



## Federal Financial Assistance Terms and Conditions of Award

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## I. Award Administration and Overview

### 1. Authority

This Financial Assistance Agreement (Agreement) is entered into between the Bureau of Reclamation (Reclamation) and the City of Los Angeles acting by and through its **Department of Water and Power, a municipal corporation** (Recipient), pursuant to Bipartisan Infrastructure Law (BIL), Public Law (P.L.) 117-58, Section 40905 COMPETITIVE GRANT PROGRAM FOR LARGE-SCALE WATER RECYCLING AND REUSE PROGRAM and Title XVI Water Reclamation and Reuse Program (Title XVI), authorized by P.L. 102-575.

## **SEC. 40905. COMPETITIVE GRANT PROGRAM FOR LARGE-SCALE WATER RECYCLING AND REUSE PROGRAM.**

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE ENTITY.—The term “eligible entity” means—

- (A) a State, Indian Tribe, municipality, irrigation district, water district, wastewater district, or other organization with water or power delivery authority;
- (B) a State, regional, or local authority, the members of which include 1 or more organizations with water or power delivery authority; or
- (C) an agency established under State law for the joint exercise of powers or a combination of entities described in subparagraphs (A) and (B).

(2) ELIGIBLE PROJECT.—The term “eligible project” means a project described in subsection (c).

(3) PROGRAM.—The term “program” means the grant program established under subsection (b).

(4) RECLAMATION STATE.—The term “Reclamation State” means a State or territory described in the first section of the Act of June 17, 1902 (43 U.S.C. 391; 32 Stat. 388, chapter 1093).

(b) ESTABLISHMENT.—The Secretary shall establish a program to provide grants to eligible entities on a competitive basis for the planning, design, and construction of large-scale water recycling and reuse projects that provide substantial water supply and other benefits to the Reclamation States in accordance with this section.

(c) ELIGIBLE PROJECT.—A project shall be eligible for a grant under this section if the project—

(1) reclaims and reuses—

- (A) municipal, industrial, domestic, or agricultural wastewater; or
- (B) impaired groundwater or surface water;

(2) has a total estimated cost of \$500,000,000 or more;

(3) is located in a Reclamation State;

(4) is constructed, operated, and maintained by an eligible entity; and

(5) provides a Federal benefit in accordance with the reclamation laws.

(d) PROJECT EVALUATION.—The Secretary may provide a grant to an eligible project under the program if—

(1) the eligible entity determines through the preparation of a feasibility study or equivalent study, and the Secretary concurs, that the eligible project—

- (A) is technically and financially feasible;
- (B) provides a Federal benefit in accordance with the reclamation laws; and
- (C) is consistent with applicable Federal and State laws;

(2) the eligible entity has sufficient non-Federal funding available to complete the eligible project, as determined by the Secretary;

(3) the eligible entity is financially solvent, as determined by the Secretary; and

(4) not later than 30 days after the date on which the Secretary concurs with the determinations under paragraph (1) with respect to the eligible project, the Secretary submits to Congress written notice of the determinations.

(e) **PRIORITY.**—In providing grants to eligible projects under the program, the Secretary shall give priority to eligible projects that meet 1 or more of the following criteria:

- (1) The eligible project provides multiple benefits, including—
  - (A) water supply reliability benefits for drought stricken States and communities;
  - (B) fish and wildlife benefits; and
  - (C) water quality improvements.
- (2) The eligible project is likely to reduce impacts on environmental resources from water projects owned or operated by Federal and State agencies, including through measurable reductions in water diversions from imperiled ecosystems.
- (3) The eligible project would advance water management plans across a multi-State area, such as drought contingency plans in the Colorado River Basin.
- (4) The eligible project is regional in nature.
- (5) The eligible project is collaboratively developed or supported by multiple stakeholders.

(f) **FEDERAL ASSISTANCE.**—

- (1) **FEDERAL COST SHARE.**—The Federal share of the cost of any project provided a grant under the program shall not exceed 25 percent of the total cost of the eligible project.
- (2) **TOTAL DOLLAR CAP.**—The Secretary shall not impose a total dollar cap on Federal contributions for all eligible individual projects provided a grant under the program.
- (3) **NONREIMBURSABLE FUNDS.**—Any funds provided by the Secretary to an eligible entity under the program shall be considered nonreimbursable.
- (4) **FUNDING ELIGIBILITY.**—An eligible project shall not be considered ineligible for assistance under the program because the eligible project has received assistance under—
  - (A) the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h et seq.);
  - (B) section 4(a) of the Water Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104–298) for eligible desalination projects; or
  - (C) section 1602(e) of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h(e)).

(g) **ENVIRONMENTAL LAWS.**—In providing a grant for an eligible project under the program, the Secretary shall comply with all applicable environmental laws, including the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.).

(h) **GUIDANCE.**—Not later than 1 year after the date of enactment of this Act, the Secretary shall issue guidance on the implementation of the program, including guidelines for the preparation of feasibility studies or equivalent studies by eligible entities.

(i) **REPORTS.**—

- (1) **ANNUAL REPORT.**—At the end of each fiscal year, the Secretary shall make available on the website of the Department of the Interior an annual report that lists each eligible project for which a grant has been awarded under this section during the fiscal year.
- (2) **COMPTROLLER GENERAL.**—

(A) ASSESSMENT.—The Comptroller General of the United States shall conduct an assessment of the administrative establishment, solicitation, selection, and justification process with respect to the funding of grants under this section.

(B) REPORT.—Not later than 1 year after the date of the initial award of grants under this section, the Comptroller General shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a report that describes—

(i) the adequacy and effectiveness of the process by which each eligible project was selected, if applicable; and

(ii) the justification and criteria used for the selection of each eligible project, if applicable.

(j) TREATMENT OF CONVEYANCE.—The Secretary shall consider the planning, design, and construction of a conveyance system for an eligible project to be eligible for grant funding under the program.

(k) TERMINATION OF AUTHORITY.—The authority to carry out this section terminates on the date that is 5 years after the date of enactment of this Act.

## 2. Public Purpose of Support

The public purpose of the Title XVI Program, Desalination Construction Program, and the Large-Scale Water Recycling Program projects are to improve water efficiency, provide flexibility during water shortages, and diversify the water supply by developing and supplementing urban and irrigation water supplies through water reuse. Large-scale water recycling projects will play an important role in helping communities develop local, drought resistant sources of water supply by turning currently unusable water sources into a new source of water supply that is less vulnerable to drought and climate change.

## 3. Background and Objectives

The Los Angeles Department of Water and Power (LADWP), in collaboration with Los Angeles Sanitation and Environment, will implement the Los Angeles Groundwater Replenishment Project to enhance local water reliability. This project will treat tertiary effluent from the Donald C. Tillman Water Reclamation Plant using advanced purification technologies, including microfiltration, reverse osmosis, and ultraviolet advanced oxidation. The purified recycled water will then be conveyed to the Hansen Spreading Grounds to replenish the San Fernando Groundwater Basin. By providing 22,000 acre-feet of drought-resilient water annually, the project will reduce reliance on imported water and establish a sustainable local water source. Funding will support the final design and construction of upgrades to both the tertiary treatment and advanced purification facilities.

## 4. Financial Assistance Administrative Regulations

All recipients are required to follow the applicable federal, Department of Interior, and Reclamation financial assistance regulations. The provisions of the "Uniform Administrative

Requirements, Cost Principles, and Audit Requirements for Federal Financial Assistance” located at [Title 2 CFR Part 200](#), the Department of the Interior Federal Agency Regulations for Grants and Agreements at [Title 2 CFR Subtitle B, Part 1400-1499](#), and the Financial Assistance Interior Regulations (or FAIR) at [Title 2 CFR Subtitle B, Parts 1402-1402.499](#), are hereby incorporated by reference as though set forth in full text.

## 5. Regulatory Compliance

All recipients must comply, or assist Reclamation, with all regulatory compliance requirements and all applicable state, federal, and local environmental, cultural, and paleontological resource protection laws and regulations, as applicable to this Agreement. These may include, but are not limited to, NEPA, including the Council on Environmental Quality and Department of the Interior regulations implementing NEPA, the Clean Water Act, the Endangered Species Act, consultation with potentially affected Tribes, and consultation with the State Historic Preservation Office. If the Recipient begins project activities that require environmental or other regulatory compliance approval, prior to written notice from the Grant Officer (GO) that all such clearances have been obtained, Reclamation reserves the right to initiate remedies for non-compliance as defined by [2 CFR 200.339-340](#), including termination of this Agreement.

## 6. Acceptance

Recipients of Reclamation financial assistance awards must comply with the applicable terms and conditions incorporated, either directly or by reference, in their Notice of Funding Opportunity R23AS00433 – WaterSMART: Large-Scale Water Recycling Projects for Fiscal Years 2023-2024, program announcements, and this Notice of Award (NOA). These terms and conditions are in addition to the assurances and certifications made as part of the award application process through submission of the Standard Forms SF-424B Assurances for Non-Construction Programs, SF-424D Assurances for Construction Programs, and Certifications Regarding Lobbying (see [SF-424 Family | Grants.gov](#)), or through acceptance of certifications and representations in the System for Award Management ([SAM.gov](#)).

Acceptance of a financial assistance award, including any amendments, from Reclamation carries with it the responsibility to be aware of and comply with all terms and conditions applicable to the award. Acceptance means starting work, drawing down or requesting funds, or accepting the award via electronic means. Accepting the award constitutes a consent to fulfill and comply with all terms and conditions by the recipient.

## 7. Amendments

Any changes to this Agreement shall be made in writing by the GO, unless determined by Reclamation to be administrative corrections which do not impact the terms and conditions of the Agreement. No statement made by any person, or in writing, other than the GO shall be allowed to amend, modify, or otherwise affect the Agreement.

All recipient requests for amendment of the Agreement, including prior approval requirements set forth in [2 CFR 200.308](#), such as no-cost extensions and changes to key personnel, or the addition of previously agreed upon funding, are addressed to the GO and submitted in writing (including via email) and will include a full description of the reason for the request.

Amendment requests can be submitted to the Grants Management Specialist (GMS) or to the GO identified on the NOA page.

## 8. Department of Labor Megaproject

As a condition of award of federal financial assistance, recipients of this funding who may undertake or sponsor construction projects with a total project cost of \$35 million or greater, are eligible for selection by the U.S. Department of Labor's Office of Federal Contractor Compliance Programs (OFCCP) for designation as a "Megaproject" based on certain selection criteria. OFCCP's selection means that the recipient must collaborate with DOL and participate in OFCCP's Mega Construction Project Program. OFCCP's selection and designation of a Megaproject affects recipients, subrecipients and vendors. Accordingly, all Recipients (and any Subrecipients) will notify vendors in any solicitations for project work that all federally assisted contractors and subcontractors will be required to participate in OFCCP's Mega Construction Project Program if the project is selected by OFCCP, and that the resulting contracts and subcontracts will include a clause requiring participation. Frequently Asked Questions for the program and additional information on how OFCCP makes their selections for participation in the Mega Construction Project Program is found on the Department of Labor website: <https://www.dol.gov/agencies/ofccp/faqs/construction-compliance>.

## II. Project Performance

### 1. Project Narrative and Milestones

Under this Agreement, the Recipient will complete planning, design and construction activities. The milestones for completing the scope of work are:

Milestone / Task / Activity	Planned Start Date	Planned Completion Date
Basis of Design	2/17/2023	12/01/2023
30% Design	3/10/2023	01/09/2024
70% Design	12/04/2023	05/30/2024
Guaranteed Maximum Price	03/01/2024	11/22/2024
100% Design	06/03/2024	12/09/2024

Construction	12/02/2024	10/01/2027
• AWPf	12/02/2024	05/06/2027
• Equalization Basin	10/01/2025	04/01/2027
• Maintenance and Warehouse Facilities	05/01/2025	10/01/2027

## 2. Recipient Responsibilities

The Recipient shall carry out the approved project in accordance with the terms and conditions stated herein, [2 CFR Part 200](#) (including procurement requirements at [200.320](#)), adherence to Federal, state, and local laws, regulations, and codes, as applicable, and shall obtain all required approvals and permits. If the approved project contains construction activities, the Recipient is responsible for construction inspection, oversight, and acceptance. If applicable, the Recipient shall also coordinate and obtain approvals from site owners and operators.

## 3. Reclamation Responsibilities

Reclamation monitoring and oversight of this award includes review and approval of financial and performance reports, and other deliverables identified as part of the project scope. Additional monitoring activities may include drawdown approvals, site visits, conference calls, and other on-site and off-site monitoring activities such as inspections or evaluation on Recipient and subrecipient premises. At the Recipient's request, Reclamation may also provide technical support to the Recipient for the approved project and objectives of this Agreement.

# III. Financial Assistance

## 1. Available Funding

The total estimated project cost for this Agreement is \$618,806,575.00.

The amount of federal funds issued with this action is \$60,000,000.00, as indicated by "Amount of Financial Assistance This Action" within block 12 of the NOA.

The Recipient shall not incur costs or obligate funds for any purpose pertaining to operation of the program or activities beyond the period of performance end date. The only costs which are authorized for a period of up to 120 days following the period of performance are those strictly associated with closeout activities for preparation of the final reports.

## 2. Approved Budget

The total approved budget summarizes the financial aspects of the project. It is detailed by category in block 11 of the NOA page and/or below. Final costs incurred within budget



categories listed may be either higher or lower than the estimated costs. All costs incurred by the Recipient under this Agreement must be in accordance with budget documentation submitted to Reclamation, and any pre-award clarifications conducted between the Recipient and Reclamation.

The Recipient is responsible for ensuring federal funds are managed in a manner consistent with [2 CFR Part 200 Subpart E](#), the approved budget, approved project activities, and terms and conditions of award. Recipients are encouraged to direct questions regarding allowability, allocability or reasonableness of costs to the GO for review prior to incurrence of the costs in question.

<b>Budget Summary</b>			
<b>Category</b>	<b>Total Cost</b>	<b>Federal Estimated Amount</b>	<b>Non-Federal Estimated Amount</b>
f. Contractual	\$10,791,369		
g. Construction	\$563,273,675		
h. Contingency	\$44,741,531		
i. Total Direct	\$618,806,575		
<b>Total Costs</b>	\$618,806,575	\$60,000,000	\$558,806,575

### 3. Cost Sharing Requirement

At least 75% non-federal cost-share is required for costs incurred under this Agreement. If pre-award costs are authorized, reimbursement of these costs is limited to federal cost share percentage identified in this Agreement.

The federal share of allowable costs shall not be expended in advance of the Recipient's non-federal share. The expenditure of federal and non-federal funds based upon the cost share percentage above shall occur concurrently. If a bona fide need arises which requires the expenditure of federal funds in advance of the Recipient share, then the Recipient must request written approval from the GO prior to the expenditure. Recipients may expend their agreed upon share of costs in advance of the expenditure of federal funds without prior written approval.

### 4. Pre-Award Incurrence of Costs

The Recipient shall be entitled to reimbursement for costs incurred on or after **July 18, 2023** which if had been incurred after the start date of the period of performance, would have been allowable, allocable, and reasonable under the terms and conditions of this Agreement.

## 5. Indirect Costs

Indirect costs are not approved for this Agreement.

## 6. Restricted Funds

### 6.1 Contingency Costs

Prior approval is required, in writing, from the GO to transfer funds (of any amount) from the contingency cost line-item to other cost categories in the budget. The request for approval from the recipient must be in writing and identify the reason(s) why the transfer is necessary and identify the cost overruns in other budget line-items. If there are no cost-overruns during the performance of construction under this Agreement, funds obligated under the contingency cost line-item may be de-obligated by the GO.

### 6.2 Prior Approval Requirement – Financial Capability Determination

Per NOFO R23AS00433 WaterSMART: Large-Scale Water Recycling Projects for Fiscal Years 2023-2024, from which these funds are being awarded, under section D.2.3 a Financial Capability Determination is required prior to Reclamation releasing Federal funding for construction activities. This agreement is being issued WITHOUT the final Financial Capability Determination. As such construction funds in the amount of \$608,015,206.00, as represented in the budget table in section g. Construction of the agreement, may not be drawn until BOR informs the recipient the determination is complete, and section 6.2 has been met.

### 6.3 Prior Approval Requirement - BOR NEPA

Per NOFO R23AS00433 WaterSMART: Large-Scale Water Recycling Projects for Fiscal Years 2023-2024, from which these funds are being awarded, under section F.2.2 Environmental Review is required to be completed by the BOR prior any ground-disturbing activities. This agreement is being issued WITHOUT a completed NEPA and therefore these funds are being suspended until the entire Environmental Review has been completed and official Notice to proceed has been issued by the Grants Officer.

## IV. Payment Information

### 1. Payment Method

Recipients must utilize the Department of Treasury Automated Standard Application for Payments (ASAP) payment system to request payments. ASAP is a Recipient-initiated payment and information system designed to provide a single point of contact for the request and delivery of federal funds. ASAP is the only allowable method for request and receipt of payment. Recipient procedures must minimize the time elapsing between the drawdown of federal funds and the disbursement for Agreement purposes.

## 2. Payment

Financial assistance recipients are paid in advance by electronic drawdown, provided they maintain written procedures that minimize the time elapse between transfer of funds from ASAP accounts and disbursements, and they have financial management systems that meet standards for fund control and accountability. Advance payments are limited to the immediate cash requirements to carry out the purpose of the approved program or project.

## 3. Return of Funds, Interest or Excess Cash

### **Payment Method ASAP**

The Recipient must direct returns of funds not spent, excess cash on hand, interest owed to the federal government, and principal to the ASAP system. Returns should include:

- The agency to credit the funding (i.e. Reclamation)
- The relevant ASAP account numbers
- The reason for the return

### **Payment Method Electronic Transfer**

If the Recipient is unable to return funds owed to the federal government through ASAP, the following electronic transfer information should be utilized:

#### **ACH Returns:**

ABA Routing Number: 051036706

Account number: 312018

Bank Name and Location: Credit Gateway, Federal Reserve Bank, Richmond, VA

Agreement Number: Reclamation Grant or Cooperative Agreement Number

#### **Fedwire Returns:**

ABA Routing Number: 021030004

ABA Short Name: TREAS NYC

Account number: 14060905

Beneficiary Name: Bureau of Reclamation

Bank Name and Location: Federal Reserve Bank, 33 Liberty Street, Federal Reserve Post Office Station, New York, NY 10045

Agreement Number: Reclamation Grant or Cooperative Agreement Number

### **Payment Method US Mail**

For Recipients that do not have electronic remittance capability, please make check payable to: "Bureau of Reclamation" and include the following in the memo lines of the check:

- The Reclamation award number
- The ASAP account number

**Mail (by USPS only)** the check to Treasury approved lockbox:  
DOI-BOR-Region: Denver  
P.O. Box 6200-21  
Portland, OR  
97228-6200

## V. Reporting Requirements

### 1. Reclamation Required Reports and Submission

Reports can be submitted to the GMS via [LCFA@usbr.gov](mailto:LCFA@usbr.gov) or [GrantSolutions](#).

#### 1.1 Financial Reporting Requirements

The interim Federal Financial Report (SF-425) shall be submitted semi-annually, according to the Report Frequency and Submission schedule noted under the *Federal Financial Report Cycle*, following the Notice of Award page. All financial reports shall be signed by an Authorized Certifying Official for the Recipient's organization.

Per [2 CFR Part 200.344](#), the **Final** Federal Financial Report (SF-425) shall be submitted within 120 days of the period of performance end date. The recipient shall not incur costs or obligate funds for any purpose pertaining to the operation of the program or activities beyond the period of performance end date and must liquidate all financial obligations incurred under the award. The only costs which are authorized for 120 days following the period of performance end date are those strictly associated with closeout activities in preparation of final reports. All sections of the Final SF-425 must be complete.

#### 1.2 Performance Progress Reporting Requirements

Reclamation requires Performance Reports to be submitted semi-annually, according to the Report Frequency and Submission schedule noted under the *Performance Progress Report Cycle*, following the Notice of Award page. Reclamation may utilize standard, OMB-approved forms for the collection of performance information, or no specific format, as identified in the NOFO or program announcement.

For Construction and non-construction, the minimum information to include in Performance Reports are:

- Report identification; recipient name, agreement number, project title.
- A comparison of actual accomplishments to the objectives of the federal award for the reporting period
- Where accomplishments can be quantified, or performance data and analysis informative to Reclamation, if applicable
- A reason(s) why any established goals/objectives were not met, if applicable
- Pertinent information on overall activity such as cost overruns, or high unit costs

- Significant developments such as problems, delays, or adverse conditions, if applicable
- Favorable developments such as objectives ahead of schedule, or less cost than anticipated, if applicable

Per [2 CFR Part 200.344](#), the **Final** Performance Progress Report shall be submitted within 120 days of the period of performance end date. The Final Performance Report shall include a summary of all activities completed during the entire period of performance with the minimum information stated above, and any Program Specific or Data Collection report requirements as stated within the NOFO and this Agreement.

## 2. Federal-wide Reports and Disclosures

### 2.1 System for Award Management

Unless exempted by [2 CFR 25.110](#), recipients must maintain current information in the System for Award Management (SAM) until the final financial report required under the Award is submitted, or the final payment is received, whichever is later, per [Appendix A to Part 25, Title 2](#). This requires recipients to review and update information *at least annually* after the initial registration, or more frequently if required by changes in your information. See [SAM.gov | Home](#). If a recipient allows their SAM registration to lapse, they will be prevented from submitting applications for funding opportunities in Grants.gov, and ASAP accounts are suspended, among other federal financial assistance restrictions.

### 2.2 Subawards and Executive Compensation

Unless exempted by [2 CFR Part 170.105](#), Recipients are required to report information on subawards and executive total compensation to meet the requirements of the federal Funding Accountability and Transparency Act of 2006. Recipients can review [Appendix A to Part 170, Title 2](#) for information on what, where, and when to report.

### 2.3 Reporting Recipient Integrity and Performance

Recipients that have active financial assistance and procurement contracts from federal agencies exceeding \$10,000,000 for any period of time during the period of performance of this Agreement must maintain current information in SAM about civil, criminal, or administrative proceedings as outlined in [Appendix XII to Part 200](#).

### 2.4 Conflicts of Interest

The Recipient must establish safeguards to prohibit its employees and Subrecipients from using their positions for purposes that constitute or present the appearance of a personal or organizational conflict of interest. The Recipient is responsible for notifying the Grants Officer in writing of any actual or potential conflicts of interest that may arise during the life of this award. Conflicts of interest include any relationship or matter which might place the Recipient or its employees in a position of conflict, real or apparent, between their responsibilities under the agreement and any other outside interests. Conflicts of interest may also include, but are not

limited to, direct or indirect financial interests, close personal relationships, positions of trust in outside organizations, consideration of future employment arrangements with a different organization, or decision-making affecting the award that would cause a reasonable person with knowledge of the relevant facts to question the impartiality of the Recipient and/or Recipient's employees and Subrecipients in the matter.

The Grants Officer and the servicing Ethics Counselor will determine if a conflict of interest exists. If a conflict of interest exists, the Grants Officer will determine whether a mitigation plan is feasible. Mitigation plans must be approved by the Grants Officer in writing. Failure to resolve conflicts of interest in a manner that satisfies the government may be cause for termination of the award.

**Definitions:**

This section incorporates by reference [2 CFR Part 200, Subpart A, Acronyms and Definitions](#) including, but not limited to the following additional terms:

A. Conflict of Interest is defined as any relationship or matter which might place the Recipient, its employees, and/or its Subrecipients in a position of conflict, real or apparent, between their responsibilities under the agreement and any other outside interests. Conflicts of interest may also include, but are not limited to, direct or indirect financial interests, close personal relationships, positions of trust in outside organizations, consideration of future employment arrangements with a different organization, or decision-making affecting the award that would cause a reasonable person with knowledge of the relevant facts to question the impartiality of the Recipient and/or Recipient's employees and Subrecipients in the matter.

B. Close Personal Relationship means a federal award program employee's childhood or other friend, sibling, or other family relations that may compromise or impair the fairness and impartiality of the Proposal Evaluator and Advisor and Grants Officer in the review, selection, award, and management of a financial assistance award.

C. Discretionary Federal Financial Assistance means Federal awards including grants and agreements that are awarded at the discretion of the agency.

D. Employment means:

1. In any capacity, even if otherwise permissible, by any applicant or potential applicant for a Federal financial assistance award;
2. Employment within the last 12 months with a different organization applying for some portion of the award's approved project activities and funding to complete them OR expected to apply for and to receive some portion of the award; and/or
3. Employment with a different organization of any member of the organization employee's household or a relative with whom the organization's employee has a close personal relationship who is applying for some portion of the award's approved project activities and funding to complete them OR expected to apply for and to receive some portion of the award.

E. Non-federal entity means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal award as a Recipient or Subrecipient.

F. Recipient means a non-federal entity that receives a federal award directly from a

federal awarding agency to carry out an activity under a federal program. The term Recipient does not include Subrecipients.

G. Subrecipient means a non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program, but does not include an individual who is a beneficiary of such program. A Subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.

## 2.5 Trafficking Victims Protection

The Recipient, its employees, and its subrecipients under this award may not engage in human trafficking, procuring commercial sex acts, or using forced labor during the performance of the award, or any subawards. Recipients must inform Reclamation immediately of any allegation of such activity. Reclamation may unilaterally terminate this award, without penalty, in addition to other remedies for noncompliance, if a violation of the [Trafficking Victims Protection Act of 2000 \(TVPA\)](#), codified at [2 CFR Part 175.15](#) for financial assistance awards, is determined. Recipients will ensure this provision is included in any agreements entered into for award activities.

## 3. Remedies for Noncompliance

Failure to comply with the recipient reporting, disclosure, and notice requirements contained in this Agreement, terms and conditions, or federal financial assistance regulations, may be considered a material noncompliance with the terms and conditions of the award.

Noncompliance may result in withholding of payments, denying both the use of federal funds and recipient cost-share for all or part of a cost, activity or action not in compliance, whole or partial suspension or termination of the Agreement, recovery of funds paid under the Agreement, withholding of future awards, or other legal remedies in accordance with [2 CFR 200.339-340](#).

# VII. Program or Project Specific Terms and Conditions

## 1. Buy America Preference for Infrastructure Projects

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

- (1) All iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for

determining the minimum amount of domestic content of the manufactured product;  
and

(3) All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The construction material standards are listed below.

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

*Categorization of articles, materials, and supplies.* An article, material, or supply should only be classified into one of the following categories: (i) Iron or steel products; (ii) 15 Manufactured products; (iii) Construction materials; or (iv) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

*Application of the Buy America Preference by category.* An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

*Determining the cost of components for manufactured products.* In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

- (a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

*Construction material standards.* The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is



followed by a standard for the material to be considered "produced in the United States." Except as specifically provided, only a single standard should be applied to a single construction material.

- (1) Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
- (2) Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
- (3) Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
- (4) Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
- (5) Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
- (6) Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
- (7) Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
- (8) Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

*Waivers.* When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. Information on the process for requesting a waiver from these requirements can be found at <https://www.doi.gov/grants/buyamerica>.

When DOI has determined that one of the following exceptions applies, the awarding official may waive the application of the Buy America Preference in any case in which the agency determines that:

- (1) applying the Buy America Preference would be inconsistent with the public interest;
- (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the Buy America Preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any

waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Office of Management and Budget (OMB) Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described at the Approved DOI General Applicability Waivers website located at <https://www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>.

### *Definitions*

"Buy America Preference" means the "domestic content procurement preference" set forth in section 70914 of the Build America, Buy America Act, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.

"Construction materials" means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

(1) The listed items are:

- (i) Non-ferrous metals;
- (ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- (iii) Glass (including optic glass);
- (iv) Fiber optic cable (including drop cable);
- (v) Optical fiber;
- (vi) Lumber;
- (vii) Engineered wood; and
- (viii) Drywall.

(2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

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

"Infrastructure project" means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. See also paragraphs (c) and (d) of 2 CFR 184.4.

"Iron or steel products" means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

"Manufactured products" means:

(1) Articles, materials, or supplies that have been:

(i) Processed into a specific form and shape; or

(ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

(2) If an item is classified as an iron or steel product, a construction material, or a Section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in 2 CFR 184.3, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or Section 70917(c) materials.

"Predominantly of iron or steel or a combination of both" means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

"Section 70917(c) materials" means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. See Section 70917(c) of the Build America, Buy America Act.

## 2. Liability

a. In general, except as provided under [28 U.S.C. Chapter 171](#) (commonly known as the "Federal Tort Claims Act"), the United States shall not be liable for monetary damages of any kind for any injury arising out of an act, omission, or occurrence that arises in relation to any facility created or improved under this Agreement, the title of which is not held by the United States.

b. Tort Claims Act. Nothing in this section increases the liability of the United States beyond that provided in 28 U.S.C. Chapter 171, United States Code (commonly known as the "Federal Tort Claims Act").

## 3. Wage Rate Requirements

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

## VI. Reclamation Contacts

### 1. Grants Officer

The Reclamation GO is the only official with legal authority to; obligate funds, approve amendments, interpret financial assistance statutes, regulations, circulars, policies, and terms of this Agreement. The GO, or Grants Management Official, contact information can be found on the bottom of the Notice of Award cover page.

### 2. Grants Management Specialist

The Reclamation GMS works in conjunction with the GO and is the primary administrative point of contact for this Agreement regarding issues related to the day-to-day management. Requests for approval regarding changes to the terms and conditions of the Agreement, including but not limited to amendments and prior approval, may be submitted to a GMS but can only be approved, in writing, by a Reclamation GO. For some agreements, the Reclamation GO and the Reclamation GMS may be the same individual.

### 3. Grants Officer's Technical Representative

The Grants Officer Technical Representative (GOTR), or Federal Project Officer, is the primary point of contact for the programmatic performance, compliance, and progress for this Agreement and represents Reclamation in questions regarding interpretation of specifications, drawings, and other technical matters. The GOTR assists the GO in documenting performance, resolving compliance issues with project activities/milestones, and other technical conditions of the Agreement, however only the GO has the legal authority over management of this award. The GOTR holds no authority to modify, approve, or make determinations related to the terms and conditions of this award.

## VIII. Department of Interior Standard Terms and Conditions

The Department of the Interior (DOI) Standard Award Terms and Conditions found at <https://www.doi.gov/grants/doi-standard-terms-and-conditions> are hereby incorporated by reference as though set forth in full text. The Recipient is responsible for ensuring their subrecipients and contractors are aware of and comply with applicable statutes, regulations, and agency requirements.