

SF Bay Area Water Quality Improvement Fund - Healthy Watersheds, Resilient Baylands
U.S. EPA Grant Agreement #W9-99T53101-0 [CFDA # 66.126]
Subrecipient Agreement
- Base Document -

This Subrecipient Agreement is made and entered into as of **October 1, 2016** by and between the Association of Bay Area Governments (ABAG), a joint powers agency acting on behalf of the San Francisco Estuary Partnership, a program of ABAG and City of Sunnyvale, a charter city in the State of California.

Recitals

A. Whereas, the U. S. Environmental Protection Agency (EPA) and ABAG entered into Grant Agreement #W9-99T53101-0 (Grant Agreement) for One Million, Six Hundred Sixty-Seven Thousand, Six Hundred Eighty-Three Dollars (\$1,667,683) of federal funding for the implementation of the Healthy Watersheds, Resilient Baylands project for multi-benefit urban greening and tidal wetlands restoration in Silicon Valley. The Grant allows for retroactive reimbursement of expenses to its start date, October 1, 2016.

B. Whereas, ABAG and SFEP and City of Sunnyvale desire to establish and/or acknowledge the governing rules, regulations, terms and conditions for City of Sunnyvale's participation in the Grant Project.

C. Whereas, ABAG and the Metropolitan Transportation Commission (MTC) entered into a Contract for Services under which MTC provides administrative and program services to ABAG. Effective July 1, 2017, the staffs of ABAG and MTC were consolidated. MTC staff now serve both the Association of Bay Area Governments and the Metropolitan Transportation Commission. As such, all interactions between ABAG and City of Sunnyvale contained within this Agreement, shall be conducted by MTC staff on behalf of ABAG.

NOW THEREFORE, based upon the foregoing recitals, ABAG and City of Sunnyvale further agree as follows:

1.0 Applicable Documents

The following are attached and incorporated by this reference:

- 1.1.1 Exhibit 1 City of Sunnyvale Scope of Work
- 1.1.2 Exhibit 2 Invoicing Procedure
- Exhibit 2a Insurance Requirements
- 1.1.3 Exhibit 3 Grant Agreement
- 1.1.4 Exhibit 4 Special Conditions to Grant Agreement
- 1.1.5 Exhibit 5 Standard Form LLL - Disclosure of Lobbying Activities

EPA – Healthy Watersheds, Resilient Baylands – Exhibit 1 – City of Sunnyvale –

1.2 The Subrecipient Agreement is comprised of this Base Document and Exhibits 1 through 5, inclusive, and is the complete and exclusive statement of understanding between ABAG and City of Sunnyvale, and supersedes any and all previous understandings or agreements, whether written or oral, and all communications between the parties relating to the subject matter of this Subrecipient Agreement.

2.0 Term of Agreement

The Subrecipient Agreement shall commence as of October 1, 2016 (Effective Date) and continue until July 31, 2020, or until terminated by the EPA pursuant to the terms of the Grant Agreement or by ABAG pursuant to the terms of this Subrecipient Agreement.

3.0 Subaward Amount

ABAG will disburse a portion of the Grant to City of Sunnyvale for carrying out its responsibilities as part of the Grant Project as described in Exhibit 1. **The maximum amount to be funded by the EPA and disbursed through ABAG to City of Sunnyvale shall be Two Hundred Sixty-Five Thousand, Two Hundred Dollars (\$265,200.00) (Subaward Amount).**

4.0 ABAG Obligations

4.1 ABAG shall be the program lead and fiscal agent for the Grant Project. ABAG shall disburse Grant funds as required or permitted by the Grant Agreement. Notwithstanding the foregoing, ABAG is not obligated to disburse any funds to City of Sunnyvale unless and until such are authorized and disbursed from EPA to ABAG.

4.2 ABAG shall coordinate the activities of all subrecipients, including City of Sunnyvale, so as to implement the Grant Project in accordance with the terms of the Grant Agreement.

4.2.1 ABAG shall promptly notify City of Sunnyvale of any notices given or actions taken by the EPA if such notices or actions are likely to affect City of Sunnyvale's performance, duties, obligations or funding under this Subrecipient Agreement. To the extent practicable, ABAG shall consult with City of Sunnyvale in carrying out ABAG's responsibilities.

5.0 City of Sunnyvale Obligations

5.1 City of Sunnyvale is, and at all times will continue to be, in full compliance with the terms and conditions of the Grant Agreement that are applicable to it. City of Sunnyvale understands and agrees that for purposes of the foregoing, any requirements imposed upon ABAG as Recipient in the Grant Agreement are hereby passed-through and adopted by City of Sunnyvale as obligations of City of Sunnyvale, excepting only ABAG's obligations as described in section 4.

5.1.1 Without limiting subsection 5.1, City of Sunnyvale shall comply with the scope of any and all authorizations, limitations, exclusions, and/or exceptions for use of the Subaward Amount, including without limitation, the Grant Agreement, the Administrative Conditions and Programmatic Conditions of the Grant Agreement, the General Conditions of the Grant Agreement and all applicable statutes, regulations and regulatory guidance referenced in any of the foregoing.

5.2 City of Sunnyvale shall carry out all the tasks set forth in Exhibit 1 as it may be amended or modified. City of Sunnyvale shall carry out all tasks in accordance with the Grant Agreement, the Administrative Conditions and Programmatic Conditions of the Grant Agreement, the General Conditions of the Grant Agreement, and the Special Conditions in Exhibit 4.

5.3 City of Sunnyvale shall not cause ABAG to be in violation of the Grant Agreement or any of its requirements whether by act or omission.

5.4 City of Sunnyvale shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, now existing and as such may change from time-to-time.

6.0 Indemnification and Ineligible Claims

6.1 To the fullest extent allowed by law, City of Sunnyvale shall defend, indemnify, save harmless and waive subrogation against ABAG and its members, officers, employees, and agents (excluding agents who are design professionals), if any, (collectively, Indemnitees), from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity arising out of or in connection with its performance of this Contract (collectively, Claims) for bodily injury, personal injury, property damage or any violation of Federal, State or local laws, with the exception that this section shall in no event be construed to require indemnification by City of Sunnyvale to a greater extent than permitted under the public policy or laws of the State of California.

6.2 These defense and indemnification obligations are undertaken in addition to, and shall not in any way be limited by, the insurance obligations set forth in Exhibit 2. Any inspection of the work by an Indemnatee is not a waiver of full compliance with these obligations. These defense and indemnification obligations shall survive the termination or expiration of the Contract for the full period of time permitted by law.

7.0 Insurance

7.1 City of Sunnyvale shall comply with the Insurance Requirements set forth in Exhibit 2a.

8.0 Termination

8.1 Upon termination of the Grant Agreement, this Subrecipient Agreement shall terminate effective the same date as the Grant Agreement and in accordance with the terms and conditions for the termination of the Grant Agreement, unless this Subrecipient Agreement is terminated sooner in accordance with its terms.

8.2 ABAG may terminate this Subrecipient Agreement upon written approval for same from EPA in accordance with the terms and conditions of such approval.

8.3 If, through any cause, City of Sunnyvale fails to fulfill in timely and proper manner its obligations under the Agreement, or if City of Sunnyvale shall violate any covenants, conditions, or stipulations of the Agreement, and should such failure or violation continue unremedied for a period of thirty (30) days after receipt of ABAG's written notice to City of Sunnyvale specifying the details of such failure or violation, then ABAG may terminate the Agreement by giving not

less than five (5) days prior written notice of such termination which specifies the effective date thereof. Upon termination under this paragraph, all unfinished or finished documents, data, studies, surveys, drawings, models, photographs, reports, and other materials prepared by City of Sunnyvale under the Agreement, shall, at the option of ABAG, become ABAG's property and City of Sunnyvale shall be entitled to receive just and equitable compensation for satisfactory work completed to the date of termination. Notwithstanding the above, City of Sunnyvale shall not be relieved of liability to ABAG for damages sustained by ABAG by virtue of any breach of the agreement by City of Sunnyvale, and ABAG may withhold any payment to City of Sunnyvale for the purpose of set-off until such time as the exact amount of damage due ABAG from City of Sunnyvale is determined.

8.4 ABAG may terminate the Agreement at any time by giving not less than thirty (30) days prior written notice of termination to Consultant which shall specify the effective date thereof. Upon termination under this paragraph, all finished or unfinished documents and other materials described in paragraph 8.3 shall at the option of ABAG become its property. If the contract is terminated by ABAG as provided in this paragraph, Consultant shall be paid for services actually performed at the rate set forth in Exhibit A; provided that, if the Agreement is terminated due to the fault of Consultant, only the paragraph relative to termination for cause shall apply.

9.0 Notices and Administrative Contacts

9.1 All notices or notifications under this Subrecipient Agreement shall be in writing addressed to the persons set forth in this section.

9.2 All notices or notifications to ABAG shall be sent to:

Darcie Luce
San Francisco Estuary Partnership
375 Beale Street, Suite 800
San Francisco, California
415-778-6673
darcie.luce@sfestuary.org

9.3 All notices or notifications to the City of Sunnyvale shall be sent to:

Melody Tovar
City of Sunnyvale
PO Box 3707
Sunnyvale, CA 94086
(408) 730-7740
mtovar@sunnyvale.ca.gov

10.0 Amendments and Changes

This Subrecipient Agreement may be changed only by a written amendment duly signed by ABAG and City of Sunnyvale.

11.0 Assignment and Delegation

City of Sunnyvale shall not assign its rights or delegate its duties under this Subrecipient Agreement. Any attempted assignment or delegation shall be null and void, and constitute a material breach of this Subrecipient Agreement.

12.0 Governing Law and Venue

This Agreement shall be governed by, and construed in accordance with, the substantive and procedural laws of the State of California. City of Sunnyvale further agrees and consents that the venue of any action brought between City of Sunnyvale and ABAG shall be exclusively in the County of Alameda.

13.0 Validity and Severability

If any provision of this Subrecipient Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Subrecipient Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

14.0 No Waiver

No waiver by either party of any event of breach and/or breach of any provision of this Subrecipient Agreement shall constitute a waiver of any other event of breach and/or breach. Either party's non-enforcement at any time, or from time to time, of any provision of this Subrecipient Agreement shall not be construed as a waiver thereof.

15.0 Record Retention and Inspection/Audit Settlement

15.1 City of Sunnyvale shall establish and maintain an accounting system adequate to accumulate and segregate reasonable, allowable, and allowable project costs. Further, City of Sunnyvale shall maintain full and adequate books, records, accounts, and any and all work products, materials, and other data relevant to its performance under this Agreement for a minimum of three (3) years following final payment by ABAG of funds provided under this Agreement, or four (4) years following the fiscal year of the last expenditure under this Agreement, whichever is longer. Books and accounts shall be maintained in accordance with Generally Accepted Accounting Principles (GAAP).

15.2 City of Sunnyvale will provide thorough and complete accounting for all funds expended in the performance of this work, to the extent that such funds are provided by ABAG consistent with 2 CFR Part 200. City of Sunnyvale shall be responsible for having an audit conducted under the audit requirements of the "Single Audit Act of 1984" as implemented by OMB Circular A-133 and any revision or supplement thereto. Sub grantee shall submit to ABAG one copy of its A-133 audit completed in accordance with the above-described single audit requirements within 30 days after completion of the audit, but no later than 6 months after the end of the grant period, or, in the event of early termination, no later than 6 months after the effective termination date.

15.3 City of Sunnyvale shall deliver all materials described in subsection 15.2 and specified by ABAG to a location to be determined by ABAG. City of Sunnyvale shall bear its own costs and expenses in this regard. However, City of Sunnyvale shall not be responsible for the costs or expenses incurred by ABAG to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Subrecipient Agreement.

15.4 If an audit of the City of Sunnyvale is conducted specifically regarding this Subrecipient Agreement by any Federal auditor, or by any auditor or accountant employed by the City of Sunnyvale or otherwise, then the City of Sunnyvale shall file a copy of such audit report with ABAG within thirty (30) days, unless otherwise provided by applicable Federal or State law or under this Subrecipient Agreement.

16.0 Lobbying and Litigation Prohibition

16.1 City of Sunnyvale shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. City of Sunnyvale shall abide by 2 CFR 225 (OMB Circular A-87), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

16.2 City of Sunnyvale agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. City of Sunnyvale shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that sub-subrecipients submit certification and disclosure forms accordingly. In accordance with the Byrd Anti-Lobbying Amendment, any subrecipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

16.3 If applicable, City of Sunnyvale shall complete and submit Exhibit 5, Standard Form LLL - Disclosure of Lobbying Activities.

17.0 Authorization Warranty

City of Sunnyvale represents and warrants that the person executing this Subrecipient Agreement on its behalf is an authorized agent who has actual authority to bind City of Sunnyvale to each and every term, condition, and obligation herein.

SIGNATURE PAGE TO FOLLOW

National Estuary Program-San Francisco Estuary Program
U.S. EPA Grant Agreement #W9-99T53101-0 [CFDA # 66.126]
Subrecipient Agreement
- Base Document -

* * * * *

Authorized Signatures

IN WITNESS WHEREOF, City of Sunnyvale has duly executed this Agreement, or caused it to be duly executed, and ABAG has duly executed this Agreement, or caused it to be duly executed.

DUNS No. 047897863

City of Sunnyvale

Kent Steffens, City Manager

Association of Bay Area Governments

Therese W. McMillan, MTC Executive Director,
Pursuant to the Contract for Services dated May 30,
2017

Approved as to form and content:

Rebecca Moon, Sr Assistant City Attorney

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Exhibit 1

U.S. EPA Grant Agreement #W9-99T53101-0
City of Sunnyvale
Healthy Watersheds, Resilient Baylands Project
Caribbean Drive Green Street Demonstration Project
Scope of Work

The City of Sunnyvale will add a major green infrastructure component to a project in north Sunnyvale adjacent to the San Francisco Bay Trail and South Bay tidal wetlands. The Caribbean Drive Green Street Demonstration Project will retrofit an existing arterial street with bioretention rain gardens planted with native habitat to reduce impervious surfaces, provide treatment and infiltration of runoff, calm traffic, and improve the streetscape for pedestrians and cyclists. The project will also provide at least 15 parking spaces for Bay Trail visitors, greatly increasing visibility and access to the Trail. A portion of the former road surface will be converted to approximately 4,528 cubic ft. of bioretention rain gardens, treating an upstream urban area of approximately 41,456 ft.².

Task 1: Urban Greening Implementation – Sunnyvale

Task 1.1: City of Sunnyvale will design and construct the Caribbean Drive Green Street Demonstration Project: retrofit an existing arterial street with bioretention rain gardens planted with native habitat to reduce impervious surfaces, provide treatment and infiltration of runoff, incorporate traffic calming, and improve the streetscape for pedestrians and cyclists. The City of Sunnyvale will incorporate at least 15 parking spaces for Bay Trail visitors into the project to increase visibility and access to the Trail. The City of Sunnyvale will convert former road surface to approximately 4,528 cubic ft. of bioretention rain gardens. Project design will achieve ecological and water quality objectives as guided by the Urban Greening Strategy to be developed in partnership with project partners San Francisco Estuary Institute (SFEI), Grassroots Ecology, Peninsula Open Space Trust, and expertise from members of the Design Advisory Team. The Design Advisory Team will be convened for this project and will include expertise in landscape and urban design, ecology, permitting, and construction. Preliminary Design work will include a Feasibility Study to help confirm the feasibility to construct the bioretention areas including investigation of groundwater aquifer, location of underground utilities, and conceptual design features including size and treatment area.

Deliverables:

- | | | |
|------|--|-------------------------|
| 1.1a | Submit Feasibility Study and Preliminary Design | <i>Dec 30, 2017</i> |
| 1.1b | Final designs demonstrating approximately 4,528 cubic ft. of bioretention rain gardens | <i>October 31, 2019</i> |
| 1.1c | Before-and-after photo documentation of constructed project | <i>July 31, 2020</i> |

Task 1.2: City of Sunnyvale staff will hold 2-4 meetings with SFEI staff to maximize the achievement of ecological and water quality objectives in the project, as guided by the Urban Greening Strategy, input from SFEI, and expertise from the Design Advisory Team members. These meetings shall identify opportunities for achieving multi-benefit ecological objectives of the projects and inform and ground the Urban Greening Strategy. City of Sunnyvale staff will also provide review comments on the draft Urban Greening Strategy produced by SFEI.

Deliverables:

- 1.2a. Summary of 2-4 urban greening scientific/design guidance meetings *June 30, 2019*
- 1.2b. Summary of review comments for Urban Greening Strategy *July 31, 2018*

Task 1.3: City of Sunnyvale staff will participate in one or more meetings of the Design Advisory Team, or a subset of the Team, to take advantage of Design Advisory Team expertise in improving project outcomes of the project.

Task 1.4: The City of Sunnyvale will assist SFEI, if needed, by providing project information required to complete a Quality Assurance Plan or Sampling and Analysis Plan (QAPP) and any modeling done by SFEI.

Task 1.5: City of Sunnyvale staff will attend at least one meeting each year of project partners and grant sub-recipients during the grant period.

Task 1.6: City of Sunnyvale staff will provide general project administration including project workflow, contract management, invoicing, and project coordination. City of Sunnyvale will submit progress reports to the SFEP Project Manager as described in Exhibit 2.

City of Sunnyvale staff will also produce a brief summary report, documenting the incorporation of ecological and water quality benefits into the implementation of the project, as described in the Urban Greening Strategy or with guidance from SFEI. The report will also include expected achievement of short-term outcomes, and any expected long-term multi-benefit outcomes.

Deliverables:

- 1.6a. Invoices and Progress Reports *10th of month following end of month or quarter*
- 1.6b. Final report *July 31, 2020*

Budget: **\$265,200.00**

Subaward Deliverables Table

Task #	Sub-Task #	Deliverable #	Deliverable	Deadline
Task 1	1.1	1.1a	Submit Feasibility Study and Preliminary Design	12/30/17
		1.1b	Final designs demonstrating approximately 4,528 cubic ft. of bioretention rain gardens	10/31/2019
		1.1c	Before-and-after photo documentation of constructed project	7/31/2020
	1.2	1.2a	Summary of urban greening scientific/design guidance meetings	6/30/19
		1.2b	Summary of review comments for Urban Greening Strategy	7/31/2018
	1.3	N/A	N/A	N/A
	1.4	N/A	N/A	N/A
	1.5	N/A	N/A	N/A
	1.6	1.6a	Invoices and progress reports, submitted monthly or quarterly	10 th of month following end of month or quarter
		1.6b	Final Report	7/31/2020

Subaward Budget Table

City of Sunnyvale				
Task	Description	Grant Amount	Match	Total
1	Urban Greening Implementation - Sunnyvale	\$265,200.00	\$265,200.00	\$530,400.00
TOTAL		\$265,200.00	\$265,200.00	\$530,400.00

EXHIBIT 2

Invoicing Procedure

A. Subrecipient Responsibilities:

1. Subrecipient will prepare and submit to ABAG/SFEP an invoice for approval, no more frequently than one per month, to cover the services provided since the Effective Date. Invoice must include a brief progress report, providing a detailed summary of work performed under the tasks described in the Scope of Work that are being invoiced for that period. Progress reports should include a discussion of the activities conducted during the service period and progress towards milestones, problems encountered and their resolution, and activities planned for the next service period. In addition, progress reports should provide a financial accounting of costs incurred during the service period and cumulative project costs by subtask.
2. Direct labor: Invoice must itemize names of staff, number of hours worked, and hourly billing rates for each task showing individual calculations and total for each task.
3. Subrecipient can only bill for actual expenses incurred at the subrecipient's actual direct labor rates, fringe benefit rates, and indirect cost rates, not to exceed the task budgets specified in the budget included in Exhibit 1.
4. Consultant or Vendor costs: Invoice must include consultant or vendor labor costs, fringe benefit cost, and indirect costs described for the monthly service period in the same manner as the subrecipient costs described above. The actual consultant or vendor invoice must be submitted to document the charges included on the subrecipient invoice.
5. Other Direct Costs (direct project expenses) are to be invoiced at cost with supporting documentation. Backup documentation must include copies of all receipts necessary to document the charges. No costs should exceed the budgeted limits delineated in the task budget without a contract amendment. No ineligible costs (such as food, entertainment, etc.) are allowed. Mileage will be paid at the current federal reimbursement rate.
6. Subrecipient invoices must summarize total contract budget, amount expended in the invoice period, and contract balance.
7. Management fees or similar charges (mark-ups) in excess of the direct costs and approved indirect rates are not allowable. This refers to any mark-up added to any direct project costs including consultant or vendor costs or other direct costs.
8. Match Costs: Subrecipient is responsible for the match share cost identified in budget included in Exhibit 1. Match funds should be reported in the monthly invoices in the same manner as the direct project costs described above including backup documentation detailing the source of the match (actual cash and/or in-kind services). Subrecipient invoices should detail match budget, match expended in the invoice period and amount remaining.

9. Electronic copies of complete invoices signed by the subrecipient contract manager including all backup documentation may be submitted in lieu of hard copy to Darcie Luce, Project Manager at darcie.luce@sfestuary.org.

ABAG/SFEP Responsibilities:

1. The ABAG/SFEP Project Manager or designee will review the submitted invoice for completeness, verify math figures, ensure the task budget is not exceeded and prepare a check requisition for approval by the SFEP Executive Director for submittal to ABAG accounts receivable.
2. ABAG accounts receivable will enter the invoice into the ABAG financial accounting system and bill the funding agency U.S. EPA monthly following completion of the prior month financial statements.
3. ABAG will pay invoices within 14 days of receipt of funds from the U.S. EPA.

4. Budget Reallocations

- a. All task budget reallocations and/or increases must be approved in advance by the SFEP Project Manager, ABAG and the U.S. EPA Program Manager.
- b. The budget reallocation, if any, cannot substantially change the scope of work without approval from the SFEP Project Manager, ABAG and the U.S. EPA Program Manager.
- c. A budget reallocation, if any, may only involve moving funds between tasks, line items, or categories not to exceed the total contract amount.

Exhibit 2a
U.S. EPA Grant Agreement #W9-99T53101-0
Subrecipient Agreement

Insurance Requirements

1. INSURANCE

A. Minimum Coverages. The insurance requirements specified in this section shall cover City of Sunnyvale's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that City of Sunnyvale authorizes to work under this Agreement (hereinafter referred to as "Agents.") City of Sunnyvale shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

City of Sunnyvale is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, City of Sunnyvale shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling City of Sunnyvale's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event City of Sunnyvale or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that City of Sunnyvale's insurance be primary without right of contribution from MTC. Prior to beginning work under this contract, City of Sunnyvale shall provide MTC with satisfactory evidence of compliance with the insurance requirements of this section.

The insurance listed hereunder shall be considered minimum requirements and any and all insurance proceeds in excess of the requirements shall be made available to MTC. If the City of Sunnyvale maintains broader coverage and/or higher limits than the minimum limits shown hereunder, MTC shall be entitled to the broader coverage and/or higher limits maintained by the City of Sunnyvale.

1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of City of Sunnyvale's employees as may be required

by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as City of Sunnyvale is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the premises and operations, and products and completed operations of City of Sunnyvale and City of Sunnyvale's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 per occurrence with a general aggregate liability of not less than \$2,000,000, a products/completed operations aggregate liability limit of not less than \$2,000,000 and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation or "Waiver of Transfer of Rights of Recovery Against Others to Us" provision included in the policy language or by endorsement in favor of MTC.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

MTC and those entities listed in Part 3 of this Attachment E (if any), and their commissioners, directors, officers, representatives, and employees are to be named as additional insureds for ongoing and completed operations. Such insurance shall be primary and non-contributory, and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from City of Sunnyvale's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by City of Sunnyvale and City of Sunnyvale's officers, and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

4. Excess or Umbrella Insurance in the amount of \$1,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$1,000,000 per claim.

The policy shall provide coverage for all work performed by City of Sunnyvale and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of City of Sunnyvale. No contract or agreement between City of Sunnyvale and any subcontractor/consultant shall relieve City of Sunnyvale of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by

City of Sunnyvale and any subcontractor/consultant working on behalf of City of Sunnyvale on the project.

B. Acceptable Insurers. All policies will be issued by insurers, generally with a Best's Rating of A- or better with a Financial Size Category of VII or better, or an A rating from a comparable rating service.

C. Self-Insurance. City of Sunnyvale's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.

D. Deductibles and Retentions. City of Sunnyvale shall be responsible for payment of any deductible or retention on City of Sunnyvale's policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that MTC seeks coverage as an additional insured under any City of Sunnyvale insurance policy that contains a deductible or self-insured retention, City of Sunnyvale shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of City of Sunnyvale, subconsultant, subcontractor, or any of their employees, officers or directors, even if City of Sunnyvale or subconsultant is not a named defendant in the lawsuit.

E. Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, City of Sunnyvale shall:

- (1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, City of Sunnyvale shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed. City of Sunnyvale must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

G. Certificates of Insurance. Prior to commencement of any construction work

conducted hereunder after the execution date of the agreement, City of Sunnyvale shall deliver to Ebix, MTC's authorized insurance consultant, insurance documentation (including Certificates of Liability Insurance, Evidences of Property Insurance, endorsements, etc.) verifying the aforementioned coverages. Such evidence of insurance shall make reference to all provisions and endorsements referred to above and shall be signed by the authorized representative of the Insurance Company shown on the insurance documentation. **The Project name shall be clearly stated on the face of each Certificate of Liability Insurance and/or Evidence of Property Insurance.**

City of Sunnyvale shall submit certificates of insurance to:

**Metropolitan Transportation Commission
Insurance Compliance
P.O. Box 100085-M8
Duluth, GA 30096
or
Email to MTC@Ebix.com
or
Fax to 1-888-617-2309**

MTC reserves the right to require copies of all required policy declarations pages or insurance policies, including endorsements, required by these specifications, at any time.

2.

ADDITIONAL INSURED


The following entities are to be named as Additional Insureds under applicable sections of this Attachment E and as MTC Indemnified Parties, pursuant to Article 9 of the Agreement.

Association of Bay Area Governments (ABAG)
Metropolitan Transportation Commission (MTC)
U. S. Environmental Protection Agency (EPA)

Exhibit 3
U.S. EPA Grant Agreement #W9-99T53101-0
Subrecipient Agreement

Grant Agreement

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	U.S. ENVIRONMENTAL PROTECTION AGENCY Grant Agreement		GRANT NUMBER (FAIN): 99T53101 MODIFICATION NUMBER: 0 PROGRAM CODE: W9	DATE OF AWARD 09/27/2016
			TYPE OF ACTION New	MAILING DATE 10/04/2016
			PAYMENT METHOD: ASAP	ACH# 90017
	RECIPIENT TYPE: Intermunicipal		Send Payment Request to: Las Vegas Finance Center email: lvtb-grants@epa.gov	
RECIPIENT: Assoc of Bay Area Governments P.O. Box 2050 Oakland, CA 94604 EIN: 94-2832478		PAYEE: Executive Director Assoc of Bay Area Governments P.O. Box 2050 Oakland, CA 94604		
PROJECT MANAGER Caitlin Sweeney P.O. Box 2050 Oakland, CA 94604 E-Mail: caitlin.sweeney@sfestuary.org Phone: 510-622-2362		EPA PROJECT OFFICER Luisa Valiela 75 Hawthorne Street, WTR-3 San Francisco, CA 94105 E-Mail: ValielaLuisa@epa.gov Phone: 415-972-3400		EPA GRANT SPECIALIST Maria Roverso Grants Management Section, EMD-6-1 E-Mail: roverso.maria@epa.gov Phone: 415-972-3573
PROJECT TITLE AND DESCRIPTION San Francisco Bay Area Water Quality Improvement Fund This agreement provides federal funding in the amount of \$1,667,683 to create 10 multi-benefit urban greening projects in Sunnyvale, Mountain View, and East Palo Alto, reducing stormwater runoff and creating 13 acres of wetland, riparian, and native plant habitat; realign 2 creeks to deliver an estimated ~50,000 cubic yards/year of sediment to restored tidal marsh, reducing maintenance costs and increasing permitting efficiency; create 10 acres of tidal transition zone and seasonal wetlands; reduce risk of flooding and associated contamination to the community of Alviso; reduce PCB and mercury delivery to the Bay; reduce methylmercury production in the baylands; and reduce risk of landfill contamination to the Bay.				
BUDGET PERIOD 10/01/2016 - 09/30/2020		PROJECT PERIOD 10/01/2016 - 09/30/2020		TOTAL BUDGET PERIOD COST \$3,335,366.00
				TOTAL PROJECT PERIOD COST \$3,335,366.00
NOTICE OF AWARD <p>Based on your Application dated 08/17/2016 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$1,667,683. EPA agrees to cost-share 50.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$1,667,683. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.</p>				
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS U.S. EPA, Region 9 Grants Management Section, EMD 6-1 75 Hawthorne Street San Francisco, CA 94105			ORGANIZATION / ADDRESS U.S. EPA, Region 9 Water Division 75 Hawthorne Street San Francisco, CA 94105	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY				
Digital signature applied by EPA Award Official Craig A. Willis - Grants Management Officer				DATE 09/27/2016

EPA Funding Information

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FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 1,667,683	\$ 1,667,683
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$ 1,667,683	\$ 1,667,683
Other Contribution		\$ 100,000	\$ 100,000
Allowable Project Cost	\$ 0	\$ 3,335,366	\$ 3,335,366

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.126 - San Francisco Bay Water Quality Improvement Fund	Clean Water Act: Sec. 320	2 CFR 200 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1809W22024	1817	B	09LE	202BK4	4158			1,667,683
									1,667,683

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Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$97,895
2. Fringe Benefits	\$62,247
3. Travel	\$2,000
4. Equipment	\$0
5. Supplies	\$2,025
6. Contractual	\$3,159,768
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$3,323,935
10. Indirect Costs: % Base <u>various rates apply</u>	\$11,431
11. Total (Share: Recipient <u>50.00</u> % Federal <u>50.00</u> %.)	\$3,335,366
12. Total Approved Assistance Amount	\$1,667,683
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$1,667,683
15. Total EPA Amount Awarded To Date	\$1,667,683

Administrative Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-march-29-2016-or-later>. These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions or restrictions cited throughout the award. The EPA repository for the general terms and conditions by year can be found at <http://www.epa.gov/grants/grant-terms-and-conditions>.

A. Annual Federal Financial Report (FFR) - SF 425

For awards with cumulative project and budget periods greater than 12 months, the recipient will submit an annual FFR (SF 425) covering the period from "project/budget period start date" to **September 30** of each calendar year to the U.S. EPA Las Vegas Finance Center (LVFC). The FFR will be submitted electronically to lvfc-grants@epa.gov no later than **December 30** of the same calendar year. The form with instructions can be found on LVFC's website at <http://www2.epa.gov/financial/forms>.

B. Procurement

The recipient will ensure all procurement transactions will be conducted in a manner providing full and open competition consistent with 2 CFR Part 200.319. In accordance 2 CFR Part 200.323 the grantee and subgrantee(s) must perform a cost or price analysis in connection with applicable procurement actions, including contract modifications.

C. Six Good Faith Efforts 40 CFR Part 33, Subpart C

Pursuant to 40 CFR Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

D. Utilization of Disadvantaged Business Enterprises

General Compliance, 40 CFR Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR Part 33.

Fair Share Objectives, 40 CFR Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR Section 33.411 some recipients may be exempt from the fair share objective requirements as described in 40 CFR Part 33, Subpart D. Recipients should work with their DBE coordinator if they think their organization may qualify for an exemption.

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000 or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the [California State Water Resources Control Board \(CSWRCB\)](#), as follows:

	MBE	WBE
Construction	2%	1%
Equipment	1%	1%
Services	1%	1%
Supplies	1%	1%

The recipient accepts the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as [CSWRCB](#),

Negotiating Fair Share Objectives/Goals, Section 33.404

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of

another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator, Joe Ochab at Ochab.Joe@epa.gov, within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

Contract Administration Provisions, 40 CFR Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR Section 33.302.

Bidders List, 40 CFR Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR Section 33.501 (b) and (c) for specific requirements and exemptions.

E. MBE/WBE Reporting

General Compliance, 40 CFR Part 33, Subpart E – Reporting Condition

MBE/WBE reporting is required annually. Reporting is required for assistance agreements where there are funds budgeted for procuring construction, equipment, services and supplies, including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category, that exceed the threshold amount of \$150,000, including amendments and/or modifications.

Based on EPA's review of the planned budget, this award meets the conditions above and is subject to Disadvantaged Business Enterprise (DBE) Program reporting requirements. Conversely, the recipient must submit to the GrantsRegion9@epa.gov a justification and budget detail within 21 days of the award date demonstrating that this award is not subject to the DBE reporting requirements.

The recipient agrees to complete and submit a "MBE/WBE Utilization under Federal Grants, Cooperative agreements" report (EPA Form 5700-52A) on an annual basis. All procurement actions that are reportable, not just that portion which exceeds \$150,000.

When completing the annual report, recipients are instructed to check the box titled "annual:" in section 1B of the form. For the final report, recipients must check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30th of each year. Final reports are due by October 30th or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on total procurements. Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

MBE/WBE reports should be sent to GrantsRegion9@epa.gov. The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at http://www.epa.gov/osbp/dbe_reporting.htm.

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Good Faith Effort requirements as described in 40 CFR Part 33, Subpart C, and Fair Share Objectives negotiation as described in 40 CFR Part 33, Subpart D.

F. Indirect Costs

If the recipient does not have a previously established indirect cost rate, it agrees that it will prepare its indirect cost rate proposal and/or cost allocation plan in accordance with the Cost Principles under 2 CFR Part 200, Subpart E. For proposal preparation, the recipient may use the appropriate completeness checklist located at: <http://www.aqd.nbc.gov/services/ICS.aspx>

The local government recipient whose cognizant federal agency has been designated by the Office of Management and Budget (OMB) must develop and submit its indirect cost rate proposal to its cognizant agency within six (6) months after the close of the governmental unit's fiscal year. If the cognizant federal agency has not been identified by the OMB, the local government recipient must still develop (and when required, submit) its proposal within that period.

The interstate agency recipient must send its proposal to its cognizant federal agency within six (6) months after the end of its fiscal year. If EPA is the cognizant federal agency of the interstate agency, local government, or special district, the recipient must send its indirect cost rate proposal within six (6) months after the end of its fiscal year to:

Regular Mail

Office of Grants and Debarment
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, MC 3903R
Washington, DC 20460
Attn: OGD Indirect Cost Rate Proposal Control Desk

Mail Courier (e.g. FedEx, UPS, etc.)

Office of Grants and Debarment
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, NW, 5th floor
Washington, DC 20004
Attn: OGD Indirect Cost Rate Proposal Control Desk

Electronic submissions of proposals may be sent via email to OGD_IndirectCost@epa.gov.

Recipients are entitled to reimbursement of indirect costs, subject to any statutory or

regulatory administrative cost limitations, if they have a current rate agreement or have submitted an indirect cost rate proposal to their cognizant federal agency for review and approval. Recipients are responsible for maintaining an approved indirect cost rate throughout the life of the award. Recipients may draw down grant funds once a rate has been approved, but only for indirect costs incurred during the period specified in the rate agreement. Recipients are not entitled to indirect costs for any period in which the rate has expired.

Recipients with differences between provisional and final rates are not entitled to more than the award amount. Recipients may request EPA approval to rebudget funds from direct cost categories to the indirect cost category (to grants which have not expired or been closed out) to cover increased indirect costs.

The recipient agrees to comply with the audit requirements prescribed in 2 CFR Part 200, Subpart F, Audits of States, Local Governments, and Non-Profit Organizations.

G. Non-Federal Third-Party Contributions

This award includes \$1,667,683 of estimated non-federal third party contributions. Third party contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantees. As applicable, these records must reflect how the value is placed on third party contributions. The value of third party contributions must be applicable to the period to which the cost sharing or matching requirement apply (2 CFR Part 200.306).

Programmatic Conditions

a. Reporting

The recipient shall submit quarterly progress reports to the EPA Project Officer within 30 calendar days after the end of each Federal fiscal quarter (January 30, April 30, July 30, and October 30). These reports should include a discussion of the activities conducted during the quarter and progress towards milestones, problems encountered and their resolution, and activities planned for the next quarter. In addition, quarterly reports should identify any special EPA assistance needed, as well as provide a financial accounting of costs incurred during the quarter and cumulative project costs by task. The progress reports should include:

- a discussion of the activities conducted during the quarter (including a comparison of actual accomplishments with the anticipated outputs and outcomes specified in the workplan),
 - progress towards milestones,
 - problems encountered with achieving outputs and outcomes, and their resolution,
 - activities planned for the next quarter,
 - a financial accounting of costs incurred during the reporting period, and
 - cumulative project costs (EPA and match amounts) since the beginning of the project, by task.
- identification of any special EPA assistance needed, and an explanation of any cost overruns. The recipient will notify the EPA Project Officer if something materially impairs their ability to complete the tasks and deliver the products, outputs and outcomes identified in the workplan.

Within 90 days of the end of the project period, the recipient must submit 1 hardcopy of the final report, documenting project activities over the entire project period and the

recipient's achievements with respect to the project's purposes and objectives. The final report must also be submitted electronically (by Email) to the EPA Project Officer.

b. QAPP

This grant includes the performance of environmental measurements, therefore, a QA Plan or Sampling and Analysis Plan must be prepared. The recipient should consult with the Region 9 Quality Assurance Office to determine what type of QA documentation would be most appropriate and what QA guidance should be followed. The QA Plan must be approved by the EPA Project Officer, the Region 9 Quality Assurance Manager, and the recipient's Quality Assurance Officer before measurement activities are undertaken. Emergency measurements may be taken without a QA Plan being prepared if the Region 9 Quality Assurance Manager agrees that the nature of the data collection activity required due to the emergency warrants an exemption. Contact the QA Office at 415-972-3411.

c. Grant Source Recognition

The recipient should publicly acknowledge the US EPA San Francisco Bay Water Quality Improvement Fund as the funding vehicle for the projects when the grantee is asked by public entities, federal agencies or state and local agencies about the projects and on-going results.

d. Subaward Reporting Requirement

The recipient must report on its subaward monitoring activities under 2 CFR 200.331(d). Examples of items that must be reported if the pass-through entity has the information available are:

1. Summaries of results of reviews of financial and programmatic reports.
2. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.
3. Environmental results the subrecipient achieved.
4. Summaries of audit findings and related pass-through entity management decisions.
5. Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.331(e), 2 CFR 200.207 and the 2 CFR Part 200.338 Remedies for Noncompliance.

e. Cybersecurity

(a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all State or Tribal law cybersecurity requirements as applicable.

(b)(1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees

to contact the EPA Project Officer (PO) no later than 90 days after the date of this award and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(b)(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

END OF DOCUMENT

Exhibit 4

U.S. EPA Grant Agreement #W9-99T53101-0 Subrecipient Agreement

Special Conditions

A. **Nondiscrimination.** City of Sunnyvale shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. City of Sunnyvale 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 City of Sunnyvale to carry out these requirements is a material breach of the Agreement which may result in the termination of the Agreement or other legally available remedies.

B. **Prompt Payment.** City of Sunnyvale must pay any contractors or subcontractor for satisfactory performance no more than 30 days from City of Sunnyvale's receipt of payment from ABAG.

C. **DBE Contractor/Subcontractor.** ABAG must be notified in writing by City of Sunnyvale prior to any termination of a DBE subcontractor for convenience by City of Sunnyvale.

If a DBE contractor or subcontractor to City of Sunnyvale fails to complete work under the subcontract for any reason, City of Sunnyvale must employ the six good faith efforts described in 40 CFR §33.301 if soliciting a replacement subcontractor even if City of Sunnyvale has achieved its fair share objectives under 40 CFR Part 33, subpart D.

If applicable, City of Sunnyvale must provide EPA Form 6100-2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors and have its DBE subcontractors complete EPA Form 6100-3—DBE Program Subcontractor Performance Form. City of Sunnyvale must then require its prime contractor to include all completed forms as part of the prime contractor's bid or proposal package. City of Sunnyvale must require its prime contractor to complete and submit EPA Form 6100-4—DBE Program Subcontractor Utilization Form as part of the prime contractor's bid or proposal package. Copies of EPA Form 6100-2—DBE Program Subcontractor Participation Form, EPA Form 6100-3—DBE Program Subcontractor Performance Form and EPA Form 6100-4—DBE Program Subcontractor Utilization Form may be obtained from EPA OSDBU's Home Page on the Internet or directly from EPA OSDBU.

City of Sunnyvale must maintain all records documenting its compliance with the requirements of 40 CFR Part 33, including documentation of its, and its prime contractors', good faith efforts and data relied upon in formulating its fair share objectives. Such records must be retained in accordance with applicable record retention requirements for the Grant Agreement.

D. **Clean Air Act and the Federal Water Pollution Control Act.** City of Sunnyvale shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Regional Office of EPA.

Exhibit 5

U.S. EPA Grant Agreement #W9-99T53101-0
Subrecipient Agreement

Standard Form LLL-Disclosure of Lobbying Activities

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____		
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____			
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____			
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____			
<table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> 10. a. Name and Address of Lobbying Entity <i>(if individual, last name, first name, MI):</i> </td> <td style="width: 50%; vertical-align: top;"> b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i> </td> </tr> </table> <p style="text-align: center; font-size: small;">(attach Continuation Sheet(s) SF-LLL-A, if necessary)</p>			10. a. Name and Address of Lobbying Entity <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>
10. a. Name and Address of Lobbying Entity <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>			
11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____			
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____				
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: <p style="text-align: center; font-size: small;">(attach Continuation Sheet(s) SF-LLL-A, if necessary)</p>				
15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No				
<table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> 16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. </td> <td style="width: 50%; vertical-align: top;"> Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____ </td> </tr> </table>			16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____			
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL		

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

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