



STATE OF VERMONT
JOINT FISCAL OFFICE

MEMORANDUM

To: Joint Fiscal Committee members
From: Daniel Dickerson, Fiscal Analyst *DWD*
Date: February 12, 2019
Subject: Position and Grant Requests – JFO #2945 - 2950

Enclosed please find six (6) items, including seven (7) limited-service positions, which the Joint Fiscal Office has received from the Administration.

JFO #2945 – \$499,912 from the U.S. Dept. of Agriculture to the VT Agency of Agriculture, Food and Markets. The funding would allow the Agency to implement a multi-pronged maple products marketing campaign, including: public relations, promotional materials, a marketing plan, expansion of the annual Maple Open House Weekend into a month-long event, and an international trade mission. *One (1) limited-service position would be established* titled Agriculture Development Specialist I. The position would be 50% funded by this grant and 50% funded by an ongoing FDA food safety modernization grant. The position duties would be split between the two grant activities. The grant activities would take place over three state fiscal years, ending on June 30, 2021.
[JFO received 2/4/19]

JFO #2946 – \$41,750 from the Northern Border Regional Commission to the VT Agency of Agriculture, Food and Markets. The funding would be combined with a \$26,250 State match to convene a two-day dairy summit focused on farmer resiliency, processor engagement, and dairy market evolution. The funding would be focused mainly towards defraying registration, meals and lodging costs for 70 Vermont dairy farmers, and would additionally allow the State to pay for out-of-state speakers and the rental of a venue.
[JFO received 2/4/19]

JFO #2947 – Three (3) limited-service positions within the VT Dept. of Labor (VDOL). The positions would be titled Job Center Specialist II. Funding for the positions would be provided through MOU between VT Dept. of Children and Families and VDOL, whereas DCF would provide a mix of State General Fund dollars and dollars from an ongoing federal grant award that was previously approved by the Joint Fiscal Committee in 2015 (JFO #2781) for the purposes of establishing job training programs for supplemental nutrition assistance program (SNAP) participants. The MOU between VDOL and DCF states that VDOL will provide employment services throughout the State for 3SquaresVT (SNAP) recipients through the coordination of its regional teams. The total amount for year one of the sub-grant is \$1,312,374. Of this money, approximately \$560,000 is State funding. Additionally, when the Joint Fiscal Committee approved JFO #2781 in 2015, it authorized the creation of thirteen new limited-service positions, five of which were in VDOL. JFO has requested that VDOL

explain how the three new limited-service positions that have been requested would fit within the existing program and staff structure.

[JFO received 2/4/19]

JFO #2948 - One (1) limited-service position within the Vermont Military Department. The position would be titled Records and Information Management (RIM) Specialist and would assist the State in conformance to federal requirements for military document management. The position would be 100% federally funded with ongoing grant funding that is typically re-awarded annually.

[JFO received 2/5/19]

JFO #2949 – One (1) limited-service position within the VT Dept. of Public Safety. The position would be housed within the Vermont State Police and would be titled Homeland Security Program Planner with responsibilities to include managing the Vermont Critical Infrastructure Program and performing outreach to organizations that may be targets of terrorist activities. The Position would be 100% federally funded with an anticipated end date of 8/31/2021 for the position authorization.

[JFO received 2/5/19]

JFO #2950 – One (1) limited-service position within the VT Dept. of Environmental Conservation (DEC). The position would be titled Environmental Analyst V and would provide engineering support within the wastewater system and potable water supply program to review permit applications through DEC's five regional offices. The position would be funded with approximately \$95,000 annually through a federal award from the Drinking Water State Revolving Fund. The Department is seeking authorization for the position for two years from the date of authorization, at which time the department will determine whether funding is expected to continue and the overall effectiveness of the additional position.

[JFO received 2/7/19]

Please review the enclosed materials and notify the Joint Fiscal Office (Daniel Dickerson at (802) 828-2472; ddickerson@leg.state.vt.us) if you have questions or would like an item held for legislative review. Unless we hear from you to the contrary by February 26, 2019 we will assume that you agree to consider as final the Governor's acceptance of these requests.

Agency of Natural Resources
Department of Environmental Conservation

Commissioner's Office
1 National Life Drive, Main 2
Montpelier, VT 05620-3520
802-828-0546

JFO 2950



MEMORANDUM

To: Joint Fiscal Committee
Thru: Emily Boedecker, Commissioner, Department of Environmental Conservation
From: Bryan J. Redmond, Director, Drinking Water & Groundwater Protection Division (DWGWPD)
Date: October 18, 2018
Subject: Request to establish Limited Service Position

This memo requests establishment of one limited service position within the Drinking Water & Groundwater Protection Division (DWGW) Regional Office Water and Wastewater Program (WW Program). Provided in the following is background, a statement and substantiation of need, identified funding source, and justification for use of the JFO position process.

Background with Statement & Substantiation of Need:

- **Environmental Analyst V (Job code: 145308 – Pay Grade 24):** The Wastewater System and Potable Water Supply Program (WW Program) is seeking an additional Assistant Regional Engineer Position (Environmental Analyst V) to serve customers of DEC's five regional offices who seek permits necessary to build homes and businesses. The Wastewater System and Potable Water Supply Rules are a complex set of requirements for the design and construction of wastewater systems and potable water supplies. The purpose of the Rules is to protect the public health and the environment and the role of the Assistant Regional Engineer is responsible for reviewing applications for the design of all new and replacement water supplies that meet the definition of a "potable water supply"; for new and replacement soil-based wastewater systems for the treatment and disposal of up to 6,499 gallons of wastewater per day; for new and replacement sanitary sewer collection systems, sanitary sewer service lines, and potable water service lines; and for minor amendments to existing permits and minor projects.

In addition to supporting housing and business development activities, these permits result in the creation of jobs for licensed designers & engineering consultants, environmental consultants, excavation contractors, landscapers and for the employees hired by business owners. Time delays for receiving these permits impact these businesses. Development and green jobs rely on the Department's ability to effectively administer the Rules.

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Improvements in broader economic conditions have resulted in a steady increase in the number of inquiries and permit applications received. It is also estimated that within the next three years, five of the nine existing technical positions within the program will be retiring from state service. Additionally, the State will have new Rules in place for 2019 that will require a greater field presence by the Regional Engineers and Assistant Regional Engineers as well as additional review times as the State changes the basis for designing leachfields. One additional technical person will be instrumental for the program to conduct proper review of applications for compliance with the Rules.

This position request will result in a right sizing of the resources available to meet the permitting demands and is a critical aspect to succession planning.

Source of Funds:

The estimated cost of this position outlined above is an Environmental Analyst V (PG 24) would be approximately \$95,000 annually and will be funded utilizing federal funds from our Drinking Water State Revolving Fund award. We are requesting the position to be limited service for two years from the authorization so that we can evaluate the program project workload progress as well as ensure the expected, continued funding availability in any subsequent year. All indications are that this funding source is secure for the foreseeable future well into FFY2022 and beyond.

Justification for use of JFO process:

There are two significant reasons this position request was not included in the Department of Environmental Conservation's SFY 2019 budget request and it is apparent the JFO request was the optimal solution to fulfilling this programmatic need. These include:

- The Department has evaluated the reallocation of existing resources within programs to meet the program specific need outlined above. The determination was made that existing capacity was not available to meet this need.
- The FFY 2018 grant received a significant increase in funding from historical levels, which was not known at the time the SFY19 budget was being developed and appropriated.

Should you have any questions or require any additional information, please do not hesitate to contact me. Thank you for your support in this regard.

Attachments

Cc: Joanna Pallito, Administrative Services Director, DEC
Steve Chadwick, Administrative Services Director, ANR

**STATE OF VERMONT
Joint Fiscal Committee Review
Limited Service - Grant Funded
Position Request Form**

This form is to be used by agencies and departments when additional grant funded positions are being requested. Review and approval by the Department of Human Resources must be obtained prior to review by the Department of Finance and Management. The Department of Finance will forward requests to the Joint Fiscal Office for JFC review. A Request for Classification Review Form (RFR) and an updated organizational chart showing to whom the new position(s) would report must be attached to this form. Please attach additional pages as necessary to provide enough detail.

Agency/Department: ANR / Dept. Environmental Conservation Date: 10/15/2018

Name and Phone (of the person completing this request): Bryan J. Redmond (802) 585-4900

Request is for:

- Positions funded and attached to a new grant.
 Positions funded and attached to an existing grant approved by JFO # Act 11 2018

1. Name of Granting Agency, Title of Grant, Grant Funding Detail (attach grant documents):

Environmental Protection Agency, Drinking Water State Revolving **Loan** Fund. Annual capitalization grant awarded to the **Department** to fund drinking water infrastructure projects **and associated** eligible drinking water activities.

2. List **below** titles, number of positions in each title, program area, and limited service end date (information **should** be based on grant award and should match information provided on the RFR) position(s) will be established **only after** JFC final approval:

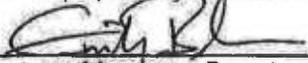
<u>Title* of Position(s) Requested</u>	<u># of Positions</u>	<u>Division/Program</u>	<u>Grant Funding Period/Anticipated End Date</u>
Environmental Analyst V 1 Position Drinking Water and Groundwater Protection Division - Wastewater and Potable Water Supply Program 10/1/2018 - 9/30/2025			

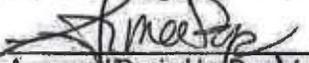
*Final determination of title and pay grade to be made by the Department of Human Resources Classification Division upon submission and review of Request for Classification Review.

3. Justification for this request as an essential grant program need:

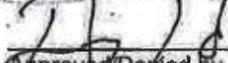
See attached justification memo.

I certify that this information is correct and that necessary funding, space and equipment for the above position(s) are available (required by 32 VSA Sec. 5(b)).

 10/15/18
Signature of Agency or Department Head Date

 10/29/18
Approved/Denied by Department of Human Resources Date

 6 Feb 19
Approved/Denied by Finance and Management Date

 2/6/19
Approved/Denied by Secretary of Administration Date

Comments:

NOV 02 2018

VERMONT DEPARTMENT OF PERSONNEL
Request for Classification Action
New or Vacant Positions
Existing Job Class/Titles ONLY
Position Description Form C

- **This form is to be used by management to request the allocation of a new position, or reallocation of a vacant position, to an EXISTING class title.**
- Employee requests must be submitted on the separate "Position Description Form A."
- Requests for full classification, to determine the appropriate pay grade for any job class must be submitted on "Position Description Form A."
- This form was designed in Microsoft Word to download and complete on your computer. This is a form-protected document, so information can only be entered in the shaded areas of the form.
- To move from field to field use your mouse, the arrow keys or press Tab. Each form field has a limited number of characters. Use your mouse or the spacebar to mark and unmark a checkbox.
- Where additional space is needed to respond to a question, you will need to attach a separate page, and number the responses to correspond with the numbers of the questions on the form. Please contact your Personnel Officer if you have difficulty completing the form.
- All sections of this form are required to be completed unless otherwise stated.
- The form must be complete, including required attachments and signatures or it will be returned to the department's personnel office.

**Request for Classification Action
New or Vacant Positions
EXISTING Job Class/Title ONLY
Position Description Form C/Notice of Action
For Department of Personnel Use Only**

Notice of Action # _____		Date Received (Stamp)
Action Taken: _____		
New Job Title _____		
Current Class Code _____	New Class Code _____	
Current Pay Grade _____	New Pay Grade _____	
Current Mgt Level _____ B/U _____ OT Cat. _____ EEO Cat. _____ FLSA _____		
New Mgt Level _____ B/U _____ OT Cat. _____ EEO Cat. _____ FLSA _____		
Classification Analyst _____	Date _____	Effective Date: _____
Comments: _____		Date Processed: _____
Willis Rating/Components:	Knowledge & Skills: _____ Mental Demands: _____ Accountability: _____	
	Working Conditions: _____ Total: _____	

Position Information:

Incumbent: **Vacant or New Position**

Position Number:

Current Job/Class Title:

Agency/Department/Unit: GUC:

Pay Group: Work Station: Zip Code:

Position Type: Permanent Limited Service (end date)

Funding Source: Core Sponsored Partnership. For Partnership positions provide the funding breakdown (% General Fund, % Federal, etc.)

Supervisor's Name, Title and Phone Number:

Check the type of request (new or vacant position) and complete the appropriate section.

New Position(s):

- a. **REQUIRED:** Allocation requested: Existing Class Code Existing Job/Class Title:

b. Position authorized by:

Joint Fiscal Office – JFO # Approval Date:

Legislature – Provide statutory citation (e.g. Act XX, Section XXX(x), XXXX session)

Other (explain) -- Provide statutory citation if appropriate.

Vacant Position:

a. Position Number:

b. Date position became vacant:

c. Current Job/Class Code: Current Job/Class Title:

d. REQUIRED: Requested (existing) Job/Class Code: Requested (existing) Job/Class Title:

e. Are there any other changes to this position; for example: change of supervisor, GUC, work station? Yes No If Yes, please provide detailed information:

For All Requests:

1. List the anticipated job duties and expectations; include all major job duties: Review engineering plans and applications/issue permits. Conduct detailed reviews of engineering plans and application materials for compliance with Wastewater System and Potable Water Supply Rules. Plan review includes on-site soil-based wastewater systems systems, community water supplies, and municipal sewer line extensions. Possess a working knowledge of environmental hydrogeologic principles relating to wastewater systems and water supply designs. Completes 95 percent or more of assigned projects within the established performance standards and 100 percent within the statutory requirements. Provide detailed and accurate review letters, denials, and permits within the established time frames. Has extensive knowledge of the Wastewater System and Potable Water Supply Rules, UIC Program, and Chapter 21, Water Supply Rules, Part 11, and governing policies. Has detailed knowledge of engineering and hydrogeological practices and principals relating to the design of wastewater systems and water supplies.

Conduct and review site evaluations. Conduct detailed site evaluations with a variety of consultants for the purpose of ascertaining the suitability of soils for the construction of soil-based wastewater systems and design of potable water supplies for a variety of projects ranging from single family residences to projects disposing of less than 6,500 gallons of wastewater per day and potable water supplies for single family residences to community water supplies. Record and describe soil types and characteristics in accordance with the practices establishes by the Division. Accurately determine apparent seasonal high groundwater tables (often through observation of redoximorphic features in the soil profiles), site limitations, etc., for the proper location and design of wastewater systems and water supplies. Appointments to conduct site visits need to be set which will not affect the ability to conduct in office plan review, return phone calls, or provide jurisdictional determinations. Provide preliminary findings verbally or in writing of site suitability for compliance with the Rules upon request of the applicant or consultant.

Spokesperson for the program. Meet with public, and /or consultants in office or at sites to review preliminary project proposals or to provide jurisdictional determinations for a diverse number of programs in accordance with the Rules and Division policy. Provide extensive telephone discussions and meetings with the public,

consultants, attorneys, town officials, realtors on program jurisdiction. Provide written jurisdictional letters when requested.

Enforcement/Complaints. Process complaints and violation notices on our programs or direct complaints to appropriate state agencies in timely manner. Provide a concise report on possible violations on request of enforcement involvement, and method of violation compliance. Represent and defend decisions, the Rules, and the Division in any appeal process or court case as requested.

Collaboration within our Division. Be an active participant in the development of office procedures and policies that will affect interpretation of and possible amendments to the Wastewater System and Potable Water Supply Rules.

The Wastewater System and Potable Water Supply Rules are in a constant state of interpretation for the legal and intended wording as applied to projects subject to the Rules. Providing interpretation of the Rules and insight for improvements for future re-writes of the Rules are an on-going task for each employee.

General Professional Behavior. Communicates in a professional and helpful manner, both verbally and in writing. Reviews and follows communication protocols of the State, Agency, Department, and Division. Maintains effective working relationships with customers, coworkers, and the public. Makes efficient use of work time, follows work rules and procedures, and adheres to work schedule. Conducts oneself in an open office setting in a manner that is quiet, respectful, and mindful of the presence of co-workers and visitors. Respond to emails, phone calls, and correspondence in a timely and professional manner.

2. Provide a brief justification/explanation of this request: The Wastewater System and Potable Water Supply Program (WW Program) is seeking to restore a 5th Assistant Regional Engineer Position (Environmental Analyst V) to serve customers of DEC's five regional offices who seek permits necessary to build homes and businesses. The Wastewater System and Potable Water Supply Rules are a complex set of requirements for the design and construction of wastewater systems and potable water supplies. The purpose of the Rules is to protect the public health and the environment and the Assistant Regional Engineer has the responsibility to review applications for the design of all new and replacement water supplies that meet the definition of a "potable water supply"; for new and replacement soil-based wastewater systems for the treatment and disposal of up to 6,499 gallons of wastewater per day; for new and replacement sanitary sewer collection systems, sanitary sewer service lines, and potable water service lines; and for minor amendments to existing permits and minor projects.

In 2015, five engineering positions were cut from the program in order to reduce general fund expenditures. These cuts have had impacts on the program's efficiency and have resulted in a drag on economic activity due to the increase in the wait time for permits. In addition to supporting housing and business development activities, these permits result in the creation of jobs for licensed designers & engineering consultants, environmental consultants, hydrogeologists, excavation contractors, landscapers and for the employees hired by business owners. Time delays for receiving these permits impact these businesses. Development and green jobs rely on the Department's ability to effectively administer the Rules.

At the same time, improvements in broader economic conditions have resulted in a steady increase in the number of inquiries and permit applications received. In state fiscal year 2018, the program issued an additional 143 permits when compared to the fiscal year proceeding the program cuts. To further complicate the situation, within the next three years it is estimated that five of the nine existing technical positions within the program will be retiring from state service. Additionally, the State will have new Rules in place for 2019 that will require a greater field presence by the Regional Engineers and Assistant Regional Engineers and

additional review times as the State changes the basis for designing leachfields. One additional technical person will be instrumental for the program to conduct proper review of applications for compliance with the Rules while maintaining its present PEP times. As stated above, these are a complex set of regulations and the primary reason the program has to date been able to absorb these cuts is due to the seasoned staff and the efficiency in which they can process applications and issue permits.

This position request will result in a right sizing of the resources available to meet the permitting demands and is a critical aspect to succession planning. The Division plans to seek approval for the Assistant Regional Engineer position using the Joint Fiscal Committee authorization process. The source of funding for the position would be existing federal grant funds.

3. If the position will be supervisory, please list the names and titles of all classified employees reporting to this position (this information should be identified on the organizational chart as well). N/A

Personnel Administrator's Section:

4. If the requested class title is part of a job series or career ladder, will the position be recruited at different levels? Yes No

5. The name and title of the person who completed this form: Ernest Christianson

6. Who should be contacted if there are questions about this position (provide name and phone number):
Ernest Christianson 802-585-4884

7. How many other positions are allocated to the requested class title in the department: 61

8. Will this change (new position added/change to vacant position) affect other positions within the organization? (For example, will this have an impact on the supervisor's management level designation; will duties be shifted within the unit requiring review of other positions; or are there other issues relevant to the classification process.) No.

Attachments:

- Organizational charts are required and must indicate where the position reports.
- Class specification (optional).
- For new positions, include copies of the language authorizing the position, or any other information that would help us better understand the program, the need for the position, etc.
- Other supporting documentation such as memos regarding department reorganization, or further explanation regarding the need to reallocate a vacancy (if appropriate).

Barbara Morway
Personnel Administrator's Signature (required)*

12/11/18
Date

Ernst Anderson

Supervisor's Signature (required)*

10/15/2018

Date

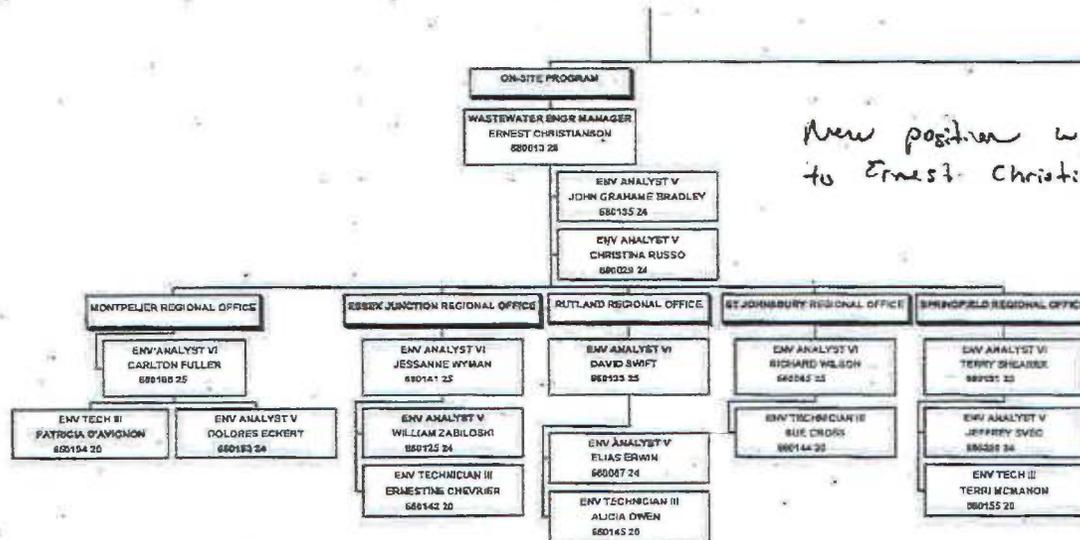
Emily Bodeke

Appointing Authority or Authorized Representative Signature (required)*

10/22/2018

Date

* Note: Attach additional information or comments if appropriate.



New position will report to Ernest Christianson.

ENVIRONMENTAL ANALYST V

Job Code: 145308

Pay Plan: Classified

Pay Grade: 24

Occupational Category: Life, Physical & Social Science

Effective Date: 09/27/2013

Class Definition: Environmental technology work at an advanced professional level for the Department of Environmental Conservation. Duties involve complex tasks in the technical review and analysis of environmental policies, programs, activities and data in a variety of regulatory, non-regulatory, and technical programs. Duties entail the collection and analysis of environmental data, evaluation of conceptual plans for environmental investigation, and the preparation, execution and evaluation of environmental studies. Work differs from a lower level analyst in the complexity of assigned responsibilities. May provide project or program oversight and/or supervise program staff or provide expertise in a specialized engineering or program element, which is not duplicated in the Department. Work is performed under the general direction of a section supervisor or division director.

Examples of Work: Plans, develops, and implements environmental plans and programs; reviews and analyzes proposed projects and plans for consistency with policies, statutes, regulations and rules, and for environmental impact; researches, collects, analyses, and enters information into, and maintains, data bases, and writes reports; prepares environmental impact statements and recommendations for corrective actions/alternatives; reviews and processes grant/loan applications; and prepares,

develops and presents informational and educational materials. Researches environmental and administrative issues. Develops and maintains technical and administrative expertise in assigned programs. Provides expert opinion, advice and training to Department management and staff, outside parties and the public on assigned programs. Makes compliance recommendations, including enforcement in regulatory programs. May supervise other technical and administrative staff on specific projects. Provides leadership, guidance and motivation to specific project teams. Trains staff, and represents the state in public meetings and legal proceedings. Develops and implements technical and administrative program changes. Performs related duties as required.

Environmental Factors: Duties are largely performed in an office setting; however, some field travel may be necessary for which private means of transportation must be available. Field work may involve exposure to chemicals, gases, hazardous liquid and solid waste, and construction sites during all weather conditions; and may involve traversing rough terrain and bodies of water. Some work outside of regular working hours, including attendance at public meetings, may be required. Strong differences of opinion may be encountered on a regular basis.

Minimum Qualifications

Knowledge, Skills and Abilities: Considerable knowledge of the laws, regulations, rules, policies and technologies of assigned programs.

Considerable knowledge of the technology and/or administrative procedures associated with the programs assigned the position.

Considerable knowledge of the scientific method of observation and analysis.

Considerable knowledge of planning principles and procedures.

Considerable knowledge of data gathering techniques and various systems for organizing and interpreting such data.

Considerable knowledge of the basic principles of environmental management and protection.

Considerable knowledge of the basic principals of ecology.

Working knowledge of computer uses and potential in data management and program planning.

Ability to communicate effectively both orally and in writing.

Ability to read and understand technical writing.

Ability to present research findings in clear, objective, written report form.

Ability to establish and maintain effective working relationships.

Ability to speak effectively in public fora, including formal hearings and court proceedings.

Ability to train other employees in all aspects of assigned programs.

Education and Experience:

Bachelor's degree in a biological-life or physical science, engineering, or an environmental or natural resources field AND four (4) years or more at a professional level in a natural resources field.

OR

Master's degree or higher in a biological-life or physical science, engineering, or an environmental or natural resources field AND two (2) years or more at a professional level in a natural resources field.

OR

One (1) year or more of experience as an Environmental Analyst IV or two (2) years or more as an Environmental Analyst III.

Special Requirements: n/a

	U.S. ENVIRONMENTAL PROTECTION AGENCY Grant Agreement		GRANT NUMBER (FAIN): 99121818 MODIFICATION NUMBER: 0 PROGRAM CODE: FS	DATE OF AWARD 07/26/2018
			TYPE OF ACTION New	MAILING DATE 08/02/2018
			PAYMENT METHOD: ASAP	ACH# 10114
RECIPIENT TYPE: State		Send Payment Request to: U.S. EPA Las Vegas Finance Center 4220 South Maryland Parkway, Building C, Room 503 Las Vegas, NV 89119 LVFC-grants@epa.gov		
RECIPIENT: Vermont D.E.C. 1 National Life Drive Main Building, 2nd Floor Montpelier, VT 05620 EIN: 03-6000274		PAYEE: Vermont D.E.C. 1 National Life Drive Main Building, 2nd Floor Montpelier, VT 05620		
PROJECT MANAGER Eric Blatt 1 National Life Drive Main Building, 2nd Floor Montpelier, VT 05620 E-Mail: Eric.Blatt@vermont.gov Phone: 802-585-4901		EPA PROJECT OFFICER James Bourne 5 Post Office Square, Suite 100, OEP06-2 Boston, MA 02109-3912 E-Mail: Bourne.James@epa.gov Phone: 617-918-1810		EPA GRANT SPECIALIST Julie Ross Grants Management Office, OARM05-5 E-Mail: Ross.Julie@epa.gov Phone: 617-918-1317
PROJECT TITLE AND DESCRIPTION Vermont Fiscal Year 2018 Drinking Water State Revolving Fund Capitalization Grant This is the 2018 capitalization grant to the Vermont Department of Environmental Conservation to fund drinking water infrastructure projects and associated eligible drinking water activities through the Drinking Water State Revolving Loan Fund Program.				
BUDGET PERIOD 10/01/2018 - 09/30/2025	PROJECT PERIOD 10/01/2018 - 09/30/2025	TOTAL BUDGET PERIOD COST \$13,328,400.00	TOTAL PROJECT PERIOD COST \$13,328,400.00	
NOTICE OF AWARD				
Based on your Application dated 05/30/2018 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$11,107,000. EPA agrees to cost-share 83.33% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$11,107,000. 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.				
ISSUING OFFICE (GRANTS-MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS EPA New England 5 Post Office Square, Suite 100 Boston, MA 02109-3912			ORGANIZATION / ADDRESS U.S. EPA, Region 1 5 Post Office Square, Suite 100 Boston, MA 02109-3912	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY				
Digital signature applied by EPA Award Official for Arthur Johnson - Acting Director, Office of Administration and Resource Management Fred Weeks - Award Official delegate				DATE 07/26/2018

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 11,107,000	\$ 11,107,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$ 2,221,400	\$ 2,221,400
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 13,328,400	\$ 13,328,400

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.468 - Safe Drinking Water State Revolving Fund	Safe Drinking Water Act: Sec. 130 Amended 1996 (PL 104-182)	2 CFR 200 2 CFR 1500 40 CFR 33 and 40 CFR 35 Subpart L

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
	18010HG001	18	E3	016	000B81	4109	18DA		7,389,018
	18010HG001	18	E3	016	000B81	4109	18DD		444,280
	18010HG001	18	E3	016	000B81	4109	18DE		164,820
	18010HG001	18	E3	016	000B81	4109	18DF		1,432,832
	18010HG001	18	E3	016	000B81	4109	18DG		1,666,050
									11,107,000

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$1,289,451
2. Fringe Benefits	\$496,438
3. Travel	\$0
4. Equipment	\$0
5. Supplies	\$26,563
6. Contractual	\$863,043
7. Construction	\$0
8. Other	\$10,336,861
9. Total Direct Charges	\$13,012,356
10. Indirect Costs: 24.51% Base	\$316,044
11. Total (Share: Recipient 16.67 % Federal 83.33 %.)	\$13,328,400
12. Total Approved Assistance Amount	\$11,107,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$11,107,000
15. Total EPA Amount Awarded To Date	\$11,107,000

Administrative Conditions

A. GENERAL ADMINISTRATIVE TERMS AND 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-october-2-2017-or>. 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>.

B. UTILIZATION OF SMALL, MINORITY AND WOMEN'S 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.

MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E

The recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants and Cooperative Agreements" report (EPA Form 5700-52A) on an annual basis. The current EPA Form 5700-52A can be found at the EPA Office of Small and Disadvantaged Business Utilization's Home Page at <https://www.epa.gov/resources-small-businesses>

MBE/WBE reporting is required in annual reports. 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 with a cumulative total that exceed the threshold amount of \$150,000, including amendments and/or modifications. The recipient must make reporting a requirement of all sub-awards/loans. All procurement actions 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 are instructed to check the box titled "annual" and 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:

**U.S. Environmental Protection Agency – Region I
5 Post Office Square – Suite 100 (OARM05-5)
Boston, MA 02109-3912
Attn: Mr. Larry Wells, Disadvantaged Business Utilization Program Manager**

Email: Wells.Larry@epa.gov

Based on EPA's review of the planned budget, this award meets the conditions above and is subject to the Disadvantaged Business Enterprise (DBE) Program reporting requirements. However, if the recipient believes this award does not meet these conditions, it must provide a justification and budget detail within 21 days of the award date clearly demonstrating that, based on the planned budget, this award is not subject to the DBE reporting requirements to the Regional or Headquarters point of contact defined in the correspondence condition, if applicable.

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 and explained below.

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 objectives requirements 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.

Current Fair Share Objective/Goal

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 Vermont Department of Environmental Conservation has negotiated the following, applicable MBE/WBE fair share objectives/goals with EPA as follows:

Vermont	MBE	WBE
Combined Goals	1.85%	3.52%

Negotiating Fair Share Objectives/Goals

In accordance with 40 CFR, Part 33, Subpart D, established goals/objectives remain in effect for three fiscal years unless there are significant changes to the data supporting the fair share objectives. The recipient is required to follow requirements as outlined in 40 CFR Part 33, Subpart D when renegotiating the fair share objectives/goals.

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.

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.

C. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE

EPA has not exercised the waiver option to allow automatic one-time extensions for non-research grants under 2 CFR 200.308 (d)(2). Therefore, if a No-Cost Time Extension is necessary to extend the period of availability of funds the recipient must submit a written request to the EPA at least 10 days prior to the budget/project period expiration dates. **The written request must include:** a written justification describing the need for additional time and a revised schedule for project completion including updated milestone target dates for the approved workplan activities. In addition, if there are overdue reports required by the administrative and programmatic terms and conditions of this assistance agreement, the recipient must ensure that they are submitted along with or prior to submitting the no cost time extension request.

The extension request must be submitted to the EPA Project Officer and EPA Grants Specialist listed on Page 1 of your Award Document.

Programmatic Conditions

A. Payment Schedule

The recipient agrees to accept grant funds that will be released by EPA utilizing the ASAP payment method. Access to these funds will be in accordance with the following schedule:

<u>Payment Quarter</u>	<u>Payment Date</u>	<u>Payment Amount</u>
FFY2019/Quarter 1	10/01/2018	\$3,000,000
FFY2019/Quarter 2	01/01/2019	\$2,683,510
FFY2019/Quarter 3	04/01/2019	\$0
FFY2019/Quarter 4	07/01/2019	\$0
FFY2020/Quarter 1	10/01/2019	\$3,816,490
FFY2020/Quarter 2	01/01/2020	\$0
FFY2020/Quarter 3	04/01/2020	\$0
FFY2020/Quarter 4	07/01/2020	\$1,607,000

B. State Match

The recipient agrees to deposit into its State Revolving Fund (SRF) a match equal to at least 20 percent of the amount awarded in the capitalization grant.

C. Intended Use Plan and Operating Agreement

The entire contents of the SFY 2018 Intended Use Plan (IUP) and the Operating Agreement (OA) are incorporated hereto by reference and made a part of this Assistance Agreement.

D. Set-Aside Work Plan

The recipient agrees to perform the activities identified and specified in the work program plan, which is made part of this Assistance Agreement.

E. Set-Aside Sub-Grants and Contracts

The recipient shall provide or make available to the Region 1 DWSRF Project Officer copies of the work plans associated with grants and contracts that it may enter into with other agencies and organizations related to activities conducted under this grant. In its semi-annual report, the grant recipient shall include a summary description of activities completed under grants and contracts entered into with funds made available under the grant.

F. Travel

EPA approves the use of Federal funds for travel budgeted in capitalization grants for implementing the DWSRF program. The recipient agrees to use Federal funds to participate in training and professional development activities integral to the effective implementation and management of the DWSRF program.

G. Drinking Water National Information Management System (DWNIMS)

The recipient agrees to input data, as required by EPA to the DWNIMS. EPA agrees to provide technical assistance to the State in its use of the DWNIMS as a management information system.

H. Public Health Benefits Reporting

The recipient of funds for the State Revolving Funds (SRF) from the Consolidated Appropriations Act, 2018, P.L. 115-141, agrees to comply with all requests for data related to the use of the funds under Section 1452 of the Safe Drinking Water Act (SDWA), and to report all uses of the funds no less than quarterly, as the Environmental Protection Agency specifies for the Drinking Water Project and Benefits Reporting (PBR) database. This reporting shall include but not be limited to data with respect to the DWSRF discretionary Green Program and additional subsidization requirements as specified in P.L. 115-141, and as outlined in the FY 2012 Procedures document and other data as necessary to carry out the authorities cited in this Grant Condition.

I. Biennial/Annual Reporting

In accordance with 2 CFR 200.328 and 40 CFR 35.3570 the recipient agrees to provide in its Biennial/Annual Report information regarding key project characteristics, milestones, and environmental/public health protection results in the following areas: 1) achievement of the outputs and outcomes established in the Intended Use Plan; 2) the reasons for delays if established outputs or outcomes were not met; 3) any additional pertinent information on environmental/public health results; 4) compliance with the Green Project Reserve discretionary requirement as outlined in the FY 2012 SRF Procedures document; and 5) use of additional subsidization.

J. Set-Aside Reporting

The recipient agrees to provide to the Region 1 Vermont DWSRF Project Officer a semi-annual report on the set-aside activities funded under this grant. These reports shall be provided on 3/31 and 9/30 of each year the grant is in effect.

K. Program Income from Administrative Fees

The recipient agrees to maintain program income resulting from program operations generated during the project period (e.g. administrative fees collected from DWSRF project loan recipients) in an account separate from the DWSRF project loan fund. In addition, the recipient agrees that such program income shall be used only for purposes related to the administration of the DWSRF program or other purposes authorized pursuant to EPA regulations.

L. Signage

The recipient agrees to comply with the SRF Signage Guidelines in order to enhance public awareness of EPA assistance agreements nationwide. (See Memo, "Guidelines for Enhancing Public Awareness of SRF Assistance Agreements," June 3, 2015.)

M. Additional Subsidization

In addition to the disadvantaged community assistance that can be provided at a state's discretion as described in Section 1452(d) of the Safe Drinking Water Act (SDWA), the recipient agrees to use twenty percent of the funds made available in the capitalization grant to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants (or any combination of these) which shall be used:

- where such funds are provided as initial financing for an eligible recipient or to buy, refinance, or restructure the debt obligations of eligible recipients only where such debt was incurred after March 23, 2018, or
- where such debt was incurred prior to March 23, 2018, if
 - the recipient, with concurrence from the EPA Region, determines that such funds could be used to help address a threat to public health from heightened exposure to lead in drinking water, or
 - a Federal or state emergency declaration has been issued due to a threat to public health from heightened exposure to lead in a municipal drinking water supply before the date of enactment of this Act.

Furthermore, in a state in which such an emergency declaration has been issued, the recipient may use more than 20 percent of the funds made available under this title to the state for DWSRF capitalization grants to provide additional subsidy to eligible recipients. The additional subsidy ceiling in these circumstances is the total capitalization grant amount, minus set-asides taken.

N. Green Project Reserve

The recipient agrees that the funds provided by this capitalization grant may, at the discretion of the recipient, be used for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.

O. Sub-award Monitoring

The recipient agrees, if they choose to pass funds from this assistance agreement to other entities, that the recipient must comply with applicable provisions of 2 CFR Part 200 and the EPA Sub-award Policy, which may be found at <https://epa.gov/grants/epa-subaward-policy>.

P. American Iron and Steel

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

(a) "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(2) *Domestic preference.*

(a) This award term and condition implements P.L. 115-141, Consolidated Appropriations Act, 2018, Section 424, by requiring that all iron and steel products used for a project for the construction, alteration, maintenance or repair of a public water system are produced in the United States except as provided in paragraph (b)(2) of this section and condition.

(b) This requirement shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency finds that:—

- (i) applying the requirement would be inconsistent with the public interest;
- (ii) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (iii) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(3) Request for a Waiver under (b) (2) of this section

(a) Any recipient request to use foreign iron or steel products in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

- (1) A description of the foreign and domestic iron, steel, and/or manufactured goods;
- (2) Unit of measure;
- (3) Quantity;
- (4) Cost;
- (5) Time of delivery or availability;
- (6) Location of the project;
- (7) Name and address of the proposed supplier; and
- (8) A detailed justification of the reason for use of foreign iron or steel products cited in accordance with paragraph (b)(2) of this section.

(b) If the Administrator receives a request for a waiver under this section, the waiver request shall be made available to the public for at least 15 days prior to making a finding based on the request.

(c) Unless the Administrator issues a waiver of this term, use of foreign iron and steel products is noncompliant with the Consolidated Appropriations Act, 2018 (P.L. 115-141).

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

Q. Wage Rate Requirements

The recipient agrees to include in all agreements to provide assistance for any construction project carried out in whole or in part with such assistance made available by a drinking water revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12), a term and condition requiring compliance with the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C.300j-9(e)) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions All contracts and subcontracts for any construction project carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled "Wage Rate Requirements Under The Clean Water Act, Section 513 and the Safe Drinking Water Act, Section 1450(e)." This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.

Preamble

With respect to the Safe Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides sub grants or loans to eligible entities within the State. Typically, the sub recipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring sub recipients' compliance with the wage rate requirements set forth herein, those sub recipients shall

compliance as described in Section I-5.

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

I. Requirements Under the Consolidated Appropriations Act, 2018 (P.L. 115-141)
For Sub recipients That Are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance with respect to State recipients and sub recipients that are governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact Valerie Bataille at Bataille.valerie@epa.gov, or (617) 918-1674, of EPA Region I for guidance. The recipient or sub recipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

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

DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

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

(i) While the solicitation remains open, the sub recipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.

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

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

(c) Sub recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the

prime contractor has required its subcontractors to include the applicable wage determinations.

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

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the Consolidated Appropriations Act, 2018, the following clauses:

(1) Minimum wages.

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

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

Sub recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

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

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

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

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

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

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

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

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

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

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

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of

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

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

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

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

- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe

benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

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

(4) Apprentices and trainees

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

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

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

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

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

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

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

5. Compliance Verification

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

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

Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage

requirements. All interviews shall be conducted in confidence."

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

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

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

II. Requirements Under The Consolidated Appropriations Act, 2018 (P.L. 115-141) For Sub recipients That Are Not Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under the FY2018 Consolidated Appropriations Act with respect to sub recipients that are not governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a State recipient needs guidance, the recipient may contact Valerie Bataille at Bataille.valerie@epa.gov, or (617) 918-1674, of EPA Region I for guidance. The recipient or sub recipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>.

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

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

Under the FY 2018 Consolidated Appropriations Act, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub recipients must obtain proposed wage determinations for specific localities at www.wdol.gov. After the Sub recipient obtains its proposed wage determination, it must submit the wage determination to Valerie Bataille at Bataille.valerie@epa.gov, or (617) 918-1674, of EPA Region I for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official.)

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

(i) While the solicitation remains open, the sub recipient shall monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.

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

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

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

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

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2018 Consolidated and Continuing Appropriations Act, the following clauses:

(1) Minimum wages.

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

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

Sub recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

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

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

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

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

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

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics

includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

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

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

(3) **Payrolls and basic records.**

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

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

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

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

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

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

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

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

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

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

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not

registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

- (5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

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

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

(10) Certification of eligibility.

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

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

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

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

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

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

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

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

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

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours

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

5. Compliance Verification

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

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

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

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

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