

**MEMORANDUM****TO:** Board of Trustees**THROUGH:** Mike Bandelin, Interim General Manager**FROM:** Bobby Magee, Director of Finance**SUBJECT:** Approve and authorize the General Manager to Execute the State of Nevada Clean Water State Revolving Fund Loan Contracts CW2401 and CW2402 in the aggregate amount of \$36,740,000 to complete the financing of the Effluent Pipeline Project.**RELATED STRATEGIC PLAN BUDGET INITIATIVE(S):**

This action supports:

Long Range Principle #3 - Finance; "The District will ensure fiscal responsibility and sustainability of service capacities by maintaining effective financial policies for operating budgets, fund balances, capital improvement and debt management."

Long Range Principle #5 - Assets and Infrastructure; "The District will practice perpetual asset renewal, replacement and improvement to provide safe and superior long term utility services and recreation venues, facilities, and services."

**RELATED DISTRICT POLICIES, PRACTICES, RESOLUTIONS OR ORDINANCES:**

Board Policy 14.1.1 – Debt Management and Limits

**DATE:** December 13, 2023**I. RECOMMENDATION**

That the Board of Trustees make a motion to Authorize the General Manager to Execute State of Nevada Clean Water State Revolving Fund Loan Contracts CW2401 and CW2402 in the aggregate amount of \$36,740,000 to complete the financing of the Effluent Pipeline Project.

**II. BACKGROUND**

The District has been advancing a priority capital project to replace sections of the Effluent Pipeline. The current project cost estimate is in the range of \$62.5 million. Funding to support this project is anticipated to include utility funds collected over the past several years and debt financing and principal forgiveness loans through a State of Nevada Clean Water State Revolving Fund

("SRF") Loan.

The District initially applied for and received approval through the State of Nevada Department of Environmental Protection ("NDEP") for a Clean Water Program SRF Loan in the amount of \$52,740,000. NDEP's Clean Water SRF Loan program requires borrowers to secure the loan through issuance of private placement bonds, to be purchased by the State Treasurer, equal to the amount of the loan.

On December 14, 2022, the Board of Trustees approved Resolution No. 1897 (Item H.3) establishing the District's Intent to issue Utility Revenue Bonds and corresponding SRF loan contracts in one or more series, in the maximum principal amount of \$52,740,000.

While completing the District's SRF loan application, and in consultation with NDEP staff, the amount of the initial SRF loan was reduced to \$16.0 million. This reduction in the (initial) loan amount was made in recognition of efforts that had the potential for the District to receive Federal Grant funding in support of the project through the Army Corps of Engineers 595 Program. NDEP staff had recommended reducing the initial loan amount to avoid the potential de-obligation of loan funds.

On March 22, 2023, the Board of Trustees approved Resolution No. 1899 (Item G.2) authorizing the issuance by the Incline Village General Improvement District, Nevada, of its Sewer Bond, Series 2023A in the maximum aggregate principal amount of \$15,760,000 which corresponds to State of Nevada Clean Water State Revolving Fund Loan Contract CW2303 and Series 2023B (Principal Forgiveness) in the maximum aggregate principal amount of \$240,000 which corresponds to State of Nevada Clean Water State Revolving Fund Loan Contract CW2304. The 2023A and 2023B Bonds were issued by the District to the State Treasurer on April 11, 2023.

While the initial loan amount was reduced, the District has been assured that additional funding through the Clean Water SRF Program, up to the original approved amount of \$52,740,000, will remain available for the Effluent Pipeline Project. In addition, in a letter dated March 1, 2023, NDEP and the State Treasurer's Office formally committed to honoring the interest rate applied to the original loan (2.19%), to any additional loan that may be required through project completion. Moreover, should interest rates decrease over the project timeframe, the State will accept the lower market interest rate at the time of securing additional SRF funding. This commitment provides the District with maximum flexibility in terms of SRF loan funds that may be required through project completion and effectively eliminates any interest rate "risk" that arose because of reducing the initial loan amount to \$16.0 million. On December 1, 2023 NDEP reported to IVGID that the current calculated rate is 2.21%, and provided written confirmation that the State will honor the previous calculation of 2.19% pursuant to the existing agreement between NDEP and the State Treasurer's Office.

This item recommends the Board authorize the General Manager to execute two separate loan contracts between the District and the State Department of Water Conservation and Natural Resources, acting through NDEP.

The first loan contract (Contract No. CW2401), in the amount of \$368,300 represents the portion of the SRF loan that NDEP has determined qualifies for principal forgiveness and, as such, is not required to be repaid.

The second loan contract (Contract No. CW2402), in the amount of \$36,371,700 represents the portion of the SRF loan that will be repaid, over 30 years, pursuant to the provisions of the related Sewer Bond, Series 2024A, at an interest rate of 2.19%.

Loan funds are available to be accessed, on a reimbursement basis, throughout the project construction period, or 3 years, whichever comes first. Interest-only payments on the funds accessed through Contract CW2402 are due and payable twice per year (January and July), based on the amount of loan funds drawn by the District throughout the project construction period. Principal (and interest) payments on funds accessed through Contract CW2402 will commence at project completion, or 3 years, whichever comes first.

The interest rate on the \$36,371,700 loan (Contract CW2402) is 2.19% and has been set based at 54% of the "Bond Buyer 20 General Obligation Bond Index" (BB20 Index), plus an adjustment factor based on the AAA Municipal Market Data (MMD) scale as of December 1, 2023, to account for the 30-year term of the loan.

### **III. BID RESULTS**

Not Applicable

### **IV. FINANCIAL IMPACT AND BUDGET**

The two loan contracts result in a combined \$36,740,000 in State of Nevada Clean Water Program SRF Loan funds intended to serve as a component of the financing plan for the District's Effluent Pipeline, of which \$368,300 is principal forgiveness.

Of the total loan amounts, up to \$36,371,700 is to be repaid over 30 years (from project completion), at a fixed interest rate of 2.19%. If the entire amount of the loan is accessed by the District, annual debt service payments of approximately \$1,660,054.16 (assuming a 2.19% interest rate) would be required to pay off the loan. The actual debt service payments will depend on the final interest rate and the timing and amount of loan funds accessed throughout the project construction period.

The State's SRF Loan program assesses a loan origination fee of 0.5%, or \$181,858.50, to be paid within 30 days after the loan closing. This fee is included as a financing cost in the overall project budget and will be paid with existing

funds of the District.

**V. ALTERNATIVES**

The Board could choose not to proceed with executing the SRF loan contracts. This alternative could jeopardize the District's ability to complete the Effluent Pipeline project and/or severely impact the project schedule.

**VI. COMMENTS**

The SRF Loans recommended for approval as part of this agenda item are available to the District on a reimbursement basis and, as such, resulting debt service payments will apply only to loan funds accessed by the District.

The SRF program provides subsidized loans at significantly reduced interest rates, in comparison to rates available in the municipal bond market.

**VII. BUSINESS IMPACT/BENEFIT**

**VIII. ATTACHMENTS**

1. Loan Contract CW2401
2. Loan Contract CW2402

**IX. DECISION POINTS NEEDED FROM THE BOARD OF TRUSTEES**

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**STATE OF NEVADA**  
**CLEAN WATER STATE REVOLVING LOAN FUND**  
**LOAN CONTRACT**  
**CONTRACT NO. CW2401**

This loan contract is made this 4<sup>th</sup> day of January 2024 between the Nevada State Department of Conservation & Natural Resources acting by and through the Nevada Division of Environmental Protection hereafter referred to as the Division, and Incline Village General Improvement District, a political subdivision of the State of Nevada, hereafter referred to as the Recipient. This loan contract is to provide funding for the project as outlined in Section 1.

**WHEREAS:**

1. The Federal Clean Water Act (33 U.S.C. Sub Section 1251 et seq. as amended) and State Law (NRS 445A.060-445A.160) authorize the Division to enter into contracts with municipalities and other public agencies for financial assistance for construction of publicly owned treatment works and pollution control projects; and
2. The account to finance the construction of treatment works and the implementation of pollution control projects has been created in the state treasury pursuant to NRS 445A.120 for the purposes of providing loans to finance the construction of treatment works and pollution control projects;
3. The Recipient is a municipality or interstate agency eligible for funding from the account;
4. The Recipient has made application for a loan related to construction of the Project hereafter described, and said Project has been determined by the Division to be eligible for a loan pursuant to applicable Federal and State laws, rules, regulations and guidance;
5. The Division has authorized loan funding for the Project hereafter described; and

1 6. Any federal Funds used for funding of this loan will be provided through the Capitalization Grants for  
2 the Clean Water State Revolving Funds CFDA #66.458 through the United States Environmental  
3 Protection Agency.

4  
5 **NOW, THEREFORE,** It is agreed as Follows:

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7 **SECTION 1. PROJECT DESCRIPTION**

8 In general, funding for this Project will be used for this Project will be used for replacing segment two of  
9 the effluent export pipeline and appurtenances along State Route 28. Specific details of the Project may be  
10 found in the application and supporting documents.

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12 **SECTION 2. INCORPORATION OF DOCUMENTS AND GENERAL RECIPIENT COMMIT-**  
13 **MENTS**

14 This contract incorporates the following documents:

- 15 (A) Exhibit A, Loan Contract Standard Conditions, and
- 16 (B) Exhibit B, Listing of Cross Cutting Federal Authorities for Assistance Sub Grants, and
- 17 (C) Exhibit C, Lobbying Certification Form, and
- 18 (D) Exhibit D, Davis-Bacon Wage Rate Requirements, and
- 19 (E) Exhibit E, American Iron and Steel Requirements, and
- 20 (F) Exhibit F, Disadvantaged Business Enterprise Guidance, and
- 21 (G) Exhibit G, Environmental Protection Agency (EPA) Grant Requirements, and

22 The Recipient accepts and agrees to comply with all terms, provisions, conditions, and commitments of this  
23 contract, including all incorporated documents, and to fulfill all assurances, declarations, representations,  
24 and commitments made by the Recipient in its application, accompanying documents, and communications  
25 filed in support of its request for loan.

1 **SECTION 3. ESTIMATED COST OF PROJECT**

2 The estimated total cost of the Project, including associated planning and design costs is **sixty-two million,**  
3 **eighty thousand, four hundred and fifty-three dollars, (\$62,080,453.00).**

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5 **SECTION 4. MAXIMUM LOAN AMOUNT**

6 Subject to all of the terms, provisions, and conditions of this contract, and subject to the availability of State  
7 and Federal funds, the Division will loan a sum not to exceed **three hundred sixty-eight thousand three**  
8 **hundred dollars (\$368,300)** to the Recipient.

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10 **SECTION 5. INTEREST RATE**

11 The annual percentage interest rate for this loan is 0.00%.

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13 **SECTION 6. REPAYMENT OF LOAN**

14 The Division has determined that the Recipient is eligible to receive additional subsidy as spelled out in  
15 Nevada's Intended Use Plan. Since the recipient is eligible for additional subsidy, 100% of the principal is  
16 forgiven.

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18 **SECTION 7. FEES**

- 19 1. The Division may charge a loan origination fee in an amount authorized by NAC 445A.775.  
20 2. The loan recipient shall remit to the Division the full amount of the loan origination fee within 30 days  
21 after the loan closing.  
22 3. This loan contract does not contain a loan origination fee.

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1 **SECTION 8. FISCAL SUSTAINABILITY PLAN**

2 The Recipient will maintain a fiscal sustainability plan that outlines the system’s assets, identifies the  
3 critical assets of the system, determines condition of the assets, and plans for future replacement.

- 4 1. The plan must evaluate the level of service required of the system, and
- 5 2. The plan must address ongoing maintenance of system assets to ensure its maximum useful life,  
6 and
- 7 3. The plan must be reviewed and updated by the Recipient at least once every five years, and
- 8 4. The Recipient may maintain a fiscal sustainability plan in logical sections of the system rather than  
9 the entire system upon approval of the Division, and
- 10 5. The plan is subject to periodic review by the Division.

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12 **SECTION 9. MAINTAIN A CAPITAL ASSET REPLACEMENT RESERVE ACCOUNT**

13 The Recipient agrees to maintain a dedicated capital asset replacement reserve account.

- 14 1. Funds within this account can be used to purchase any capital asset of the water utility.
- 15 2. Funds within this account cannot be used for operations, maintenance, debt service, or other non-  
16 capital expenditures.
- 17 3. The Recipient agrees to fund the account at least annually based upon the needed replacement cost  
18 of the system’s short-lived assets (15 years or less) amortized on a straight-line basis. The  
19 replacement cost of the system’s short-lived assets must be re-evaluated at least every five (5) years.
- 20 4. The reserve account must be identifiable on the Recipient’s financial statements provided to the  
21 Division.
- 22 5. The Division may consider other funding available for capital assets to meet this condition.

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24 **SECTION 10. USEFUL LIFE OF PROJECT**

25 For purposes of this contract, the parties agree that the useful life of the Project is at least thirty (30) years  
26 from and after Project completion.



1 **SECTION 11. TERM**

2 This contract shall take effect upon execution of the contract by the Division and the Recipient, and for the  
3 purpose of this section, the term of this contract is for no more than thirty (30) years from the date of this  
4 loan contract.

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6 **SECTION 12. NOTICES**

7 All notices or other communications hereunder shall be sufficiently given and shall be deemed given when:  
8 (a) hand delivered; (b) mailed by registered or certified United States mail, postage; or (c) via email to the  
9 parties hereinafter set forth at the following addresses:

10

11 1. Nevada Division of Environmental Protection

12 Office of Financial Assistance

13 901 S. Stewart St., Ste 4001

14 Carson City, NV 89701-5249

15 [ndep-ofa@ndep.nv.gov](mailto:ndep-ofa@ndep.nv.gov)

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17 2. Incline Village General Improvement District

18 1220 Sweetwater Rd.

19 Incline Village, NV 89451-9214

20 [ksn@ivgid.org](mailto:ksn@ivgid.org)

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1 **IN WITNESS THEREOF**, the parties have executed this contract on the dates set forth below.

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3 **RECIPIENT: INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT**

4 \_\_\_\_\_ Date: \_\_\_\_\_

5 Mike Bandelin, Interim General Manager, Incline Village General Improvement District

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7 **DIVISION OF ENVIRONMENTAL PROTECTION**

8 \_\_\_\_\_ Date: \_\_\_\_\_

9 Jennifer Carr, Administrator

EXHIBIT A  
CWSRF STANDARD LOAN CONDITIONS

**Condition 1. AWARD OF CONSTRUCTION CONTRACTS; NOTIFICATION OF AWARD AND INITIATION OF CONSTRUCTION**

- 1.1 The Recipient shall conduct value engineering if the total estimated cost of building the treatment works is more than \$10,000,000 (NAC 445A.782).
- 1.2 The Division may, upon the request of a recipient, grant an extension of the time provided by subsection 1 in any case where unusual or extenuating circumstances exist. Any request for an extension must be made in writing and must set forth facts justifying the extension.
- 1.3 The Recipient agrees to promptly notify the Division in writing both of the award of the prime construction contract for the project and of initiation of construction of the project.
- 1.4 The Recipient shall require the contractor to submit a schedule for construction at the preconstruction conference. The contractor shall be required to update the schedule as necessary.
- 1.5 The Recipient agrees to expeditiously proceed with and complete construction of the project in substantial accordance with project plans and specifications approved by the Division.

**Condition 2. CONSTRUCTION ACTIVITIES AND NOTIFICATIONS**

If the loan is awarded for construction of collection lines, the Recipient shall require mandatory connection to the system. This shall be accomplished by including a requirement for mandatory connections in the sewer use ordinance.

The Recipient agrees to promptly notify the Division in writing of:

- 2.1 Any substantial change in scope of the project. The Recipient agrees that no substantial change in the scope of the project will be undertaken until written notice of the proposed change has been provided to the Division and the Division has given written approval for such change.
- 2.2 Cessation of all major construction work on the project where such cessation of work is expected to or does extend for a period of 30 days or more.
- 2.3 Any circumstance, combination of circumstances, or condition, which is expected to or does delay completion of construction for a period of 90 days or more beyond the estimated date of completion of construction previously provided to the Division.
- 2.4 Completion of construction of the project.

After completion of the project the Recipient shall provide the Division with as-built record drawings for the project.

**Condition 3. RESIDENT ENGINEER & INSPECTOR**

The Recipient is required to hire a qualified full time resident engineer and inspector(s) during the construction of the project unless waived by the Division.

**Condition 4. PROJECT ACCESS & STATE REVIEWS**

- 4.1 The Recipient agrees to ensure that the Division or any authorized representative thereof will have suitable access to the project site and project documents at reasonable times during project construction.
- 4.2 The parties agree that review or approval of project plans and specifications by the Division is for administrative purposes only and does not relieve the Recipient of the responsibility to properly plan, design, construct, operate and maintain the Project.

**EXHIBIT A**  
**CWSRF STANDARD LOAN CONDITIONS**

**Condition 5. INDEMNIFICATION**

- 5.1** As between the Division and the Recipient, the Recipient agrees that it has sole responsibility for proper planning, design, construction, operation and maintenance of the Project, and the Recipient agrees to indemnify the Division, the state of Nevada and their officer, agents and employees against and to hold the same free and harmless from any and all claims, demands, damages, losses costs, expenses or liability due or incident to planning, design, construction, operation or maintenance of the Project.
- 5.2** The parties will not waive and intend to assert available NRS 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Actual damages for any State breach shall never exceed the amount of funds, which have been appropriated for payment under this contract, but not yet paid, for the fiscal year budget in existence at the time of the breach.
- 5.3** To the fullest extent of limited liability as set forth above, each party shall indemnify, hold harmless, and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to, reasonable attorneys' fees and costs arising out of any alleged negligent or willful acts or omissions of the party, its officers, employees, and agents. Such obligation shall not be constructed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist to any party or person described in this paragraph.
- 5.4** The indemnification obligation under this paragraph is conditioned upon receipt of written notice by the indemnifying party within 30 days of the indemnified party's actual notice of any actual or pending claim or cause of action. The indemnifying party shall not be liable to hold harmless any attorneys' fees and costs for the indemnified party's chosen right to participate with legal counsel.

**Condition 6. PROJECT COMPLETION; INITIATION OF OPERATIONS & OPERATION AND MAINTENANCE**

- 6.1** At the time of completion of construction, the Division, after consultation with the Recipient, will establish a reasonable estimated project completion date, and the Recipient agrees to make all reasonable efforts to meet the date so established. Such date shall be binding upon the Recipient unless modified in writing by the Division upon a showing of good cause by the Recipient. Extension of the project completion date by the Division shall not be unreasonably withheld.
- 6.2** Upon completion of construction of the Project, the Recipient agrees to expeditiously initiate project operations. The Recipient agrees to properly staff, operate and maintain all portions of the Project during its useful life in accordance with all applicable state laws, rules and regulations. Upon reasonable notice, the Recipient shall make available to the Division the operation and maintenance manuals for the Project.

**Condition 7. DEDICATED SOURCE OF REVENUE & SYSTEM USER CHARGES**

- 7.1** The Recipient shall adopt and maintain in effect during the term of this contract a user charge system or other dedicated source of revenue such as connection fees, which at all times complies with the requirements of applicable state rules, regulations and guidelines.

**EXHIBIT A**  
**CWSRF STANDARD LOAN CONDITIONS**

- 7.2 The Recipient agrees to administer a system of user charges acceptable to the Division pursuant to NAC 445A.788- 445A.790.
- 7.3 The Recipient further agrees to periodically review and modify the system of user charges as necessary to assure its reasonable adequacy to repay the loan, and to cover operating costs and meet other financial obligations of the Recipient. The system of user charges shall be reviewed at least once every three years and all modifications thereto shall be consistent with NAC 445A.788 and shall be maintained to the reasonable satisfaction of the Division.

**Condition 8. CONTINUOUS USE OF PROJECT**

The Recipient agrees that it will not abandon, substantially discontinue use of, or dispose of the project during the useful life of the project without prior written approval of the Division. If the Recipient does abandon, substantially discontinue use, of, or dispose of the Project during the useful life of the Project without prior approval of the Division, the Recipient shall repay the account for the revolving fund all remaining principal advanced hereunder due in accordance with the terms of this contract.

**Condition 9. REPORTS, RECORDS & ACCOUNTING STANDARDS**

- 9.1 The Recipient agrees to expeditiously provide, during construction of the project and thereafter during the useful life of the project, such reports, data, and information as may be reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation by the State Revolving Fund Loan Program or to fulfill any reporting requirements of the federal government. At a minimum, such reports reasonably required by the Division shall include the submission of annual financial statements, prepared on a basis utilizing “Generally Accepted Accounting Principles (GAAP).

Without limitation of the requirement to maintain project accounts in accordance with generally accepted government accounting standards, the Recipient agrees to:

- 9.2 Maintain separate Project accounts in accordance with generally accepted government accounting standards including, but not limited to, standards relating to the reporting of infrastructure assets and those contained in the Standards for Audit of Governmental Organizations, Programs, Activities and Functions, promulgated by the U.S. General Accounting Office.
- 9.3 Comply with requirements described in to 2 CFR §200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements which apply to expenditures by a public or non-profit entity of federal monies from all sources in an amount greater than or equal to \$750,000 in a year.
- 9.4 Establish an official file for the project which shall adequately document all significant actions relative to the project;
- 9.5 Establish accounts which will adequately and accurately depict all amounts received and expended on the project, including all loan funds received under this contract;
- 9.6 Establish accounts which will adequately depict all income received which is attributable to the project, specifically including any income attributable to loan funds disbursed under this contract.
- 9.7 Establish an accounting system which will accurately depict final total costs of the project, including both direct and indirect costs.

**EXHIBIT A**  
**CWSRF STANDARD LOAN CONDITIONS**

- 9.8** Maintain records and accounting activities of the wastewater utility separately from other activities of the Recipient.
- 9.9** If a force account is used by the Recipient for any phase of the Project, other than for planning, design and construction engineering and administration provided for by allowance, accounts will be established which reasonable document all employee hours charged to the project and the associated tasks performed by each employee.
- 9.10** Retain project records for a minimum of three (3) years after final loan repayment has been made, and for such longer period as may be required for the Division to fulfill federal reporting requirements under federal statutes and regulations. All Recipient records relative to the project shall be subject at all reasonable times to inspection, copying, and audit by the Division or any authorized representative.

**Condition 10. FINANCIAL INFORMATION AUDIT**

The Division, at its option, may call for an audit of financial information relative to the project, where the Division determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of federal requirements. Where such an audit is called for, the audit shall be performed by a Certified Public Accountant independent of the Recipient and at the cost of the Recipient. The audit shall be in the form required by the Division.

**Condition 11. LOAN DISBURSEMENT; AVAILABILITY OF FUNDS**

- 11.1** The Recipient agrees to draw funds available in section 4 within three (3) years from the date of this contract. Funds will be subject to de-obligation and/or review after this time period by the Division.

Except as may be otherwise provided in this contract, loan amounts will be disbursed as follows:

- 11.2** Loan funds will be promptly disbursed to the Recipient for project costs incurred by the Recipient upon receipt by the Division of proper and acceptable Payment Request Forms from the Recipient.
- 11.3** Additional loan funds will be promptly disbursed to the Recipient for project costs incurred by the Recipient upon receipt of proper and acceptable payment requests from the Recipient provided that payment shall not be made more frequently than once a month.
- 11.4** The Recipient agrees that it will not request payment for any project cost until such cost has been incurred and is due and payable, although it is agreed that actual payment of such cost by the Recipient is not required as a condition of payment request. The Recipient agrees to provide a certification with each payment request that costs shown in the payment request have been incurred and is due and payable at the time of the request.
- 11.5** Each disbursement of loan funds other than for the planning and design allowance will be accompanied by an appropriate prorate percentage of the allowance for construction engineering and inspection services for the project.
- 11.6** The Division's obligation to pay any sum to the Recipient under any provisions of this contract, is contingent upon the availability of sufficient funds to permit the payments provided for herein. In the event that sufficient funds, as determined by the Division, do not become available for any reason, the Division shall not be obligated to make any payments to the Recipient under this contract. This provision shall be construed as a condition precedent to the obligation of the Division to make any payments under this contract. Nothing in this contract shall be construed to provide the Recipient with

EXHIBIT A  
CWSRF STANDARD LOAN CONDITIONS

a right of priority for payment over any other agency. If any payments which are otherwise due to the Recipient under this contract are deferred because of unavailability of sufficient funds, such payments will promptly be made to the Recipient when sufficient funds do become available.

- 11.7 Any federal funds used for funding of this loan will be provided through the Capitalization Grants for Clean Water State Revolving Funds CFDA #66.458.

Condition 12. **COMPLIANCE WITH OTHER FEDERAL STATUTES AND AUTHORITIES**

- 12.1 A number of other federal laws and authorities will be applied to activities supported with SRF funds directly made available by capitalization grants. Exhibit B contains a current list of these other laws and authorities. The Recipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, regulations, and requirements.
- 12.2 The Recipient recognizes as goals the applicable Minority Business Enterprise (MBE)/Women Business Enterprise (WBE) “fair share” goals negotiated with EPA by the Division for construction, supplies, equipment and services as follows:
- |              |        |        |
|--------------|--------|--------|
| Construction | MBE 2% | WBE 2% |
| Equipment    | MBE 1% | WBE 1% |
| Services     | MBE 1% | WBE 2% |
| Supplies     | MBE 1% | WBE 1% |
- 12.3 The Davis-Bacon Act wage rules apply to the project funded by this loan contract as specified in Exhibit D.
- 12.4 The American Iron and Steel requirements apply for the entirety of the construction activities through completion of construction as specified in Exhibit E.
- 12.5 The Build America, Buy America (BABA) Act requirements apply to the project funded by this loan contract. Unless a waiver is granted by the United States Environmental Protection Agency, all funds made available under this contract must only be used to procure iron, steel, manufactured products, and construction materials that are produced in the United States.
- 12.6 As required by [2 CFR 200.216](#), federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- 12.7 Prohibitions extend to the use of Federal funds by recipients and subrecipients to enter into a contract with an entity that “uses any equipment, system, or service that uses covered telecommunications equipment or services” as a substantial or essential component of any system, or as critical technology as part of any system. Certain equipment, systems, or services, including equipment, systems, or services produced or provided by entities subject to the prohibition are recorded in the [System for Award Management](#) exclusion list.

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CWSRF STANDARD LOAN CONDITIONS

Condition 13. **REPAYMENT; PENALTIES; RECIPIENT OBLIGATIONS**

- 13.1** The loan amount, together with all interest accruing thereon, shall be repaid as provided for in the loan contract.
- 13.2** The Recipient agrees to make each loan payment on or before the due date. A ten-day grace period will be allowed. A penalty in the amount of one-tenth of one percent (0.1%) of the defaulted payment will be due for each day of nonpayment beyond the grace period. Any penalties assessed will not be added to the loan balance but will be treated as a separate account and obligation of the Recipient, to be paid in full within 30 days after Recipient is in compliance with payment schedule.
- 13.3** The Recipient, as a whole, is obligated to make all payments required by this contract to the Division, notwithstanding any individual default by its constituents or others in the payment to the Recipient of taxes, assessments, fees, or other charges levied by the Recipient. The Recipient shall provide for the punctual payment to the Division of all amounts which become due under this contract and which are received from constituents or others in the payment to the Recipient of taxes, assessments, fees, or other charges levied by the Recipient. In the event of failure, neglect or refusal of any officer of the Recipient to levy or cause to be levied any taxes, assessments, fees or charges necessary to provide payment by the Recipient under this contract, to enforce or to collect such taxes, assessments, fees or charges or to pay over to the Division any money collected on the taxes, assessments, fees or charges necessary to satisfy any amount due under this contract, the Division may take such action in a court of competent jurisdiction as it deems necessary to compel the performance of all duties relating to the levying and collection of the taxes, assessments, fees or charges and the payment of the money collected therefrom to the Division.
- 13.4** Action taken pursuant hereto shall not deprive the Division of, or limit the application of, any other remedy provided by law or by this contract.

Condition 14. **TERMINATION; IMMEDIATE REPAYMENT; INTEREST**

- 14.1** This contract may be terminated by written notice during construction of the project, or thereafter at any time prior to complete repayment by the Recipient, at the option of the Division, upon violation by the Recipient of any material provision of this loan contract after such violation has been called to the attention of the Recipient and after failure of the Recipient to bring itself into compliance with the provisions of this contract within a reasonable time as established by the Division.
- 14.2** In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the Division an amount equal to the current balance due on the loan, including accrued interest, and all penalty assessments due in accordance with the terms of this contract.

Condition 15. **DEFAULTS & REMEDIES**

- 15.1 NOTICE OF DEFAULT.** If an Event of Default shall occur, the non-defaulting party shall give the party in default prompt telephonic notice of the occurrence of such Event of Default, provided the non-defaulting party has knowledge of such Event of Default. Such telephonic notice shall be immediately followed by written notice of such event of Default given in the manner set forth in the contract.



EXHIBIT A  
CWSRF STANDARD LOAN CONDITIONS

- 15.2 EVENTS OF DEFAULT.** The occurrence of one or more of the following events constitutes an Event of Default, whether occurring voluntarily or involuntarily, by operation of law or pursuant to any order of any court or governmental agency.
- i. Failure by the Recipient to pay, or cause to be paid, any Loan Repayment required to be paid hereunder when due;
  - ii. Failure by the Recipient to observe and perform any duty, covenant, obligation, or agreement on its part to be observed or performed under this Loan Agreement, which failure shall continue for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the Recipient by NDEP;
  - iii. Any representation made by or on behalf of the Recipient contained in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan, is intentionally false or misleading in any material respect.
- 15.3 REMEDIES,** If NDEP determines that an Event of Default has occurred, NDEP may, without further notice:
- i. Declare the outstanding loan amount plus any unpaid accrued interest, fees, and other amounts due hereunder due and payable;
  - ii. Cease making disbursement of Loan proceeds or make some disbursements of Loan proceeds and withhold or refuse to make other disbursements;
  - iii. Pursue any other legal or equitable remedy it may have.

**Condition 16. DISPOSITION OF EQUIPMENT**

In accordance with 41 CFR 105-71.132, when original or replacement equipment used to construct the facilities acquired under this contract is no longer needed for the original project, disposition of the equipment will be made as follows:

- 16.1** Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold, or otherwise disposed of with no further obligation to the Division.
- 16.2** Items of equipment with a current per unit fair market value of \$5,000 or greater may be retained or sold and the State shall have a right to an amount calculated by multiplying the current market value or proceed from sale by the Division's share of the equipment. In cases where the Recipient fails to take the appropriate actions, the Division may direct the Recipient to take excess and disposition actions.

**Condition 17. DISPUTES**

Any dispute arising under this contract which is not otherwise disposed of shall be decided by the Administrator of the Division of Environmental Protection. The decision shall be reduced to writing and a copy thereof furnished to the Recipient. The decision of the Administrator shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Administrator's decision to the Recipient, the Recipient mails or otherwise furnishes a written appeal of the decision to the Director of the Department of Conservation and Natural Resources. The decision of the Director shall be final and conclusive unless overturned by a court of competent jurisdiction. In connection with any appeal under this clause, the Recipient shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Recipient shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this loan contract.

**EXHIBIT A**  
**CWSRF STANDARD LOAN CONDITIONS**

**Condition 18. FORCE MAJURE**

Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligation hereunder due to unforeseeable events including: strikes, failure of public transportation, civil or military authority, acts of public enemy, accidents, fires, explosions, earthquakes, flood, or unusual atmospheric events. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of this Contract after the intervening cause ceases.

**Condition 19. WAIVER**

The parties hereto may, from time to time, waive any rights under this contract unless such waiver is contrary to law, provided that any such waiver must be in writing and must be signed by the party making such waiver.

**Condition 20. AMENDMENT**

This contract may be amended at any time by mutual written agreement of the parties.

EXHIBIT B  
**Cross-Cutting Federal Authorities**

Cross-cutting federal authorities are the requirements of other federal laws and Executive Orders that apply in the case of federally funded projects. The cross-cutters include (but are not limited to): environmental laws such as the Endangered Species Act, the National Historic Preservation Act, executive orders on the protection of wetlands and flood plains, social policy authorities such as executive orders on equal employment opportunity in federally assisted programs, and economic authorities such as rules implementing executive orders on the debarment and suspension of persons who have engaged in misconduct. In the State Revolving Fund programs, compliance with federal cross-cutting authorities is required by all recipients of these federal funds. A list of the possible applicable cross-cutters follows.

Environmental Authorities

- o Archaeological and Historic Preservation Act, Pub. L. 93-291, as amended
- o Protection and Enhancement of the Cultural Environment
- o Clean Air Act, Pub. L. 95-95, as amended
- o Coastal Barrier Resources Act, Pub. L. 97-348
- o Coastal Zone Management Act, Pub. L. 92-583, as amended
- o Endangered Species Act, Pub. L. 93-205, as amended
- o Environmental Justice, Executive Order 12898
- o Flood Plain Management, Executive Order 11988 as amended by Executive Order 12148
- o Protection of Wetlands, Executive Order 11990 as amended by Executive Order 12608
- o Farmland Protection Policy Act, Pub. L. 97-98
- o Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- o Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265
- o National Environmental Policy Act, Pub. L. 91-190
- o National Historic Preservation Act, Pub. L. 89-655, as amended
- o Safe Drinking Water Act, Pub. L. 93-523, as amended
- o Wild and Scenic Rivers Act, Pub. L. 90-54 as amended

Economic and Miscellaneous Authorities

- o Debarment and Suspension, Executive Order 12549
- o Demonstration Cities and Metropolitan Development Act, Pub. L. 89-754, as amended, and Executive Order 12372
- o Drug-Free Workplace Act, Pub. L. 100-690
- o New Restrictions on Lobbying, Section 319 of Pub. L. 101-121
- o Prohibitions relating to violations of the Clean Water Act or Clean Air Act with respect to Federal contracts, grants, or loans under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, and Executive Order 11738
- o Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended

Civil Rights, Nondiscrimination, Equal Employment Opportunity Authorities

- o Older Americans Act, Pub. L. 94-135
- o Equal Employment Opportunity, Executive Order 11246
- o Section 13 of the Clean Water Act, Pub. L. 92-500
- o Section 504 of the Rehabilitation Act, Pub. L. 93-112
- o Title VI of the Civil Rights Act, Pub. L. 88-352

EXHIBIT B  
**Cross-Cutting Federal Authorities**

Disadvantaged Business Enterprise Authorities

- o Small, Minority, and Women-owned Business Enterprises, Executive Orders No.11625, 12138, and 12432
- o Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988 Pub. L. No. 100-590
- o 40 CFR Part 33 Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements



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EPA Project Control Number

**CERTIFICATION REGARDING LOBBYING**

**CERTIFICATION FOR CONTRACTS, GRANTS,  
LOANS AND COOPERATIVE AGREEMENTS**

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Typed Name & Title of Authorized Representative

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Signature and Date of Authorized Representative

## EXHIBIT D

### Preamble

With respect to the Clean Water State Revolving Funds and Safe Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides sub grants or loans to eligible entities within the State. Typically, the sub recipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring sub recipients' compliance with the wage rate requirements set forth herein, those sub recipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I-5.

Occasionally, the sub recipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring sub recipients' compliance with the wage rate requirements set forth herein, those sub recipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

### **I. Requirements Under The Consolidated Appropriations Act For Sub recipients That Are Governmental Entities:**

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance - with respect to State recipients and sub recipients that are governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact Elizabeth Borowiec, [borowiec.elizabeth@epa.gov](mailto:borowiec.elizabeth@epa.gov), 415-972-3419, of EPA Region 9, for guidance. The recipient or sub recipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

#### **1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.**

DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by Clean Water State Revolving Funds and Safe Drinking Water State Revolving Funds. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

#### **2. Obtaining Wage Determinations.**

(a) Sub recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) weekly to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the

## EXHIBIT D

closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.

- (ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the sub recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub recipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.

(c) Sub recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### **3. Contract and Subcontract provisions.**

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or Consolidated Appropriations Act, 2017, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

## EXHIBIT D

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis- Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub recipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The sub recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall



## EXHIBIT D

be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable Standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of

## EXHIBIT D

apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/whd/forms/wh347instr.htm> or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

## EXHIBIT D

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

### (4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or sub contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the

## EXHIBIT D

trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and sub recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The sub recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub recipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen,

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working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

### 5. Compliance Verification

(a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB.

Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The sub recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the sub recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The sub recipient shall periodically review contractors and subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.

### **II. Requirements Under The Consolidated Appropriations Act, 2017 (P.L. 115-31) For Sub recipients That Are Not Governmental Entities:**

The following terms and conditions specify how recipients will assist EPA in meeting its DB

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responsibilities when DB applies to EPA awards of financial assistance under –FY 2017 Consolidated Appropriations Act with respect to sub recipients that are not governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a State recipient needs guidance, the recipient may contact Elizabeth Borowiec, [borowiec.elizabeth@epa.gov](mailto:borowiec.elizabeth@epa.gov), 415-972-3419, EPA Grants Management Office for guidance. The recipient or sub recipient may also obtain additional guidance from DOL’s web site at <http://www.dol.gov/whd/>

**Under these terms and conditions, the sub recipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.**

### **1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.**

Under the FY 2017 Consolidated Appropriations Act -, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a Clean Water State Revolving Funds and Safe Drinking Water State Revolving Funds,-. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

### **2. Obtaining Wage Determinations.**

(a) Sub recipients must obtain proposed wage determinations for specific localities at [www.wdol.gov](http://www.wdol.gov). After the Sub recipient obtains its proposed wage determination, it must submit the wage determination to Elizabeth Borowiec, [borowiec.elizabeth@epa.gov](mailto:borowiec.elizabeth@epa.gov), 415-972-3419, EPA Region 9, for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official.)

(b) Sub recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.
- (ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does

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not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the sub recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub recipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.

(d) Sub recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### 3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2017 Consolidated Appropriations Act -, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) ), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work



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actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis- Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub recipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The sub recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified

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week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period (1) contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR

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5.12.

### (4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee

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performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Sub recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The sub recipient shall insert the following clauses

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set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub recipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## EXHIBIT D

### 5. Compliance Verification

(a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c). The sub recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the sub recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . In addition, during the examinations the sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The sub recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.

EXHIBIT E

Use of American Iron and Steel (AIS requirement)  
H.R. 3547, Division G, Title IV

Sec. 436. (a)(1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works **unless all of the iron and steel products used in the project are produced in the United States.**

(a) **Definitions.** As used in this award term and condition—

- (1) “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
- (2) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) **Domestic preference.**

- (1) This award term and condition implements P.L. 114-133, Consolidated Appropriations Act, 2016, Section 424, by requiring that all iron and steel products used for a project for the construction, alteration, maintenance or repair of a public water system are produced in the United States except as provided in paragraph (b)(2) of this section and condition.
- (2) This requirement shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency finds that:—
  - (i) applying the requirement would be inconsistent with the public interest;
  - (ii) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
  - (iii) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) **Request for a Waiver under (b)(3) of this section**

- (1) Any recipient request to use foreign iron or steel products in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—
  - (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
  - (B) Unit of measure;
  - (C) Quantity;
  - (D) Cost;
  - (E) Time of delivery or availability;
  - (F) Location of the project;
  - (G) Name and address of the proposed supplier; and
  - (H) A detailed justification of the reason for use of foreign iron or steel products cited in accordance with paragraph (b)(3) of this section.
- (2) If the Administrator receives a request for a waiver under this section, the waiver request shall be made available to the public for at least 15 days prior to making a finding based on the request.
- (3) Unless the Administrator issues a waiver of this term, use of foreign iron and steel products is noncompliant with the Consolidated Appropriations Act, 2016 (P.L. 114-133).

(d) This term and condition shall be applied in a manner consistent with United States obligations under international agreements.



## EXHIBIT E

If you require further clarification or guidelines, please contact Krista Butler at (775) 687-9423 or [kwahnefried@ndep.nv.gov](mailto:kwahnefried@ndep.nv.gov).

# **State Revolving Fund**

## **Disadvantaged Business Enterprise Program**

### **Guidance to Borrowers & Contractors**

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5700-52A Part II

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– DBE Subcontractor Participation

## State Revolving Fund

### Disadvantaged Business Enterprise Program

#### **Section 1: Overview**

As stipulated by the Environmental Protection Agency (EPA), Nevada State Revolving Fund (SRF) borrowers and their contractors are required to make good faith efforts to utilize businesses classified as Disadvantaged Business Enterprises (DBEs) for goods and services associated with SRF financed projects. A borrower and their contractors should utilize DBEs through prime contracting, subcontracting, joint-ventures, other business relationships, and through the procurement of supplies, materials, and equipment.

#### **Section 2: Definition of Disadvantaged Business Enterprise (DBE)**

A DBE is a business owned and/or controlled by socially and economically disadvantaged individuals including Minority and Women Business Enterprises.

**Minority Business Enterprise (MBE)** – A business which is at least 51% owned and/or controlled by one or more U.S. citizens who are Black, Hispanic, Portuguese, Asian American, American Indian, or groups found to be economically and socially disadvantaged by the U.S. Small Business Administration pursuant to Section 8(a) of the Federal Small Business Act.

**Women Business Enterprise (WBE)** – A business which is at least 51% owned and/or controlled by one or more U.S. citizens who are women.

#### **Section 3: Disadvantage Business Enterprise (DBE) requirements and contract conditions**

The following pages include conditions which must be included in all bidding and contract documents for SRF financed projects including:

- DBE related laws, rules, and regulations
- Equal Employment
- DBE Participation Goals
- Good Faith Effort for DBE Participation
- DBE Contract Terms and Conditions

## Nevada State Revolving Fund Disadvantaged Business Enterprise (DBE) and Contract Conditions

The DBE Solicitation and Contract Conditions must be physically included in all bidding and contract documents for SRF financed projects.

### **DBE Related Laws, Rules, and Regulations**

This project is being financed in whole or in part by the Nevada State Revolving Fund (SRF). The borrower is required to comply with the following laws, rules and regulations and must ensure that their contractor(s) also comply with these laws, rules, and regulations.

1. Ensures access to facilities or programs regardless of race, color, national origin, sex, age or handicap: Title VI of the Civil Rights Act of 1964 (P.L. 88-352, Section 504 of the Rehabilitation Act, P.L. 93-112 (87 Stat. 355, 29 U.S.C. Sec. 794), Older Americans Act (P.L. 94-135, 89 Stat. 713, 89 Stat. 728 Sec. 303, 42 U.S.C. 6102).
2. Encourages recipients of federal funds to award construction, supply and professional service contracts to minority and women's business enterprises (MBE/WBE) and small businesses and requires recipients to utilize affirmative steps in procurement: Executive Orders 11625, 12138 and 12432; Section 129 of P. L. 100-590 Small Businesses Reauthorization & Amendment Act of 1988; Public Law 102-389 (42 U.S.C. 4370d); a 1993 appropriations act ("EPA's 8% statute"); Title X of the Clean Air Acts Amendments of 1990 (42 U.S.C. 7601 note) ("EPA's 10% statute").
3. Prohibits entering into contracts or sub-contracts with individuals or businesses who are debarred or suspended: Executive Order 12549, 3 CFR, 189 and 40 CFR Part 32. Borrowers are required to check the status of all contractors (construction and professional services) and must require contractors to check the status of subcontractors for contracts expected to be equal to or over \$25,000. Information on debarment is available at the following website: [www.sam.gov](http://www.sam.gov).
4. 40 CFR Part 33 Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements.
5. Prohibits discrimination by federal contractors and subcontractors for reasons of race, color, religion, sex, and national origin: Equal Employment Executive Order 11246, as amended by Executive Orders 11375 and 12086 and subsequent regulations. Inclusion of the seven clauses (located below in the Equal Employment section) from Section 202 of E. O. 11246 as amended by E. O. 11375 and 12086 are required in all project related contracts and subcontracts over \$10,000.

### **Equal Employment** (must be included in all contracts over \$10,000)

During the performance of this contract, the contractor agrees as follow:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants

EXHIBIT F

for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

**DBE Participation Goals**

Borrowers and their prime contractors must follow and document good faith efforts to meet the DBE Participation Goals listed below:

Goods or Services	MBE Participation Goal	WBE Participation Goal
<b>Construction</b>	2%	2%
<b>Equipment</b>	1%	1%
<b>Services</b>	1%	2%
<b>Supplies</b>	1%	1%

The DBE Participation Goals are not quotas – SRF will not penalize a borrower and their contractors if they cannot meet the goals. However, SRF will require a borrower and their contractors to make a good faith effort to meet these goals.

**Good Faith Effort for DBE Participation**

EPA defines “Good Faith Effort” to include, at a minimum, the following actions by a borrower and their contractors and sub-contractors:

1. Include DBEs on solicitation lists.
2. Assure that DBEs are solicited once they are identified.
3. Divide total requirements into smaller tasks to permit maximum DBE participation, where feasible. Encourage the joint submission of bids by multiple DBE businesses.
4. Establish delivery schedules which will encourage MBE/WBE participation, where feasible.
5. Encourage use of the services of the Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce (MBDA) OR State/Regional/Local equivalent.
6. Require that each party to a subgrant, subagreement, or contract award take the good faith efforts outlined.

**DBE Contract Terms and Conditions**

The following conditions must be included in all procurement contracts entered into by the borrower and their contractors and subcontractors for SRF financed projects:

1. The prime contractor must pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor’s receipt of payment from the loan recipient.
2. The prime contractor must document its efforts towards meeting the six “Good Faith Efforts for DBE Participation” even if the prime contractor has achieved its fair share objectives.
3. The prime contractor must notify the loan recipient in writing prior to the termination of any DBE subcontractor for convenience by the prime contractor.
4. If a DBE subcontractor fails to complete work under the subcontract for any reason, the prime contractor must employ the six “Good Faith Efforts for DBE Participation” if soliciting a replacement subcontractor.
5. All DBE procurements whether from bid documents or subsequent draw request are to be **reported on form 5700-52A to the SRF.**
6. The prime contractor must submit **Form 6100-4 – DBE Subcontractor Utilization** to the borrower as part of bid proposals.
7. The prime contractor must ensure DBE subcontractors submit **Form 6100-3 – DBE Subcontractor Performance**. In turn, the prime contractor submits the forms to the borrower.
8. The prime contractor must provide **Form 6100-2 – DBE Subcontractor Participation** to DBE subcontractors. DBE subcontractors may submit Form 6100-2 to:

DBE/MBE/WBE Coordinator  
 U.S. Environmental Protection Agency,  
 Region 9 75 Hawthorne Street (PMD-1)  
 San Francisco, CA 94105

EXHIBIT F

Report	Provided By:	Completed By:	Submitted To:	Appendix
DBE Reporting Form 5700-52A Part II	SRF	Borrower	SRF	A
Form 6100-4	Borrower	Prime Contractor	Borrower	B
Form 6100-3	Prime Contractor	Sub-Contractor	Borrower	C
Form 6100-2	Prime Contractor	Sub-Contractor	EPA, Region 9	D

8. Each procurement contract signed must include the following term and condition:

**“The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”**



**Disadvantaged Business Enterprise  
Utilization Guidance to Borrowers and  
Prime Contractors**

**Sources to Identify and Certify DBEs**

<b>Source</b>	<b>Phone</b>	<b>Website/E-mail</b>
Nevada Department of Transportation Civil Rights Program (DBE assistance and list)	External Civil Rights and Contract Compliance-Nevada Unified Certification Program <b>800-267-1971</b>	<a href="http://nevadadbe.com">http://nevadadbe.com</a>
Nevada Department of Transportation DBE Program		<a href="http://nevadadot.com/nevadaDBE/dbe.aspx">http://nevadadot.com/nevadaDBE/dbe.aspx</a>
Nevada Governor's Office of Economic Development – Procurement Outreach Program	800-336-1600	<a href="http://diversifynevada.com/programs-resources/procurement-outreach">http://diversifynevada.com/programs-resources/procurement-outreach</a>
Nevada Small Business Development Center (NSBDC)	800-240-7094 DBE assistance 775-687-9921	<a href="http://dbe.nsbdc.org/">http://dbe.nsbdc.org/</a>
Hispanic Business Nevada		<a href="http://hispanicbusinessnevada.com/">http://hispanicbusinessnevada.com/</a>
US Small Business Admin. (SBA)		<a href="http://www.sba.gov/">http://www.sba.gov/</a>
Minority Business Development Agency-US Dept. of Commerce		<a href="http://www.mbda.gov/">http://www.mbda.gov/</a>

EXHIBIT F

**Disadvantaged Business Enterprise  
Utilization Guidance to Borrowers and  
Prime Contractors**

**Appendix A**

**DBE Reporting Form 5700-52A Part II**

When requesting loan draws which involve procurements to MBE/WBE businesses, information must be reported on forms provided by SRF as shown on the next page.

EXHIBIT F

**PART II.**

**MBE/WBE PROCUREMENTS MADE DURING REPORTING PERIOD**  
**EPA Financial Assistance Agreement Number: \_\_\_\_\_**

1. Procurement Made By			2. Business Enterprise		3. \$ Value of Procurement	4. Date of Procurement MM/DD/YY	5. Type of Product or Services <sub>A</sub> (Enter Code)	6. Name/Address/Phone Number of MBE/WBE Contractor or Vendor
Recipient	Sub-Recipient and/or SRF Loan Recipient	Prime	Minority	Women				

Type of product or service codes:

- 1 = Construction
- 2 = Supplies
- 3 = Services
- 4 = Equipment

Note: Refer to Terms and conditions of your Assistance Agreement to determine the frequency of reporting. Recipients are required to submit MBE/WBE reports to EPA beginning with the Federal fiscal year quarter the recipients receive the award, continuing until the project is completed. EPA FORM 5700-52A - (Approval Expires 06/30/14)



**Instructions for Part II:**

For each MBE/WBE procurement made under this assistance agreement during the reporting period, provide the following information:

1. Check whether this procurement was made by the recipient, sub-recipient/SRF loan recipient, or the prime contractor.
2. Check either the MBE or WBE column. If a firm is both an MBE and WBE, the recipient may choose to count the entire procurement towards EITHER its MBE or WBE accomplishments. The recipient may also divide the total amount of the procurement (using any ratio it so chooses) and count those divided amounts toward its MBE and WBE accomplishments. If the recipient chooses to divide the procurement amount and count portions toward its MBE and WBE accomplishments, please state the appropriate amounts under the MBE and WBE columns on the form. **The combined MBE and WBE amounts for that MBE/WBE contractor must not exceed the "Value of the Procurement" reported in column #3**
3. Dollar value of procurement.
4. Date of procurement, shown as month, day, year. Date of procurement is defined as the date the contract or procurement was awarded, **not** the date the contractor received payment under the awarded contract or procurement, unless payment occurred on the date of award. **(Where direct purchasing is the procurement method, the date of procurement is the date the purchase was made)**
5. Using codes at the bottom of the form, identify type of product or service acquired through this procurement (e.g., enter 1 if construction, 2 if supplies, etc).
6. Name, address, and telephone number of MBE/WBE firm.
7. Send to SRF.

\*\*This data is requested to comply with provisions mandated by: statute or regulations (40 CFR Part 30, 31, and 33); OMB Circulars; or added by EPA to ensure sound and effective assistance management. Accurate, complete data are required to obtain funding, while no pledge of confidentiality is provided.

The public reporting and recording burden for this collection of information is estimated to average 1 hour per

response annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclosure or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Include the OMB Control number in any correspondence. Do not send the completed form to this address.

EXHIBIT F

**Disadvantaged Business Enterprise  
Utilization Guidance to Borrowers and  
Prime Contractors**

**Appendix  
B**

**Form 6100-4 – DBE Subcontractor Utilization**

The borrower must require potential prime contractors to submit Form 6100-4, as shown on the next page, to the borrower as part of bid proposals.

EXHIBIT F



OMB Control No: 2090-0030 Approved: 8/13/2013 Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE)  
Program DBE Subcontractor  
Utilization Form**

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE<sup>1</sup> subcontractors<sup>2</sup> and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	<input type="radio"/> YES	<input checked="" type="radio"/> NO	
If yes, please complete the table below. If no, please explain:			
Subcontractor Name/ Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?
Continue on back if needed			

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202. Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



OMB Control No: 2090-0030 Approved: 8/13/2013 Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE)  
Program DBE Subcontractor  
Utilization Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.



EXHIBIT F

**Disadvantaged Business Enterprise  
Utilization Guidance to Borrowers and  
Prime Contractors**

**Appendix  
C**

**Form 6100-3 – DBE Subcontractor Performance**

The prime contractor must require potential subcontractors to submit Form 6100-3, as show on the next page, as part of bid proposals. In turn, prime contractors submit the data to the borrower.



OMB Control No: 2090-0030 Approved: 8/13/2013 Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE)  
Program DBE Subcontractor  
Performance Form**

This form is intended to capture the DBE<sup>1</sup> subcontractor's<sup>2</sup> description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services , Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: <input type="radio"/> DOT <input type="radio"/> SBA <input type="radio"/> Other: _____		Meets/ exceeds EPA certification standards? <input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> Unknown

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



OMB Control No: 2090-0030 Approved: 8/13/2013 Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE)  
Program DBE Subcontractor  
Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

<b>Subcontractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

EXHIBIT F

**Disadvantaged Business Enterprise  
Utilization Guidance to Borrowers and  
Prime Contractors**

**Appendix  
D**

**Form 6100-2 – DBE Subcontractor Participation**

The prime contractor must provide subcontractors the opportunity to submit Form 6100-2, as shown on the next page, to:

DBE/MBE/WBE Coordinator  
U.S. Environmental Protection Agency,  
Region 9 75 Hawthorne Street (PMD-1)  
San Francisco, CA 94105



OMB Control No: 2090-0030 Approved: 8/13/2013 Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE)  
Program DBE Subcontractor  
Participation Form**

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE<sup>1</sup> subcontractor<sup>2</sup> the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services , Equipment or Supplies	Amount Received by Prime Contractor

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

EPA FORM 6100-2 (DBE Subcontractor Participation Form)



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Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Participation Form

Please use the space below to report any concerns regarding the above EPA-funded project:

Multiple horizontal lines for reporting concerns.

Table with 2 columns: Subcontractor Signature, Print Name, Title, Date.

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

## Exhibit G

### Infrastructure Investment and Jobs Act (IIJA) Signage Required Term and Condition

**This Term & Condition applies to construction projects funded in whole or in part by the Infrastructure Investment and Jobs Act (IIJA) for the following programs: Clean Water State Revolving Fund (CWSRF), Drinking Water State Revolving Fund (DWSRF), Brownfields, Superfund, Emerging Contaminants, Great Lakes Restoration Initiative (GLRI), and Solid Waste Infrastructure for Recycling (SWIFR).**

#### 1. Signage Requirements

a. Building A Better America Emblem: The recipient will ensure that a sign is placed at construction sites supported under this award displaying the official Building A Better America emblem and must identify the project as a “project funded by President Biden’s Bipartisan Infrastructure Law.” Construction is defined at 40 CFR 33.103 as “erection, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other improvements to real property, and activities in response to a release or a threat of a release of a hazardous substance into the environment, or activities to prevent the introduction of a hazardous substance into a water supply.” The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

The recipient will ensure compliance with the guidelines and design specifications for using the official Building A Better America emblem and corresponding logomark available at:

<https://www.whitehouse.gov/wp-content/uploads/2022/08/Building-A-Better-America-Brand-Guide.pdf>

b. EPA Logo: The recipient will ensure that signage displays the EPA logo along with the official Building A Better America emblem. The EPA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the recipient received financial assistance from EPA for the project.

The recipient will ensure compliance with the sign specifications provided by the EPA Office of Public Affairs (OPA) available at: <https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients>. As provided in the sign specifications from OPA, the EPA logo is the preferred identifier for assistance agreement projects and use of the EPA seal requires prior approval from the EPA. To obtain the appropriate EPA logo or seal graphic file, the recipient should send a request directly to OPA and include the EPA Project Officer in the communication. Instructions for contacting OPA is available on the [Using the EPA Seal and Logo page](#).

c. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Building A Better America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

#### 2. Public or Media Events

EPA encourages the recipient to notify the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to construction projects as a result of this agreement and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.



1 STATE OF NEVADA

2 CLEAN WATER STATE REVOLVING FUND

3 LOAN CONTRACT

4 CONTRACT NO. CW2402

5  
6 This loan contract is made this 4<sup>th</sup> day of January 2024 between the Nevada State Department of  
7 Conservation & Natural Resources acting by and through the Nevada Division of Environmental Protection  
8 hereafter referred to as the Division, and Incline Village General Improvement District, a political  
9 subdivision of the State of Nevada, hereafter referred to as the Recipient. This loan contract is to provide  
10 funding for the project as outlined in Section 1.

11  
12 **WHEREAS:**

- 13
- 14 1. The Federal Clean Water Act (33 U.S.C. Sub Section 1251 et seq. as amended) and State Law (NRS  
15 445A.060-445A.160) authorize the Division to enter into contracts with municipalities and other public  
16 agencies for financial assistance for construction of publicly owned treatment works and pollution  
17 control projects; and
  - 18 2. The account to finance the construction of treatment works and the implementation of pollution control  
19 projects has been created in the state treasury pursuant to NRS 445A.120 for the purposes of providing  
20 loans to finance the construction of treatment works and pollution control projects;
  - 21 3. The Recipient is a municipality or interstate agency eligible for funding from the account;
  - 22 4. The Recipient has made application for a loan related to construction of the Project hereafter described,  
23 and said Project has been determined by the Division to be eligible for a loan pursuant to applicable  
24 Federal and State laws, rules, regulations and guidance;
  - 25 5. The Division has authorized loan funding for the Project hereafter described; and

1 6. Any federal Funds used for funding of this loan will be provided through the Capitalization Grants for  
2 the Clean Water State Revolving Funds CFDA #66.458 through the United States Environmental  
3 Protection Agency.

4  
5 **NOW, THEREFORE,** It is agreed as Follows:

6  
7 **SECTION 1. PROJECT DESCRIPTION**

8 In general, funding for this Project will be used for replacing segment two of the effluent export pipeline  
9 and appurtenances along State Route 28. Specific details of the Project may be found in the application and  
10 supporting documents.

11  
12 **SECTION 2. INCORPORATION OF DOCUMENTS AND GENERAL RECIPIENT COMMIT-**  
13 **MENTS**

14 This contract incorporates the following documents:

- 15 (A) Exhibit A, Loan Contract Standard Conditions, and
- 16 (B) Exhibit B, Listing of Cross Cutting Federal Authorities for Assistance Sub Grants, and
- 17 (C) Exhibit C, Lobbying Certification Form, and
- 18 (D) Exhibit D, Davis-Bacon Wage Rate Requirements, and
- 19 (E) Exhibit E, American Iron and Steel Requirements, and
- 20 (F) Exhibit F, Disadvantaged Business Enterprise Guidance, and
- 21 (G) Exhibit G, Environmental Protection Agency (EPA) Grant Requirements, and
- 22 (H) Exhibit H, DRAFT Amortization Schedule.
- 23 (I) Exhibit I, Fixed Interest Rate for Estimated Total Project Cost (SECTION 3).

24 The Recipient accepts and agrees to comply with all terms, provisions, conditions, and commitments of this  
25 contract, including all incorporated documents, and to fulfill all assurances, declarations, representations,

1 and commitments made by the Recipient in its application, accompanying documents, and communications  
2 filed in support of its request for loan.

3

4 **SECTION 3. ESTIMATED COST OF PROJECT**

5 The estimated total cost of the Project, including associated planning and design costs is **sixty-two million,**  
6 **eighty thousand, four hundred and fifty-three dollars, (\$62,080,453.00).**

7

8 **SECTION 4. MAXIMUM LOAN AMOUNT**

9 Subject to all of the terms, provisions, and conditions of this contract, and subject to the availability of State  
10 and Federal funds, the Division will loan a sum not to exceed **thirty-six million, three hundred, seventy-**  
11 **one thousand, seven hundred dollars (\$36,371,700.00)** to the Recipient.

12

13 **SECTION 5. INTEREST RATE**

14 1. The interest rate for the Recipient's loan is computed to equal 54.0% of the published "Bond Buyer 20  
15 General Obligation Bond Index" (BB20 Index) plus an adjustment to account for the 30-year term of  
16 the loan, or 54.0% of the last published BB20 index (for market situations such as an inverted yield  
17 curve). The adjustment is the difference between the 20-year AAA Municipal Market Data (MMD) rate  
18 and the 30-year AAA MMD rate. The BB20 Index is a nationally recognized weekly index as of every  
19 Thursday in The Bond Buyer, a weekly publication. The AAA MMD rates are available daily from  
20 Thomson Reuters, a municipal market information service. The BB20 Index and AAA MMD rates are  
21 also available to the public from many securities brokers and dealers.

22 2. The BB20 Index, as of March 9, 2023, was 3.73%. As of the same date, the 30-year AAA MMD rate  
23 was 3.58% and the 20-year rate was 3.4% which results in an adjustment of .18% ( $[3.58]-[3.4]=.18\%$ ).

24 3. The annual percentage interest rate for this loan is therefore 2.19%. Interest on any loan funds disbursed  
25 to the Recipient shall accrue from the date each disbursement of such funds is made by the Division to  
26 the Recipient.

1 4. Interest payable on any loan funds disbursed to the Recipient shall be calculated on the basis of a 360-  
2 day year consisting of twelve 30-day months on the unpaid principal amount advanced from the date  
3 or dates of each advance until the principal thereof is paid in full.  
4

5 **SECTION 6. REPAYMENT OF LOAN**

6 1. Loan funds shall be repaid in accordance with the provisions of the bond resolution adopted by the  
7 Incline Village General Improvement District on December 13, 2023 (the “Resolution”) authorizing  
8 the issuance of the Incline Village General Improvement District Utility Revenue Bonds, Series 2024A  
9 (hereafter referred to as the “Resolution”) and with calculations provided to the Recipient on a semi-  
10 annual basis, by the Division or its designee. Interest payments shall be payable semiannually on  
11 January 1 and July 1 of each year commencing on the January 1 or July 1 which is at least 30 days  
12 immediately succeeding the date of the first principal advance made to the Recipient under this loan  
13 contract.

14 2. Principal payments shall be made semiannually on January 1 and July 1, commencing on the first  
15 January 1 or July 1 which is at least 30 days immediately following the date the Recipient draws the  
16 maximum principal amount authorized under this loan contract, the date the Recipient completes the  
17 Project, or three years from the date of this loan contract, whichever occurs first. The principal and  
18 interest payments shall be structured to produce substantially level payments and amortize the  
19 outstanding principal amount of the loan over the term of the loan (Exhibit H).

20 3. The Bond is not subject to prepayment unless the State consents to such prepayment or a change in use  
21 of the Project occurs which necessitates remedial action under Treasury Reg. 1.141-12 in order to  
22 comply with the federal tax covenant in the Resolution.  
23

24 **SECTION 7. FEES**

25 1. The Division may charge a loan origination fee in an amount authorized by NAC 445A.775.

- 1 2. The loan recipient shall remit to the Division the full amount of the loan origination fee within 30 days  
2 after the loan closing.
- 3 3. This loan contract contains a loan origination fee in the amount of \$181,858.50. (0.50% of the loan  
4 amount)

5

6 **SECTION 8. FISCAL SUSTAINABILITY PLAN**

7 The Recipient will maintain a fiscal sustainability plan that outlines the system's assets, identifies the  
8 critical assets of the system, determines condition of the assets, and plans for future replacement.

- 9 1. The plan must evaluate the level of service required of the system, and
- 10 2. The plan must address ongoing maintenance of system assets to ensure its maximum useful life,  
11 and
- 12 3. The plan must be reviewed and updated by the Recipient at least once every five years, and
- 13 4. The Recipient may maintain a fiscal sustainability plan in logical sections of the system rather than  
14 the entire system upon approval of the Division, and
- 15 5. The plan is subject to periodic review by the Division.

16

17 **SECTION 9. USEFUL LIFE OF PROJECT**

18 For purposes of this contract, the parties agree that the useful life of the Project is at least thirty (30) years  
19 from and after Project completion.

20

21 **SECTION 10. TERM**

22 This contract shall take effect upon execution of the contract by the Division and the Recipient, and for the  
23 purpose of this section, the term of this contract is for no more than thirty (30) years from the date of this  
24 loan contract.

25

1 **SECTION 11. NOTICES**

2 All notices or other communications hereunder shall be sufficiently given and shall be deemed given when:  
3 (a) hand delivered; (b) mailed by registered or certified United States mail, postage; or (c) via email to the  
4 parties hereinafter set forth at the following addresses:

5  
6 1. Nevada Division of Environmental Protection  
7 Office of Financial Assistance  
8 901 S. Stewart St., Ste 4001  
9 Carson City, NV 89701-5249  
10 [ndep-ofa@ndep.nv.gov](mailto:ndep-ofa@ndep.nv.gov)

11  
12 2. Incline Village General Improvement District  
13 1220 Sweetwater Rd.  
14 Incline Village, NV 89451-9214  
15 [ksn@ivgid.org](mailto:ksn@ivgid.org)

16  
17 **IN WITNESS THEREOF**, the parties have executed this contract on the dates set forth below.

18  
19 **RECIPIENT: INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT**

20 \_\_\_\_\_ Date: \_\_\_\_\_

21 Mike Bandelin, Interim General Manager, Incline Village General Improvement District

22  
23 **DIVISION OF ENVIRONMENTAL PROTECTION**

24 \_\_\_\_\_ Date: \_\_\_\_\_

25 Jennifer Carr, Administrator

EXHIBIT A  
CWSRF STANDARD LOAN CONDITIONS

**Condition 1. AWARD OF CONSTRUCTION CONTRACTS; NOTIFICATION OF AWARD AND INITIATION OF CONSTRUCTION**

- 1.1 The Recipient shall conduct value engineering if the total estimated cost of building the treatment works is more than \$10,000,000 (NAC 445A.782).
- 1.2 The Division may, upon the request of a recipient, grant an extension of the time provided by subsection 1 in any case where unusual or extenuating circumstances exist. Any request for an extension must be made in writing and must set forth facts justifying the extension.
- 1.3 The Recipient agrees to promptly notify the Division in writing both of the award of the prime construction contract for the project and of initiation of construction of the project.
- 1.4 The Recipient shall require the contractor to submit a schedule for construction at the preconstruction conference. The contractor shall be required to update the schedule as necessary.
- 1.5 The Recipient agrees to expeditiously proceed with and complete construction of the project in substantial accordance with project plans and specifications approved by the Division.

**Condition 2. CONSTRUCTION ACTIVITIES AND NOTIFICATIONS**

If the loan is awarded for construction of collection lines, the Recipient shall require mandatory connection to the system. This shall be accomplished by including a requirement for mandatory connections in the sewer use ordinance.

The Recipient agrees to promptly notify the Division in writing of:

- 2.1 Any substantial change in scope of the project. The Recipient agrees that no substantial change in the scope of the project will be undertaken until written notice of the proposed change has been provided to the Division and the Division has given written approval for such change.
- 2.2 Cessation of all major construction work on the project where such cessation of work is expected to or does extend for a period of 30 days or more.
- 2.3 Any circumstance, combination of circumstances, or condition, which is expected to or does delay completion of construction for a period of 90 days or more beyond the estimated date of completion of construction previously provided to the Division.
- 2.4 Completion of construction of the project.

After completion of the project the Recipient shall provide the Division with as-built record drawings for the project.

**Condition 3. RESIDENT ENGINEER & INSPECTOR**

The Recipient is required to hire a qualified full time resident engineer and inspector(s) during the construction of the project unless waived by the Division.

**Condition 4. PROJECT ACCESS & STATE REVIEWS**

- 4.1 The Recipient agrees to ensure that the Division or any authorized representative thereof will have suitable access to the project site and project documents at reasonable times during project construction.
- 4.2 The parties agree that review or approval of project plans and specifications by the Division is for administrative purposes only and does not relieve the Recipient of the responsibility to properly plan, design, construct, operate and maintain the Project.

**EXHIBIT A**  
**CWSRF STANDARD LOAN CONDITIONS**

**Condition 5. INDEMNIFICATION**

- 5.1** As between the Division and the Recipient, the Recipient agrees that it has sole responsibility for proper planning, design, construction, operation and maintenance of the Project, and the Recipient agrees to indemnify the Division, the state of Nevada and their officer, agents and employees against and to hold the same free and harmless from any and all claims, demands, damages, losses costs, expenses or liability due or incident to planning, design, construction, operation or maintenance of the Project.
- 5.2** The parties will not waive and intend to assert available NRS 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Actual damages for any State breach shall never exceed the amount of funds, which have been appropriated for payment under this contract, but not yet paid, for the fiscal year budget in existence at the time of the breach.
- 5.3** To the fullest extent of limited liability as set forth above, each party shall indemnify, hold harmless, and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to, reasonable attorneys' fees and costs arising out of any alleged negligent or willful acts or omissions of the party, its officers, employees, and agents. Such obligation shall not be constructed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist to any party or person described in this paragraph.
- 5.4** The indemnification obligation under this paragraph is conditioned upon receipt of written notice by the indemnifying party within 30 days of the indemnified party's actual notice of any actual or pending claim or cause of action. The indemnifying party shall not be liable to hold harmless any attorneys' fees and costs for the indemnified party's chosen right to participate with legal counsel.

**Condition 6. PROJECT COMPLETION; INITIATION OF OPERATIONS & OPERATION AND MAINTENANCE**

- 6.1** At the time of completion of construction, the Division, after consultation with the Recipient, will establish a reasonable estimated project completion date, and the Recipient agrees to make all reasonable efforts to meet the date so established. Such date shall be binding upon the Recipient unless modified in writing by the Division upon a showing of good cause by the Recipient. Extension of the project completion date by the Division shall not be unreasonably withheld.
- 6.2** Upon completion of construction of the Project, the Recipient agrees to expeditiously initiate project operations. The Recipient agrees to properly staff, operate and maintain all portions of the Project during its useful life in accordance with all applicable state laws, rules and regulations. Upon reasonable notice, the Recipient shall make available to the Division the operation and maintenance manuals for the Project.

**Condition 7. DEDICATED SOURCE OF REVENUE & SYSTEM USER CHARGES**

- 7.1** The Recipient shall adopt and maintain in effect during the term of this contract a user charge system or other dedicated source of revenue such as connection fees, which at all times complies with the requirements of applicable state rules, regulations and guidelines.



**EXHIBIT A**  
**CWSRF STANDARD LOAN CONDITIONS**

- 7.2 The Recipient agrees to administer a system of user charges acceptable to the Division pursuant to NAC 445A.788- 445A.790.
- 7.3 The Recipient further agrees to periodically review and modify the system of user charges as necessary to assure its reasonable adequacy to repay the loan, and to cover operating costs and meet other financial obligations of the Recipient. The system of user charges shall be reviewed at least once every three years and all modifications thereto shall be consistent with NAC 445A.788 and shall be maintained to the reasonable satisfaction of the Division.

**Condition 8. CONTINUOUS USE OF PROJECT**

The Recipient agrees that it will not abandon, substantially discontinue use of, or dispose of the project during the useful life of the project without prior written approval of the Division. If the Recipient does abandon, substantially discontinue use, of, or dispose of the Project during the useful life of the Project without prior approval of the Division, the Recipient shall repay the account for the revolving fund all remaining principal advanced hereunder due in accordance with the terms of this contract.

**Condition 9. REPORTS, RECORDS & ACCOUNTING STANDARDS**

- 9.1 The Recipient agrees to expeditiously provide, during construction of the project and thereafter during the useful life of the project, such reports, data, and information as may be reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation by the State Revolving Fund Loan Program or to fulfill any reporting requirements of the federal government. At a minimum, such reports reasonably required by the Division shall include the submission of annual financial statements, prepared on a basis utilizing “Generally Accepted Accounting Principles (GAAP).

Without limitation of the requirement to maintain project accounts in accordance with generally accepted government accounting standards, the Recipient agrees to:

- 9.2 Maintain separate Project accounts in accordance with generally accepted government accounting standards including, but not limited to, standards relating to the reporting of infrastructure assets and those contained in the Standards for Audit of Governmental Organizations, Programs, Activities and Functions, promulgated by the U.S. General Accounting Office.
- 9.3 Comply with requirements described in to 2 CFR §200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements which apply to expenditures by a public or non-profit entity of federal monies from all sources in an amount greater than or equal to \$750,000 in a year.
- 9.4 Establish an official file for the project which shall adequately document all significant actions relative to the project;
- 9.5 Establish accounts which will adequately and accurately depict all amounts received and expended on the project, including all loan funds received under this contract;
- 9.6 Establish accounts which will adequately depict all income received which is attributable to the project, specifically including any income attributable to loan funds disbursed under this contract.
- 9.7 Establish an accounting system which will accurately depict final total costs of the project, including both direct and indirect costs.

**EXHIBIT A**  
**CWSRF STANDARD LOAN CONDITIONS**

- 9.8** Maintain records and accounting activities of the wastewater utility separately from other activities of the Recipient.
- 9.9** If a force account is used by the Recipient for any phase of the Project, other than for planning, design and construction engineering and administration provided for by allowance, accounts will be established which reasonable document all employee hours charged to the project and the associated tasks performed by each employee.
- 9.10** Retain project records for a minimum of three (3) years after final loan repayment has been made, and for such longer period as may be required for the Division to fulfill federal reporting requirements under federal statutes and regulations. All Recipient records relative to the project shall be subject at all reasonable times to inspection, copying, and audit by the Division or any authorized representative.

**Condition 10. FINANCIAL INFORMATION AUDIT**

The Division, at its option, may call for an audit of financial information relative to the project, where the Division determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of federal requirements. Where such an audit is called for, the audit shall be performed by a Certified Public Accountant independent of the Recipient and at the cost of the Recipient. The audit shall be in the form required by the Division.

**Condition 11. LOAN DISBURSEMENT; AVAILABILITY OF FUNDS**

- 11.1** The Recipient agrees to draw funds available in section 4 within three (3) years from the date of this contract. Funds will be subject to de-obligation and/or review after this time period by the Division.

Except as may be otherwise provided in this contract, loan amounts will be disbursed as follows:

- 11.2** Loan funds will be promptly disbursed to the Recipient for project costs incurred by the Recipient upon receipt by the Division of proper and acceptable Payment Request Forms from the Recipient.
- 11.3** Additional loan funds will be promptly disbursed to the Recipient for project costs incurred by the Recipient upon receipt of proper and acceptable payment requests from the Recipient provided that payment shall not be made more frequently than once a month.
- 11.4** The Recipient agrees that it will not request payment for any project cost until such cost has been incurred and is due and payable, although it is agreed that actual payment of such cost by the Recipient is not required as a condition of payment request. The Recipient agrees to provide a certification with each payment request that costs shown in the payment request have been incurred and is due and payable at the time of the request.
- 11.5** Each disbursement of loan funds other than for the planning and design allowance will be accompanied by an appropriate prorate percentage of the allowance for construction engineering and inspection services for the project.
- 11.6** The Division's obligation to pay any sum to the Recipient under any provisions of this contract, is contingent upon the availability of sufficient funds to permit the payments provided for herein. In the event that sufficient funds, as determined by the Division, do not become available for any reason, the Division shall not be obligated to make any payments to the Recipient under this contract. This provision shall be construed as a condition precedent to the obligation of the Division to make any payments under this contract. Nothing in this contract shall be construed to provide the Recipient with

EXHIBIT A  
CWSRF STANDARD LOAN CONDITIONS

a right of priority for payment over any other agency. If any payments which are otherwise due to the Recipient under this contract are deferred because of unavailability of sufficient funds, such payments will promptly be made to the Recipient when sufficient funds do become available.

- 11.7 Any federal funds used for funding of this loan will be provided through the Capitalization Grants for Clean Water State Revolving Funds CFDA #66.458.

Condition 12. **COMPLIANCE WITH OTHER FEDERAL STATUTES AND AUTHORITIES**

- 12.1 A number of other federal laws and authorities will be applied to activities supported with SRF funds directly made available by capitalization grants. Exhibit B contains a current list of these other laws and authorities. The Recipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, regulations, and requirements.
- 12.2 The Recipient recognizes as goals the applicable Minority Business Enterprise (MBE)/Women Business Enterprise (WBE) “fair share” goals negotiated with EPA by the Division for construction, supplies, equipment and services as follows:
- |              |        |        |
|--------------|--------|--------|
| Construction | MBE 2% | WBE 2% |
| Equipment    | MBE 1% | WBE 1% |
| Services     | MBE 1% | WBE 2% |
| Supplies     | MBE 1% | WBE 1% |
- 12.3 The Davis-Bacon Act wage rules apply to the project funded by this loan contract as specified in Exhibit D.
- 12.4 The American Iron and Steel requirements apply for the entirety of the construction activities through completion of construction as specified in Exhibit E.
- 12.5 The Build America, Buy America (BABA) Act requirements apply to the project funded by this loan contract. Unless a waiver is granted by the United States Environmental Protection Agency, all funds made available under this contract must only be used to procure iron, steel, manufactured products, and construction materials that are produced in the United States.
- 12.6 As required by [2 CFR 200.216](#), federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- 12.7 Prohibitions extend to the use of Federal funds by recipients and subrecipients to enter into a contract with an entity that “uses any equipment, system, or service that uses covered telecommunications equipment or services” as a substantial or essential component of any system, or as critical technology as part of any system. Certain equipment, systems, or services, including equipment, systems, or services produced or provided by entities subject to the prohibition are recorded in the [System for Award Management](#) exclusion list.

EXHIBIT A  
CWSRF STANDARD LOAN CONDITIONS

Condition 13. **REPAYMENT; PENALTIES; RECIPIENT OBLIGATIONS**

- 13.1 The loan amount, together with all interest accruing thereon, shall be repaid as provided for in the loan contract.
- 13.2 The Recipient agrees to make each loan payment on or before the due date. A ten-day grace period will be allowed. A penalty in the amount of one-tenth of one percent (0.1%) of the defaulted payment will be due for each day of nonpayment beyond the grace period. Any penalties assessed will not be added to the loan balance but will be treated as a separate account and obligation of the Recipient, to be paid in full within 30 days after Recipient is in compliance with payment schedule.
- 13.3 The Recipient, as a whole, is obligated to make all payments required by this contract to the Division, notwithstanding any individual default by its constituents or others in the payment to the Recipient of taxes, assessments, fees, or other charges levied by the Recipient. The Recipient shall provide for the punctual payment to the Division of all amounts which become due under this contract and which are received from constituents or others in the payment to the Recipient of taxes, assessments, fees, or other charges levied by the Recipient. In the event of failure, neglect or refusal of any officer of the Recipient to levy or cause to be levied any taxes, assessments, fees or charges necessary to provide payment by the Recipient under this contract, to enforce or to collect such taxes, assessments, fees or charges or to pay over to the Division any money collected on the taxes, assessments, fees or charges necessary to satisfy any amount due under this contract, the Division may take such action in a court of competent jurisdiction as it deems necessary to compel the performance of all duties relating to the levying and collection of the taxes, assessments, fees or charges and the payment of the money collected therefrom to the Division.
- 13.4 Action taken pursuant hereto shall not deprive the Division of, or limit the application of, any other remedy provided by law or by this contract.

Condition 14. **TERMINATION; IMMEDIATE REPAYMENT; INTEREST**

- 14.1 This contract may be terminated by written notice during construction of the project, or thereafter at any time prior to complete repayment by the Recipient, at the option of the Division, upon violation by the Recipient of any material provision of this loan contract after such violation has been called to the attention of the Recipient and after failure of the Recipient to bring itself into compliance with the provisions of this contract within a reasonable time as established by the Division.
- 14.2 In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the Division an amount equal to the current balance due on the loan, including accrued interest, and all penalty assessments due in accordance with the terms of this contract.

Condition 15. **DEFAULTS & REMEDIES**

- 15.1 **NOTICE OF DEFAULT.** If an Event of Default shall occur, the non-defaulting party shall give the party in default prompt telephonic notice of the occurrence of such Event of Default, provided the non-defaulting party has knowledge of such Event of Default. Such telephonic notice shall be immediately followed by written notice of such event of Default given in the manner set forth in the contract.

EXHIBIT A  
CWSRF STANDARD LOAN CONDITIONS

- 15.2 EVENTS OF DEFAULT.** The occurrence of one or more of the following events constitutes an Event of Default, whether occurring voluntarily or involuntarily, by operation of law or pursuant to any order of any court or governmental agency.
- i. Failure by the Recipient to pay, or cause to be paid, any Loan Repayment required to be paid hereunder when due;
  - ii. Failure by the Recipient to observe and perform any duty, covenant, obligation, or agreement on its part to be observed or performed under this Loan Agreement, which failure shall continue for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the Recipient by NDEP;
  - iii. Any representation made by or on behalf of the Recipient contained in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan, is intentionally false or misleading in any material respect.
- 15.3 REMEDIES,** If NDEP determines that an Event of Default has occurred, NDEP may, without further notice:
- i. Declare the outstanding loan amount plus any unpaid accrued interest, fees, and other amounts due hereunder due and payable;
  - ii. Cease making disbursement of Loan proceeds or make some disbursements of Loan proceeds and withhold or refuse to make other disbursements;
  - iii. Pursue any other legal or equitable remedy it may have.

**Condition 16. DISPOSITION OF EQUIPMENT**

In accordance with 41 CFR 105-71.132, when original or replacement equipment used to construct the facilities acquired under this contract is no longer needed for the original project, disposition of the equipment will be made as follows:

- 16.1** Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold, or otherwise disposed of with no further obligation to the Division.
- 16.2** Items of equipment with a current per unit fair market value of \$5,000 or greater may be retained or sold and the State shall have a right to an amount calculated by multiplying the current market value or proceed from sale by the Division's share of the equipment. In cases where the Recipient fails to take the appropriate actions, the Division may direct the Recipient to take excess and disposition actions.

**Condition 17. DISPUTES**

Any dispute arising under this contract which is not otherwise disposed of shall be decided by the Administrator of the Division of Environmental Protection. The decision shall be reduced to writing and a copy thereof furnished to the Recipient. The decision of the Administrator shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Administrator's decision to the Recipient, the Recipient mails or otherwise furnishes a written appeal of the decision to the Director of the Department of Conservation and Natural Resources. The decision of the Director shall be final and conclusive unless overturned by a court of competent jurisdiction. In connection with any appeal under this clause, the Recipient shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Recipient shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this loan contract.

**EXHIBIT A**  
**CWSRF STANDARD LOAN CONDITIONS**

**Condition 18. FORCE MAJURE**

Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligation hereunder due to unforeseeable events including: strikes, failure of public transportation, civil or military authority, acts of public enemy, accidents, fires, explosions, earthquakes, flood, or unusual atmospheric events. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of this Contract after the intervening cause ceases.

**Condition 19. WAIVER**

The parties hereto may, from time to time, waive any rights under this contract unless such waiver is contrary to law, provided that any such waiver must be in writing and must be signed by the party making such waiver.

**Condition 20. AMENDMENT**

This contract may be amended at any time by mutual written agreement of the parties.

EXHIBIT B  
**Cross-Cutting Federal Authorities**

Cross-cutting federal authorities are the requirements of other federal laws and Executive Orders that apply in the case of federally funded projects. The cross-cutters include (but are not limited to): environmental laws such as the Endangered Species Act, the National Historic Preservation Act, executive orders on the protection of wetlands and flood plains, social policy authorities such as executive orders on equal employment opportunity in federally assisted programs, and economic authorities such as rules implementing executive orders on the debarment and suspension of persons who have engaged in misconduct. In the State Revolving Fund programs, compliance with federal cross-cutting authorities is required by all recipients of these federal funds. A list of the possible applicable cross-cutters follows.

Environmental Authorities

- o Archaeological and Historic Preservation Act, Pub. L. 93-291, as amended
- o Protection and Enhancement of the Cultural Environment
- o Clean Air Act, Pub. L. 95-95, as amended
- o Coastal Barrier Resources Act, Pub. L. 97-348
- o Coastal Zone Management Act, Pub. L. 92-583, as amended
- o Endangered Species Act, Pub. L. 93-205, as amended
- o Environmental Justice, Executive Order 12898
- o Flood Plain Management, Executive Order 11988 as amended by Executive Order 12148
- o Protection of Wetlands, Executive Order 11990 as amended by Executive Order 12608
- o Farmland Protection Policy Act, Pub. L. 97-98
- o Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- o Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265
- o National Environmental Policy Act, Pub. L. 91-190
- o National Historic Preservation Act, Pub. L. 89-655, as amended
- o Safe Drinking Water Act, Pub. L. 93-523, as amended
- o Wild and Scenic Rivers Act, Pub. L. 90-54 as amended

Economic and Miscellaneous Authorities

- o Debarment and Suspension, Executive Order 12549
- o Demonstration Cities and Metropolitan Development Act, Pub. L. 89-754, as amended, and Executive Order 12372
- o Drug-Free Workplace Act, Pub. L. 100-690
- o New Restrictions on Lobbying, Section 319 of Pub. L. 101-121
- o Prohibitions relating to violations of the Clean Water Act or Clean Air Act with respect to Federal contracts, grants, or loans under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, and Executive Order 11738
- o Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended

Civil Rights, Nondiscrimination, Equal Employment Opportunity Authorities

- o Older Americans Act, Pub. L. 94-135
- o Equal Employment Opportunity, Executive Order 11246
- o Section 13 of the Clean Water Act, Pub. L. 92-500
- o Section 504 of the Rehabilitation Act, Pub. L. 93-112
- o Title VI of the Civil Rights Act, Pub. L. 88-352

EXHIBIT B  
**Cross-Cutting Federal Authorities**

Disadvantaged Business Enterprise Authorities

- o Small, Minority, and Women-owned Business Enterprises, Executive Orders No.11625, 12138, and 12432
- o Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988 Pub. L. No. 100-590
- o 40 CFR Part 33 Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements





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EPA Project Control Number

**CERTIFICATION REGARDING LOBBYING**

**CERTIFICATION FOR CONTRACTS, GRANTS,  
LOANS AND COOPERATIVE AGREEMENTS**

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Typed Name & Title of Authorized Representative

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Signature and Date of Authorized Representative

## EXHIBIT D

### Preamble

With respect to the Clean Water State Revolving Funds and Safe Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides sub grants or loans to eligible entities within the State. Typically, the sub recipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring sub recipients' compliance with the wage rate requirements set forth herein, those sub recipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I-5.

Occasionally, the sub recipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring sub recipients' compliance with the wage rate requirements set forth herein, those sub recipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

### **I. Requirements Under The Consolidated Appropriations Act For Sub recipients That Are Governmental Entities:**

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance - with respect to State recipients and sub recipients that are governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact Elizabeth Borowiec, [borowiec.elizabeth@epa.gov](mailto:borowiec.elizabeth@epa.gov), 415-972-3419, of EPA Region 9, for guidance. The recipient or sub recipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

#### **1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.**

DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by Clean Water State Revolving Funds and Safe Drinking Water State Revolving Funds. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

#### **2. Obtaining Wage Determinations.**

(a) Sub recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) weekly to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the

## EXHIBIT D

closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.

- (ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the sub recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub recipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.

(c) Sub recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### **3. Contract and Subcontract provisions.**

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or Consolidated Appropriations Act, 2017, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

## EXHIBIT D

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis- Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub recipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The sub recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall

## EXHIBIT D

be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable Standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of

## EXHIBIT D

apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/whd/forms/wh347instr.htm> or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

## EXHIBIT D

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

### (4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or sub contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the

## EXHIBIT D

trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and sub recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).



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(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The sub recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub recipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen,

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working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

### 5. Compliance Verification

(a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB.

Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The sub recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the sub recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The sub recipient shall periodically review contractors and subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.

### **II. Requirements Under The Consolidated Appropriations Act, 2017 (P.L. 115-31) For Sub recipients That Are Not Governmental Entities:**

The following terms and conditions specify how recipients will assist EPA in meeting its DB

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responsibilities when DB applies to EPA awards of financial assistance under –FY 2017 Consolidated Appropriations Act with respect to sub recipients that are not governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a State recipient needs guidance, the recipient may contact Elizabeth Borowiec, [borowiec.elizabeth@epa.gov](mailto:borowiec.elizabeth@epa.gov), 415-972-3419, EPA Grants Management Office for guidance. The recipient or sub recipient may also obtain additional guidance from DOL’s web site at <http://www.dol.gov/whd/>

**Under these terms and conditions, the sub recipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.**

### **1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.**

Under the FY 2017 Consolidated Appropriations Act -, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a Clean Water State Revolving Funds and Safe Drinking Water State Revolving Funds,-. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

### **2. Obtaining Wage Determinations.**

(a) Sub recipients must obtain proposed wage determinations for specific localities at [www.wdol.gov](http://www.wdol.gov). After the Sub recipient obtains its proposed wage determination, it must submit the wage determination to Elizabeth Borowiec, [borowiec.elizabeth@epa.gov](mailto:borowiec.elizabeth@epa.gov), 415-972-3419, EPA Region 9, for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official.)

(b) Sub recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.
- (ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does

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not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the sub recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub recipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.

(d) Sub recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### 3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2017 Consolidated Appropriations Act -, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) ), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work

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actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis- Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub recipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The sub recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified

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week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period (1) contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR

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5.12.

### (4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee



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performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Sub recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The sub recipient shall insert the following clauses

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set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub recipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## EXHIBIT D

### 5. Compliance Verification

(a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c). The sub recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the sub recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . In addition, during the examinations the sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The sub recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.

EXHIBIT E

Use of American Iron and Steel (AIS requirement)  
H.R. 3547, Division G, Title IV

Sec. 436. (a)(1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works **unless all of the iron and steel products used in the project are produced in the United States.**

(a) **Definitions.** As used in this award term and condition—

- (1) “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
- (2) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) **Domestic preference.**

- (1) This award term and condition implements P.L. 114-133, Consolidated Appropriations Act, 2016, Section 424, by requiring that all iron and steel products used for a project for the construction, alteration, maintenance or repair of a public water system are produced in the United States except as provided in paragraph (b)(2) of this section and condition.
- (2) This requirement shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency finds that:—
  - (i) applying the requirement would be inconsistent with the public interest;
  - (ii) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
  - (iii) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) **Request for a Waiver under (b)(3) of this section**

- (1) Any recipient request to use foreign iron or steel products in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—
  - (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
  - (B) Unit of measure;
  - (C) Quantity;
  - (D) Cost;
  - (E) Time of delivery or availability;
  - (F) Location of the project;
  - (G) Name and address of the proposed supplier; and
  - (H) A detailed justification of the reason for use of foreign iron or steel products cited in accordance with paragraph (b)(3) of this section.
- (2) If the Administrator receives a request for a waiver under this section, the waiver request shall be made available to the public for at least 15 days prior to making a finding based on the request.
- (3) Unless the Administrator issues a waiver of this term, use of foreign iron and steel products is noncompliant with the Consolidated Appropriations Act, 2016 (P.L. 114-133).

(d) This term and condition shall be applied in a manner consistent with United States obligations under international agreements.

EXHIBIT E

If you require further clarification or guidelines, please contact Michelle Stamates at (775) 687-9331 or [mstamate@ndep.nv.gov](mailto:mstamate@ndep.nv.gov).

# **State Revolving Fund**

## **Disadvantaged Business Enterprise Program**

### **Guidance to Borrowers & Contractors**

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- Good Faith Effort for DBE Participation
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5700-52A Part II

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– DBE Subcontractor Participation

## State Revolving Fund

### Disadvantaged Business Enterprise Program

#### **Section 1: Overview**

As stipulated by the Environmental Protection Agency (EPA), Nevada State Revolving Fund (SRF) borrowers and their contractors are required to make good faith efforts to utilize businesses classified as Disadvantaged Business Enterprises (DBEs) for goods and services associated with SRF financed projects. A borrower and their contractors should utilize DBEs through prime contracting, subcontracting, joint-ventures, other business relationships, and through the procurement of supplies, materials, and equipment.

#### **Section 2: Definition of Disadvantaged Business Enterprise (DBE)**

A DBE is a business owned and/or controlled by socially and economically disadvantaged individuals including Minority and Women Business Enterprises.

**Minority Business Enterprise (MBE)** – A business which is at least 51% owned and/or controlled by one or more U.S. citizens who are Black, Hispanic, Portuguese, Asian American, American Indian, or groups found to be economically and socially disadvantaged by the U.S. Small Business Administration pursuant to Section 8(a) of the Federal Small Business Act.

**Women Business Enterprise (WBE)** – A business which is at least 51% owned and/or controlled by one or more U.S. citizens who are women.

#### **Section 3: Disadvantage Business Enterprise (DBE) requirements and contract conditions**

The following pages include conditions which must be included in all bidding and contract documents for SRF financed projects including:

- DBE related laws, rules, and regulations
- Equal Employment
- DBE Participation Goals
- Good Faith Effort for DBE Participation
- DBE Contract Terms and Conditions



## Nevada State Revolving Fund Disadvantaged Business Enterprise (DBE) and Contract Conditions

The DBE Solicitation and Contract Conditions must be physically included in all bidding and contract documents for SRF financed projects.

### **DBE Related Laws, Rules, and Regulations**

This project is being financed in whole or in part by the Nevada State Revolving Fund (SRF). The borrower is required to comply with the following laws, rules and regulations and must ensure that their contractor(s) also comply with these laws, rules, and regulations.

1. Ensures access to facilities or programs regardless of race, color, national origin, sex, age or handicap: Title VI of the Civil Rights Act of 1964 (P.L. 88-352, Section 504 of the Rehabilitation Act, P.L. 93-112 (87 Stat. 355, 29 U.S.C. Sec. 794), Older Americans Act (P.L. 94-135, 89 Stat. 713, 89 Stat. 728 Sec. 303, 42 U.S.C. 6102).
  
2. Encourages recipients of federal funds to award construction, supply and professional service contracts to minority and women's business enterprises (MBE/WBE) and small businesses and requires recipients to utilize affirmative steps in procurement: Executive Orders 11625, 12138 and 12432; Section 129 of P. L. 100-590 Small Businesses Reauthorization & Amendment Act of 1988; Public Law 102-389 (42 U.S.C. 4370d); a 1993 appropriations act ("EPA's 8% statute"); Title X of the Clean Air Acts Amendments of 1990 (42 U.S.C. 7601 note) ("EPA's 10% statute").
  
3. Prohibits entering into contracts or sub-contracts with individuals or businesses who are debarred or suspended: Executive Order 12549, 3 CFR, 189 and 40 CFR Part 32. Borrowers are required to check the status of all contractors (construction and professional services) and must require contractors to check the status of subcontractors for contracts expected to be equal to or over \$25,000. Information on debarment is available at the following website: [www.sam.gov](http://www.sam.gov).
  
4. 40 CFR Part 33 Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements.
  
5. Prohibits discrimination by federal contractors and subcontractors for reasons of race, color, religion, sex, and national origin: Equal Employment Executive Order 11246, as amended by Executive Orders 11375 and 12086 and subsequent regulations. Inclusion of the seven clauses (located below in the Equal Employment section) from Section 202 of E. O. 11246 as amended by E. O. 11375 and 12086 are required in all project related contracts and subcontracts over \$10,000.

### **Equal Employment** (must be included in all contracts over \$10,000)

During the performance of this contract, the contractor agrees as follow:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants

EXHIBIT F

for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

**DBE Participation Goals**

Borrowers and their prime contractors must follow and document good faith efforts to meet the DBE Participation Goals listed below:

Goods or Services	MBE Participation Goal	WBE Participation Goal
<b>Construction</b>	2%	2%
<b>Equipment</b>	1%	1%
<b>Services</b>	1%	2%
<b>Supplies</b>	1%	1%

The DBE Participation Goals are not quotas – SRF will not penalize a borrower and their contractors if they cannot meet the goals. However, SRF will require a borrower and their contractors to make a good faith effort to meet these goals.

**Good Faith Effort for DBE Participation**

EPA defines "Good Faith Effort" to include, at a minimum, the following actions by a borrower and their contractors and sub-contractors:

1. Include DBEs on solicitation lists.
2. Assure that DBEs are solicited once they are identified.
3. Divide total requirements into smaller tasks to permit maximum DBE participation, where feasible. Encourage the joint submission of bids by multiple DBE businesses.
4. Establish delivery schedules which will encourage MBE/WBE participation, where feasible.
5. Encourage use of the services of the Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce (MBDA) OR State/Regional/Local equivalent.
6. Require that each party to a subgrant, subagreement, or contract award take the good faith efforts outlined.

**DBE Contract Terms and Conditions**

The following conditions must be included in all procurement contracts entered into by the borrower and their contractors and subcontractors for SRF financed projects:

1. The prime contractor must pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the loan recipient.
2. The prime contractor must document its efforts towards meeting the six "Good Faith Efforts for DBE Participation" even if the prime contractor has achieved its fair share objectives.
3. The prime contractor must notify the loan recipient in writing prior to the termination of any DBE subcontractor for convenience by the prime contractor.
4. If a DBE subcontractor fails to complete work under the subcontract for any reason, the prime contractor must employ the six "Good Faith Efforts for DBE Participation" if soliciting a replacement subcontractor.
5. All DBE procurements whether from bid documents or subsequent draw request are to be **reported on form 5700-52A to the SRF.**
6. The prime contractor must submit **Form 6100-4 – DBE Subcontractor Utilization** to the borrower as part of bid proposals.
7. The prime contractor must ensure DBE subcontractors submit **Form 6100-3 – DBE Subcontractor Performance**. In turn, the prime contractor submits the forms to the borrower.
8. The prime contractor must provide **Form 6100-2 – DBE Subcontractor Participation** to DBE subcontractors. DBE subcontractors may submit Form 6100-2 to:

DBE/MBE/WBE Coordinator  
 U.S. Environmental Protection Agency,  
 Region 9 75 Hawthorne Street (PMD-1)  
 San Francisco, CA 94105

EXHIBIT F

Report	Provided By:	Completed By:	Submitted To:	Appendix
DBE Reporting Form 5700-52A Part II	SRF	Borrower	SRF	A
Form 6100-4	Borrower	Prime Contractor	Borrower	B
Form 6100-3	Prime Contractor	Sub-Contractor	Borrower	C
Form 6100-2	Prime Contractor	Sub-Contractor	EPA, Region 9	D

8. Each procurement contract signed must include the following term and condition:

**“The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”**

**Disadvantaged Business Enterprise  
Utilization Guidance to Borrowers and  
Prime Contractors**

**Sources to Identify and Certify DBEs**

<b>Source</b>	<b>Phone</b>	<b>Website/E-mail</b>
Nevada Department of Transportation Civil Rights Program (DBE assistance and list)	External Civil Rights and Contract Compliance-Nevada Unified Certification Program <b>800-267-1971</b>	<a href="http://nevadadbe.com">http://nevadadbe.com</a>
Nevada Department of Transportation DBE Program		<a href="http://nevadadot.com/nevadadbe/dbe.aspx">http://nevadadot.com/nevadadbe/dbe.aspx</a>
Nevada Governor's Office of Economic Development – Procurement Outreach Program	800-336-1600	<a href="http://diversifynevada.com/programs-resources/procurement-outreach">http://diversifynevada.com/programs-resources/procurement-outreach</a>
Nevada Small Business Development Center (NSBDC)	800-240-7094 DBE assistance 775-687-9921	<a href="http://dbe.nsbdc.org/">http://dbe.nsbdc.org/</a>
Hispanic Business Nevada		<a href="http://hispanicbusinessnevada.com/">http://hispanicbusinessnevada.com/</a>
US Small Business Admin. (SBA)		<a href="http://www.sba.gov/">http://www.sba.gov/</a>
Minority Business Development Agency-US Dept. of Commerce		<a href="http://www.mbda.gov/">http://www.mbda.gov/</a>

EXHIBIT F

**Disadvantaged Business Enterprise  
Utilization Guidance to Borrowers and  
Prime Contractors**

**Appendix A**

**DBE Reporting Form 5700-52A Part II**

When requesting loan draws which involve procurements to MBE/WBE businesses, information must be reported on forms provided by SRF as shown on the next page.

EXHIBIT F

**PART II.**

**MBE/WBE PROCUREMENTS MADE DURING REPORTING PERIOD**  
**EPA Financial Assistance Agreement Number: \_\_\_\_\_**

1. Procurement Made By			2. Business Enterprise		3. \$ Value of Procurement	4. Date of Procurement MM/DD/YY	5. Type of Product or Services <sub>A</sub> (Enter Code)	6. Name/Address/Phone Number of MBE/WBE Contractor or Vendor
Recipient	Sub-Recipient and/or SRF Loan Recipient	Prime	Minority	Women				

Type of product or service codes:

- 1 = Construction
- 2 = Supplies
- 3 = Services
- 4 = Equipment

Note: Refer to Terms and conditions of your Assistance Agreement to determine the frequency of reporting. Recipients are required to submit MBE/WBE reports to EPA beginning with the Federal fiscal year quarter the recipients receive the award, continuing until the project is completed. EPA FORM 5700-52A - (Approval Expires 06/30/14)

**Instructions for Part II:**

For each MBE/WBE procurement made under this assistance agreement during the reporting period, provide the following information:

1. Check whether this procurement was made by the recipient, sub-recipient/SRF loan recipient, or the prime contractor.
2. Check either the MBE or WBE column. If a firm is both an MBE and WBE, the recipient may choose to count the entire procurement towards EITHER its MBE or WBE accomplishments. The recipient may also divide the total amount of the procurement (using any ratio it so chooses) and count those divided amounts toward its MBE and WBE accomplishments. If the recipient chooses to divide the procurement amount and count portions toward its MBE and WBE accomplishments, please state the appropriate amounts under the MBE and WBE columns on the form. **The combined MBE and WBE amounts for that MBE/WBE contractor must not exceed the "Value of the Procurement" reported in column #3**
3. Dollar value of procurement.
4. Date of procurement, shown as month, day, year. Date of procurement is defined as the date the contract or procurement was awarded, **not** the date the contractor received payment under the awarded contract or procurement, unless payment occurred on the date of award. **(Where direct purchasing is the procurement method, the date of procurement is the date the purchase was made)**
5. Using codes at the bottom of the form, identify type of product or service acquired through this procurement (e.g., enter 1 if construction, 2 if supplies, etc).
6. Name, address, and telephone number of MBE/WBE firm.
7. Send to SRF.

\*\*This data is requested to comply with provisions mandated by: statute or regulations (40 CFR Part 30, 31, and 33); OMB Circulars; or added by EPA to ensure sound and effective assistance management. Accurate, complete data are required to obtain funding, while no pledge of confidentiality is provided.

The public reporting and recording burden for this collection of information is estimated to average 1 hour per

response annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclosure or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Include the OMB Control number in any correspondence. Do not send the completed form to this address.



EXHIBIT F

**Disadvantaged Business Enterprise  
Utilization Guidance to Borrowers and  
Prime Contractors**

**Appendix  
B**

**Form 6100-4 – DBE Subcontractor Utilization**

The borrower must require potential prime contractors to submit Form 6100-4, as shown on the next page, to the borrower as part of bid proposals.

EXHIBIT F



OMB Control No: 2090-0030 Approved: 8/13/2013 Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE)  
Program DBE Subcontractor  
Utilization Form**

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE<sup>1</sup> subcontractors<sup>2</sup> and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	<input type="radio"/> YES	<input checked="" type="radio"/> NO	
If yes, please complete the table below. If no, please explain:			
Subcontractor Name/ Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?
Continue on back if needed			

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202. Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



OMB Control No: 2090-0030 Approved: 8/13/2013 Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE)  
Program DBE Subcontractor  
Utilization Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

EXHIBIT F

**Disadvantaged Business Enterprise  
Utilization Guidance to Borrowers and  
Prime Contractors**

**Appendix  
C**

**Form 6100-3 – DBE Subcontractor Performance**

The prime contractor must require potential subcontractors to submit Form 6100-3, as show on the next page, as part of bid proposals. In turn, prime contractors submit the data to the borrower.



OMB Control No: 2090-0030 Approved: 8/13/2013 Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE)  
Program DBE Subcontractor  
Performance Form**

This form is intended to capture the DBE<sup>1</sup> subcontractor's<sup>2</sup> description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services , Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: <input type="radio"/> DOT <input type="radio"/> SBA <input type="radio"/> Other: _____		Meets/ exceeds EPA certification standards? <input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> Unknown

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



OMB Control No: 2090-0030 Approved: 8/13/2013 Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE)  
Program DBE Subcontractor  
Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

<b>Subcontractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

EXHIBIT F

**Disadvantaged Business Enterprise  
Utilization Guidance to Borrowers and  
Prime Contractors**

**Appendix  
D**

**Form 6100-2 – DBE Subcontractor Participation**

The prime contractor must provide subcontractors the opportunity to submit Form 6100-2, as shown on the next page, to:

DBE/MBE/WBE Coordinator  
U.S. Environmental Protection Agency,  
Region 9 75 Hawthorne Street (PMD-1)  
San Francisco, CA 94105



OMB Control No: 2090-0030 Approved: 8/13/2013 Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE)  
Program DBE Subcontractor  
Participation Form**

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE<sup>1</sup> subcontractor<sup>2</sup> the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services , Equipment or Supplies	Amount Received by Prime Contractor

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



EPA FORM 6100-2 (DBE Subcontractor Participation Form)



OMB Control No: 2090-0030 Approved: 8/13/2013 Approval Expires: 8/31/2015

Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Participation Form

Please use the space below to report any concerns regarding the above EPA-funded project:

Multiple horizontal lines for reporting concerns.

Table with 2 columns: Subcontractor Signature, Print Name, Title, Date.

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

## Exhibit G

### Infrastructure Investment and Jobs Act (IIJA) Signage Required Term and Condition

**This Term & Condition applies to construction projects funded in whole or in part by the Infrastructure Investment and Jobs Act (IIJA) for the following programs: Clean Water State Revolving Fund (CWSRF), Drinking Water State Revolving Fund (DWSRF), Brownfields, Superfund, Emerging Contaminants, Great Lakes Restoration Initiative (GLRI), and Solid Waste Infrastructure for Recycling (SWIFR).**

#### 1. Signage Requirements

a. Building A Better America Emblem: The recipient will ensure that a sign is placed at construction sites supported under this award displaying the official Building A Better America emblem and must identify the project as a “project funded by President Biden’s Bipartisan Infrastructure Law.” Construction is defined at 40 CFR 33.103 as “erection, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other improvements to real property, and activities in response to a release or a threat of a release of a hazardous substance into the environment, or activities to prevent the introduction of a hazardous substance into a water supply.” The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

The recipient will ensure compliance with the guidelines and design specifications for using the official Building A Better America emblem and corresponding logomark available at:

<https://www.whitehouse.gov/wp-content/uploads/2022/08/Building-A-Better-America-Brand-Guide.pdf>

b. EPA Logo: The recipient will ensure that signage displays the EPA logo along with the official Building A Better America emblem. The EPA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the recipient received financial assistance from EPA for the project.

The recipient will ensure compliance with the sign specifications provided by the EPA Office of Public Affairs (OPA) available at: <https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients>. As provided in the sign specifications from OPA, the EPA logo is the preferred identifier for assistance agreement projects and use of the EPA seal requires prior approval from the EPA. To obtain the appropriate EPA logo or seal graphic file, the recipient should send a request directly to OPA and include the EPA Project Officer in the communication. Instructions for contacting OPA is available on the [Using the EPA Seal and Logo page](#).

c. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Building A Better America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

#### 2. Public or Media Events

EPA encourages the recipient to notify the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to construction projects as a result of this agreement and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

EXHIBIT H

Borrower Name	Incline Village General Improvement District	
First Payment Date	July 1, 2023	
Principal Amount	\$15,760,000.00	
Interest Rate <sup>A</sup>	2.10%	
Length of Amortization	30	
Total Number of Payments	60	Annual pmts 706,636.34
Fixed Payment Amount	\$353,318.17	
Closing Date	April 11, 2023	

Payment	Due Date	Principal	Interest	Total Payment	Remaining Balance
1	7/1/2023	\$279,771.58	\$73,546.67	\$353,318.25	\$15,480,228.42
2	1/1/2024	\$190,775.77	162,542.40	\$353,318.17	\$15,289,452.65
3	7/1/2024	\$192,778.92	160,539.25	\$353,318.17	\$15,096,673.73
4	1/1/2025	\$194,803.10	158,515.07	\$353,318.17	\$14,901,870.63
5	7/1/2025	\$196,848.53	156,469.64	\$353,318.17	\$14,705,022.10
6	1/1/2026	\$198,915.44	154,402.73	\$353,318.17	\$14,506,106.66
7	7/1/2026	\$201,004.05	152,314.12	\$353,318.17	\$14,305,102.61
8	1/1/2027	\$203,114.59	150,203.58	\$353,318.17	\$14,101,988.02
9	7/1/2027	\$205,247.30	148,070.87	\$353,318.17	\$13,896,740.72
10	1/1/2028	\$207,402.39	145,915.78	\$353,318.17	\$13,689,338.33
11	7/1/2028	\$209,580.12	143,738.05	\$353,318.17	\$13,479,758.21
12	1/1/2029	\$211,780.71	141,537.46	\$353,318.17	\$13,267,977.50
13	7/1/2029	\$214,004.41	139,313.76	\$353,318.17	\$13,053,973.09
14	1/1/2030	\$216,251.45	137,066.72	\$353,318.17	\$12,837,721.64
15	7/1/2030	\$218,522.09	134,796.08	\$353,318.17	\$12,619,199.55
16	1/1/2031	\$220,816.57	132,501.60	\$353,318.17	\$12,398,382.98
17	7/1/2031	\$223,135.15	130,183.02	\$353,318.17	\$12,175,247.83
18	1/1/2032	\$225,478.07	127,840.10	\$353,318.17	\$11,949,769.76
19	7/1/2032	\$227,845.59	125,472.58	\$353,318.17	\$11,721,924.17
20	1/1/2033	\$230,237.97	123,080.20	\$353,318.17	\$11,491,686.20
21	7/1/2033	\$232,655.46	120,662.71	\$353,318.17	\$11,259,030.74
22	1/1/2034	\$235,098.35	118,219.82	\$353,318.17	\$11,023,932.39
23	7/1/2034	\$237,566.88	115,751.29	\$353,318.17	\$10,786,365.51
24	1/1/2035	\$240,061.33	113,256.84	\$353,318.17	\$10,546,304.18
25	7/1/2035	\$242,581.98	110,736.19	\$353,318.17	\$10,303,722.20
26	1/1/2036	\$245,129.09	108,189.08	\$353,318.17	\$10,058,593.11
27	7/1/2036	\$247,702.94	105,615.23	\$353,318.17	\$9,810,890.17
28	1/1/2037	\$250,303.82	103,014.35	\$353,318.17	\$9,560,586.35
29	7/1/2037	\$252,932.01	100,386.16	\$353,318.17	\$9,307,654.34
30	1/1/2038	\$255,587.80	97,730.37	\$353,318.17	\$9,052,066.54
31	7/1/2038	\$258,271.47	95,046.70	\$353,318.17	\$8,793,795.07
32	1/1/2039	\$260,983.32	92,334.85	\$353,318.17	\$8,532,811.75
33	7/1/2039	\$263,723.65	89,594.52	\$353,318.17	\$8,269,088.10
34	1/1/2040	\$266,492.74	86,825.43	\$353,318.17	\$8,002,595.36
35	7/1/2040	\$269,290.92	84,027.25	\$353,318.17	\$7,733,304.44
36	1/1/2041	\$272,118.47	81,199.70	\$353,318.17	\$7,461,185.97
37	7/1/2041	\$274,975.72	78,342.45	\$353,318.17	\$7,186,210.25
38	1/1/2042	\$277,862.96	75,455.21	\$353,318.17	\$6,908,347.29
39	7/1/2042	\$280,780.52	72,537.65	\$353,318.17	\$6,627,566.77
40	1/1/2043	\$283,728.72	69,589.45	\$353,318.17	\$6,343,838.05
41	7/1/2043	\$286,707.87	66,610.30	\$353,318.17	\$6,057,130.18
42	1/1/2044	\$289,718.30	63,599.87	\$353,318.17	\$5,767,411.88
43	7/1/2044	\$292,760.35	60,557.82	\$353,318.17	\$5,474,651.53
44	1/1/2045	\$295,834.33	57,483.84	\$353,318.17	\$5,178,817.20
45	7/1/2045	\$298,940.59	54,377.58	\$353,318.17	\$4,879,876.61
46	1/1/2046	\$302,079.47	51,238.70	\$353,318.17	\$4,577,797.14

Payment	Due Date	Principal	Interest	Total Payment	Remaining Balance
47	7/1/2046	\$305,251.30	48,066.87	\$353,318.17	\$4,272,545.84
48	1/1/2047	\$308,456.44	44,861.73	\$353,318.17	\$3,964,089.40
49	7/1/2047	\$311,695.23	41,622.94	\$353,318.17	\$3,652,394.17
50	1/1/2048	\$314,968.03	38,350.14	\$353,318.17	\$3,337,426.14
51	7/1/2048	\$318,275.20	35,042.97	\$353,318.17	\$3,019,150.94
52	1/1/2049	\$321,617.09	31,701.08	\$353,318.17	\$2,697,533.85
53	7/1/2049	\$324,994.06	28,324.11	\$353,318.17	\$2,372,539.79
54	1/1/2050	\$328,406.50	24,911.67	\$353,318.17	\$2,044,133.29
55	7/1/2050	\$331,854.77	21,463.40	\$353,318.17	\$1,712,278.52
56	1/1/2051	\$335,339.25	17,978.92	\$353,318.17	\$1,376,939.27
57	7/1/2051	\$338,860.31	14,457.86	\$353,318.17	\$1,038,078.96
58	1/1/2052	\$342,418.34	10,899.83	\$353,318.17	\$695,660.62
59	7/1/2052	\$346,013.73	7,304.44	\$353,318.17	\$349,646.89
60	1/1/2053	\$349,646.89	3,671.29	\$353,318.18	\$0.00
		\$15,760,000.00	\$5,439,090.29	\$21,199,090.29	\$0.00

<sup>A</sup>See Section 5 for final interest rate for this contract.

### First Interest Payment Calculation

Date	Amount	Day count	Interest Amount
4/11/2023	\$15,760,000.00	80	\$73,546.67
			\$0.00
			\$73,546.67



NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

STATE OF NEVADA Department of Conservation & Natural Resources Joe Lombardo, Governor James A. Settelmeyer, Director Greg Lovato, Administrator

March 1, 2023

Chair Matthew Dent Incline Village General Improvement District 893 Southwood Boulevard Incline Village, Nevada 89451

Chair Dent:

The Nevada Division of Environmental Protection, Office of Financial Assistance (OFA), together with the Nevada State Treasurer's Office, are pleased to partner with Incline Village General Improvement District for the effluent export pipeline project (segment 2). This project will replace approximately 33,000 linear feet of pipeline within the Nevada Department of Transportation's right-of-way that has deteriorated beyond its service life. The export of effluent water keeps Lake Tahoe's waters clear and contributes to wetland facilities located in the Carson Valley that provide a year-round home to various avian species.

The need for this project cannot be over emphasized. The Lake Tahoe watershed is one of the most protected in the nation. We understand the existing pipeline has demonstrated limited structural integrity with current, documented leaks being reported. Not only will this project protect our pristine Lake Tahoe watershed, but it will further protect the environment from harmful contaminants and create jobs in the northern Nevada area.

OFA manages the Clean Water State Revolving Fund. The fund is designed to provide funding to infrastructure projects that protect public health and the environment through below-market interest rates. These projects make sure that our nation remains safe, clean, and livable. To ensure this project is completed timely, expeditiously, and on budget, OFA is offering to lock in the same interest rate for each bond issued from the Clean Water State Revolving Fund to complete segment 2 of the effluent export pipeline project should the market interest rate increase. Should the market interest rate decrease, OFA is willing to accept the lower market rate at the time of issuance for this specific project. The Treasurer's Office has reviewed our offer to lock in the interest rate for multiple issuances for this same project and concurs with this request.

This project will create jobs, safeguard the health of Nevada residents and visitors, and protect the crystal blue waters of Lake Tahoe.

Cordially,

DocuSigned by: Jason Cooper 3/1/2023 | 4:03 PM PST Jason B. Cooper, CGFM Administrative Services Officer 3 Nevada Division of Environmental Protection

DocuSigned by: Jeff Landerfelt 3/1/2023 | 4:08 PM PST Jeff Landerfelt Senior Deputy Treasurer-Operations State Treasurer's Office