —Explain any contracts or sub-Agreements that will be awarded, why needed. Explain contractor qualifications and how the contractor will be selected.			
Construction Field Cost-Shafter Check			\$2,624,000
Construction Field Cost-Lake Woollomes Check			\$1,793,000
Construction Field Cost-Deer Creek Check			\$1,192,000
Engineering design, surveying, geotechnical, project management, grant administration, and construction management			\$1,192,000
Electrical Engineering			\$89,000
OTHER –List any other cost elements necessary for your project; such as extra reporting, or contingencies in a construction contract.			
Construction Easement			\$78,000
TOTAL DIRECT COSTS			
INDIRECT COSTS			
	10%	1	\$846,068
TOTAL ESTIMATED PROJECT COST			\$9,306,747

FUNDING SOURCES	% TOTAL PROJECT COST	TOTAL COST BY SOURCE
RECIPIENT FUNDING	65%	\$6,006,747
OTHER NON-FEDERAL FUNDING		\$0.00
RECLAMATION FUNDING	35%	\$3,300,000
OTHER FEDERAL FUNDING		\$0.00
TOTALS	100%	\$9,306,747

7.2 Cost Sharing Requirement

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

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

cost share percentage above shall occur concurrently. 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 Grants Officer prior to the expenditure. Recipient's may 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 shall be entitled to reimbursement for costs incurred on or after **October 1, 2015**, which if had been incurred after this Agreement was entered into, would have been allowable, allocable, and reasonable under the terms and conditions of this Agreement.

7.4 Allowable Costs (2 CFR Subpart E §200.400 through §200.475)

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 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 90 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 (2 CFR §200.308)

In accordance with 2 CFR §200.308(g) 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 Modifications

Any changes to this Agreement shall be made by means of a written modification. Reclamation may make changes to the Agreement by means of a unilateral modification to address administrative matters, such as changes in address, no-cost time extensions, changes to Reclamation Key Personnel, or the addition of previously agreed upon funding. Additionally, a unilateral modification may be utilized by Reclamation if it should become necessary to suspend or terminate the Agreement in accordance with 2 CFR §200.338.

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

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

8. KEY PERSONNEL

8.1 Recipient's Key Personnel

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

Friant Water Authority
Attn: Steve Ottemoeller
854 N. Harvard Ave
Lindsay, California 93247
Telephone: (559) 562-6930
E-mail: sottemoeller@friantwater.org

8.2 Reclamation's Key Personnel

8.2.1 Grants Officer (GO):

Bureau of Reclamation
Mid Pacific Region Office
Attn: Christina A. Muñoz
2800 Cottage Way, Room W-1927
Sacramento, California 95825-1898
Telephone: (916) 978-5115/Fax: (916) 978-5175
E-mail: cmunoz@usbr.gov

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

8.2.2 Grants Officer Technical Representative (GOTR):

Bureau of Reclamation
Mid Pacific Region Office, San Joaquin River Restoration Program Office
Attn: Kellye Kennedy
2800 Cottage Way, Room E-1815
Sacramento, California 95825-1898
Telephone: (916) 978-4640/Fax: (916) 978-5469
E-mail: kkennedy@usbr.gov

- (a) The GOTR's authority is limited to technical and programmatic aspects of the Agreement. The GOTR's responsibilities include, but are not limited to, the following:
- (1) Assist the Recipient, as necessary, in interpreting and carrying out the scope of work in the Agreement;
 - (2) Review, and where required, approve Recipient reports and submittals as required by the Agreement;
 - (3) Where applicable, monitor the Recipient to ensure compliance with the technical requirements of the Agreement;
 - (4) Where applicable, ensure that Reclamation complies with the technical requirements of the Agreement;
- (b) The GOTR does not have the authority to and may not issue any technical assistance which:

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

8.2.3 Grants Management Specialist. The Grants Management Specialist 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 modifications and prior approval, may only be granted, in writing, by a Reclamation Grants Officer. Please note that for some agreements, the Grants Officer and the Grants Management Specialist may be the same individual.

Bureau of Reclamation
Mid Pacific Region Office
Attn: Christina A. Muñoz
2800 Cottage Way, Room W-1927
Sacramento, California 95825-1898
Telephone: (916) 978-5115/Fax: (916) 978-5175
E-mail: cmunoz@usbr.gov

9. REPORTING REQUIREMENTS AND DISTRIBUTION

9.1 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 §200.338.

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

9.3 Monitoring and reporting program performance (2 CFR §200.328)

(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 §200.331 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 90 calendar days after the period of performance 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 2 CFR §200.328(b)(2) above.

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

Required Reports	Interim Reports	Final Report
Performance Report		
Format	No specific format required. See content requirements within Section 9.3 (2 CFR §200.328) above.	Summary of activities completed during the entire period of performance is required. See content requirements within Section 9.3 (2 CFR §200.328) above.
Reporting Frequency	Quarterly	Final Report due upon completion of Agreement's period of performance
Reporting Period	Federal fiscal quarters ending: December 31, March 31, June 30 September 30	Entire period of performance
Due Date*	Within 30 days after the end of the Reporting Period.	Within 90 days after the completion date of the Agreement
First Report Due Date	The first performance report is due for reporting period ending December 31, 2016	N/A
Submit to:	Grants Management Specialist	Grants Management Specialist
Federal Financial Report		
Format	SF-425 (all sections must be completed)	SF-425(all sections must be completed)
Reporting Frequency	Quarterly	Final Report due upon completion of Agreement's period of performance
Reporting Period	Federal fiscal quarters ending: December 31, March 31, June 30 September 30	Entire period of performance
Due Date*	Within 30 days after the end of the Reporting Period.	Within 90 days after the completion date of the Agreement
First Report Due Date	The first Federal financial report is due for reporting period ending December 31, 2016	N/A
Submit to:	Grants Management Specialist	Grants Management Specialist

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

10. REGULATORY COMPLIANCE

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

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

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

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

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

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

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

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

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

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

II. RECLAMATION STANDARD TERMS AND CONDITIONS

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 Payment. (2 CFR §200.305)

(a) For states, payments are governed by Treasury-State CMIA agreements and default procedures codified at 31 CFR Part 205 “Rules and Procedures for Efficient Federal-State Funds Transfers” and 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 Financial management paragraph (b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved standard 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 paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per §200.207 Specific conditions, 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) Use of resources before requesting cash advance payments. 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 §§200.207 Specific conditions, Subpart D—Post Federal Award Requirements of this part, 200.338 Remedies for Noncompliance, 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 Guidance 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 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 §200.342 Effects of suspension and termination.

(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 the receipt, obligation and expenditure of funds.

(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 \$120,000 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. Remittances must include pertinent information of the payee and nature of payment in the memo area (often referred to as “addenda records” by Financial Institutions) as that will assist in the timely posting of interested earned on federal funds. Pertinent details include the Payee Account Number (PAN) if the payment originated from PMS, or Agency information if the payment originated from ASAP, NSF or another federal agency payment system. The remittance must be submitted as follows:

(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*:

Routing Number: 021030004

Account number: 75010501

Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY

(* Please note organization initiating payment is likely to incur a charge from your 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

Name (abbreviated when possible) and ALC Agency POC: Michelle Haney,
(301) 492-5065

(iv) For recipients that do not have electronic remittance capability, please make check** 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

(** Please allow 4-6 weeks for processing of a payment by check to be applied to the appropriate PMS account)

(v) Any additional information/instructions may be found on the PMS Web site at <http://www.dpm.psc.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.

Recipients must complete enrollment in ASAP for all active financial assistance agreements with Reclamation. ASAP enrollment is specific to each Agency and Bureau; meaning, if a Recipient organization has an existing ASAP account with another Federal agency or Department of the Interior bureau, but not with Reclamation, then the Recipient must initiate and complete enrollment in ASAP under Reclamation's Agency Location Code (1425) through submission of an enrollment form found at www.usbr.gov/mso/aamd/asap.html. For information regarding ASAP enrollment, please visit www.usbr.gov/mso/aamd/asap.html, or contact the Reclamation ASAP Help Desk BOR_ASAP_Enroll@usbr.gov. Further information regarding ASAP may be obtained from the ASAP website at <http://www.fms.treas.gov/asap>.

In accordance with 2 CFR 25.200(b)(2) the Recipient shall "Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by an 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 §200.326)

§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 §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

§200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(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 §200.212 Suspension and debarment.

(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 must be conducted in a manner providing full and open competition consistent with the standards of this section. 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.

(b) 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.

(c) 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.

(d) 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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

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

- (i) A complete, adequate, and realistic specification or purchase description is available;
- (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
- (iii) 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.

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

- (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publically advertised;
- (ii) 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;
- (iii) 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;
- (iv) 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
- (v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- (2) Proposals must be solicited from an adequate number of qualified sources;
- (3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§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 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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.323 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 modifications. 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—Cost Principles 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.

§200.324 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 modification 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.

§200.325 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 obligations 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.

§200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

4. EQUIPMENT (2 CFR §200.313)

See also §200.439 Equipment and other capital expenditures.

(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) 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 Federally-owned and exempt property, paragraph (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 Materials and supplies costs, including costs of computing devices.

(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 Equipment, paragraph (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 Subpart F §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 Scope of audit 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 Program-specific audits. 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 Relation to other audit requirements, 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 Subrecipient and contractor determinations 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 §200.331 Requirements for pass-through entities.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

8. REMEDIES FOR NONCOMPLIANCE (2 CFR §200.338)

§200.338 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 §200.207 Specific conditions. 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 §200.339)

(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 for cause;
- (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; or
- (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.

(b) 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 §§200.343 Closeout and 200.344 Post-closeout adjustments and continuing responsibilities.

10. DEBARMENT AND SUSPENSION (2 CFR §1400)

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

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

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

12. ASSURANCES AND CERTIFICATIONS INCORPORATED BY REFERENCE

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

Such Assurances also include, but are not limited to, the promise to comply with all applicable Federal statutes and orders relating to nondiscrimination in employment, assistance, and housing; the Hatch Act; Federal wage and hour laws and regulations and work place safety standards;

Federal environmental laws and regulations and the Endangered Species Act; and Federal protection of rivers and waterways and historic and archeological preservation.

13. COVENANT AGAINST CONTINGENT FEES

The Recipient warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide offices established and maintained by the Recipient for the purpose of securing Agreements or business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement amount, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

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

Trafficking in persons.

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

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

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

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

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

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

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

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

(A) Associated with performance under this award; or

(B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR part 1400.

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

- (1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
- (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:
 - (i) Associated with performance under this award; or
 - (ii) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 *CFR part 1400*.

(c) *Provisions applicable to any recipient.*

- (1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
- (2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - (i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - (ii) Is in addition to all other remedies for noncompliance that are available to us under this award.
- (3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

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

- (1) “Employee” means either:
 - (i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - (ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

(2) “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of 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. CENTRAL CONTRACTOR REGISTRATION AND UNIVERSAL IDENTIFIER REQUIREMENTS (2 CFR 25, APPENDIX A)

The Central Contractor Registration (CCR) has been migrated to the System for Award Management (SAM). Recipients must continue to comply with the CCR requirements below by maintaining current registration within www.SAM.gov.

A. Requirement for Central Contractor Registration (CCR)

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

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

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

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

C. Definitions

For purposes of this award term:

1. *Central Contractor Registration (CCR)* means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).
2. *Data Universal Numbering System (DUNS) number* means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
3. *Entity*, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
 - a. A Governmental organization, which is a state, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. *Subaward*:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, *see* Sec. II.210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. *Subrecipient* means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

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

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

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.fsr.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>.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.
- c. *Reporting of Total Compensation of Subrecipient Executives.*
 - 1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(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 (and subawards); and

ii. 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 subrecipient executive total compensation described in paragraph c.1. of this award term:
- i. To the recipient.
 - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

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. RECIPIENT INTEGRITY AND PERFORMANCE MATTERS (APPENDIX XII to 2 CFR Part 200)

A. Reporting of Matters Related to Recipient Integrity and Performance

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.