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Alice L. Lee

Vice-Chair  
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore  
Tasha Kama

Councilmembers  
Gabe Johnson  
Kelly Takaya King  
Michael J. Molina  
Tamara Paltin  
Shane M. Sinenci  
Yuki Lei K. Sugimura



**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

May 21, 2021

Director of Council Services  
Traci N. T. Fujita, Esq.

RECEIVED

2021 MAY 24 AM 11:58

OFFICE OF THE  
COUNTY CLERK

The Honorable Alice L. Lee  
Council Chair  
County of Maui  
Wailuku, Hawaii 96793

Dear Chair Lee:

SUBJECT: **LAHAINA FLOOD CONTROL PROJECT** (IT-33)

May I request that the attached correspondence dated April 26, 2021, from the Director of Public Works, transmitting a proposed bill, entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE U.S. DEPARTMENT OF AGRICULTURE NATURAL RESOURCES CONSERVATION SERVICE RELATED TO THE LAHAINA WATERSHED FLOOD PROTECTION PROJECT," be placed on the next Council meeting agenda.

Sincerely,

A handwritten signature in black ink that reads "Yuki Lei Sugimura". The signature is written in a cursive style.

YUKI LEI K. SUGIMURA, Chair  
Infrastructure and Transportation  
Committee

it:ltr:033ach01:lma

Attachment

COUNTY COMMUNICATION NO. 21-256

MICHAEL P. VICTORINO  
Mayor

ROWENA M. DAGDAG-ANDAYA  
Director

JORDAN MOLINA  
Deputy Director

GLEN A. UENO, P.E., L.S.  
Development Services Administration

RODRIGO "CHICO" R. RABARA, P.E.  
Engineering Division

JOHN R. SMITH, P.E.  
Highways Division

Telephone: (808) 270-7745  
Fax: (808) 270-6267



COUNTY OF MAUI  
**DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION**

200 SOUTH HIGH STREET, ROOM NO. 410  
WAILUKU, MAUI, HAWAII 96793

RECEIVED

2021 APR 29 PM 3:57

OFFICE OF THE  
COUNTY COUNCIL

April 26, 2021

Honorable Michael P. Victorino  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

*Michael P. Victorino* 4/27/21  
\_\_\_\_\_  
Mayor Date

For Transmittal to:

Honorable Yuki Lei K. Sugimura, Chair  
Infrastructure and Transportation Committee  
Maui County Council  
200 South High Street  
Wailuku, Maui, Hawaii 96793

Dear Chair Sugimura:

**SUBJECT: LAHAINA FLOOD CONTROL PROJECT (IT-33)  
A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE  
COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL  
AGREEMENT WITH THE U.S. DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE RELATED TO THE  
LAHAINA WATERSHED FLOOD PROTECTION PROJECT**

The attached bill for an ordinance authorizes the Mayor to enter into an intergovernmental agreement with the Natural Resources Conservation Service (NRCS), which will provide \$1,229,230 in grant funding to the County of Maui for the development of a supplemental watershed plan-environmental document (Supplemental Plan-ED) for the Lahaina Watershed Flood Protection Project. As part of the agreement, the County will provide in-kind assistance equivalent to \$149,980.

The Department of Public Works (DPW) has been working with the NRCS and the West Maui Soil and Water Conservation District since the early 1980s to provide 100-year flood protection to south Lahaina and reduce the total sediment discharge to the ocean.

Honorable Michael P. Victorino  
For Transmittal to:  
Honorable Yuki Lei K. Sugimura  
April 26, 2021  
Page 2

Lahaina Flood Control Project Phases 1, 2A, 2B, and 3A were constructed between 2009 and 2015. However, detailed design and construction of the subsequent phases could not proceed because NRCS funding was not available.

The attached agreement provides the necessary funding and structure to restart the project by analyzing current planned works and reasonable alternatives to meet project objectives, given current site conditions. The proposed alternative supported by the Supplemental Plan-ED would be designed in a separate phase.

DPW looks forward to working with its partners and stakeholders to develop a multi-objective flood protection project which meets the needs of the community and environment.

If you have any questions, please feel free to call our office at (808) 270-7845.

Sincerely,

A handwritten signature in black ink, appearing to be 'RMA', with a long horizontal stroke extending to the right.

ROWENA M. DAGDAG-ANDAYA  
Director of Public Works

RMDA:ckc (ED21-0401)

Attachment

S:\ENG\PROJECTS\02 CIP\2021\21-34 Lahaina Watershed - Supplemental Plan-ED\C  
Correspondence\Letters\2021.04.26 Lahaina Watershed Project – transmit bill.docx

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_ (2021)

**A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR  
OF THE COUNTY OF MAUI TO ENTER INTO AN  
INTERGOVERNMENTAL AGREEMENT WITH THE  
U.S. DEPARTMENT OF AGRICULTURE NATURAL RESOURCES  
CONSERVATION SERVICE  
RELATED TO THE LAHAINA WATERSHED FLOOD PROTECTION PROJECT**

**BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:**

**SECTION 1. Purpose.** The U.S. Department of Agriculture Natural Resources Conservation Service ("NRCS") and the County of Maui ("County") wish to enter into an agreement to develop a supplemental watershed plan-environmental document ("Supplemental Plan-ED") for the Lahaina Watershed Flood Protection Project ("Project"). The total cost of the agreement is \$1,379,210. NRCS will provide \$1,229,230 in grant funds to the County, and the County will contribute in-kind assistance equivalent to \$149,980. The West Maui Soil and Water Conservation District ("West Maui SWCD") is required to be consulted throughout the development of the Supplemental Plan-ED. The end date of agreement is September 30, 2024.

Since 1981, NRCS, the County, and the West Maui SWCD have worked together to provide flood protection to Lahaina. The Supplemental Plan-ED will be a document that reviews the purpose, scope, and major features of the existing plan; considers conditions requiring modification; determines conditions significant enough to warrant a revised watershed project plan; analyzes project

alternatives; and includes the appropriate environmental document needed for the determined federal action. The Notice of Grant Agreement and Award ("Agreement") is attached hereto as Exhibit "1" and incorporated herein by reference.

SECTION 2. Council authorization. Pursuant to Section 2.20.020, Maui County Code, the Council of the County of Maui hereby authorizes the Mayor to execute the Agreement, all other necessary documents relating to the Agreement, and any amendment thereto.

SECTION 3. Effective date. This ordinance takes effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:

/s/ Michael J. Hopper

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MICHAEL J. HOPPER  
Deputy Corporation Counsel  
County of Maui  
2020-1814  
2021-04-20 Ord NRCS



U.S. Department of Agriculture  
Natural Resources Conservation Service

## NOTICE OF GRANT AND AGREEMENT AWARD

1. Award Identifying Number  NR2192510002C001	2. Amendment Number	3. Award /Project Period  Date of Final Signature - 09/30/2024	4. Type of award instrument:  Cooperative Agreement
5. Agency (Name and Address)  Natural Resources Conservation Service Pacific Islands Area State Office P.O. Box 50004 Honolulu, Hawaii 96850-0050		6. Recipient Organization (Name and Address)  MAUI, COUNTY OF 200 S HIGH ST WAILUKU HI 96793-2155  DUNS: 077680155      EIN:	
7. NRCS Program Contact  Name: Susan Kubo Phone: (717) 237-2216 Email: susan.kubo@pa.usda.gov	8. NRCS Administrative Contact  Name: KAYLIE ALDERMAN Phone: Email: kaylie.alderman@usda.gov	9. Recipient Program Contact  Name: Christy Chung Phone: (808) 270-5541 Email: christy.k.chung@co.maui.hi.us	10. Recipient Administrative Contact  Name: Ty Takeno Phone: 808-270-7434 Email: Ty.Takeno@co.maui.hi.us
11. CFDA  10.904	12. Authority  16 U.S.C. 1001-1009 33 U.S.C. 701b-1 68 Stat. 666, as amended Public Law 83-566 Public Law 84-1018, 70 Stat. 1088 Public Law 85-865, 72 Stat. 1605 Public Law 86-468, 74 Stat. 131, 132 Public Law 86-545, 74 Stat. 254 Public Law 87-703, 76 Stat. 608 Public Law 90-361, 82 Stat. 250	13. Type of Action  New Agreement	14. Program Director  Name: Rowena Dagdag-Andaya Phone: (808) 270-7845 Email: rowena.dagdag-andaya@co.maui.hi.us
15. Project Title/ Description: Development of supplemental watershed plan-environmental document (Supplemental Plan-ED) for the Lahaina Watershed Flood Protection Project.			
16. Entity Type: B = County Government			
17. Select Funding Type			
Select funding type:	<input checked="" type="checkbox"/> Federal		<input checked="" type="checkbox"/> Non-Federal
Original funds total	\$1,229,230.00		\$149,980.00
Additional funds total	\$0.00		\$0.00

Grand total	\$1,229,230.00	\$149,980.00
18. Approved Budget		
Personnel	\$0.00	Fringe Benefits \$0.00
Travel	\$0.00	Equipment \$0.00
Supplies	\$0.00	Contractual \$1,229,230.00
Construction	\$0.00	Other \$0.00
Total Direct Cost	\$1,229,230.00	Total Indirect Cost \$0.00
		Total Non-Federal Funds \$149,980.00
		Total Federal Funds Awarded \$1,229,230.00
		Total Approved Budget \$1,379,210.00

This agreement is subject to applicable USDA NRCS statutory provisions and Financial Assistance Regulations. In accepting this award or amendment and any payments made pursuant thereto, the undersigned represents that he or she is duly authorized to act on behalf of the awardee organization, agrees that the award is subject to the applicable provisions of this agreement (and all attachments), and agrees that acceptance of any payments constitutes an agreement by the payee that the amounts, if any, found by NRCS to have been overpaid, will be refunded or credited in full to NRCS.

Name and Title of Authorized Government Representative Travis Thomason Director, Pacific Island Area	Signature	Date
<del>Name and Title of Authorized Recipient Representative</del> Michael Victorino Mayor	See attached County of Maui signature page Signature	Date

#### NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

#### PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. Section 522a)

## COUNTY EXECUTION PAGE

This agreement is subject to applicable USDA NRCS statutory provisions and Financial Assistance Regulations. In accepting this award or amendment and any payments made pursuant thereto, the undersigned represents that he or she is duly authorized to act on behalf of the awardee organization, agrees that the award is subject to the applicable provisions of this agreement (and all attachments), and agrees that acceptance of any payments constitutes an agreement by the payee that the amounts, if any, found by NRCS to have been overpaid, will be refunded or credited in full to NRCS.


GRANTEE:

COUNTY OF MAUI

By \_\_\_\_\_  
MICHAEL P. VICTORINO  
Its Mayor

Date \_\_\_\_\_

APPROVAL RECOMMENDED:

  
\_\_\_\_\_  
ROWENA M. DAGDAG-ANDAYA  
Director  
Department of Public Works

Date APR 23 2021

APPROVED AS TO FORM  
AND LEGALITY:

/s/ Michael J. Hopper

\_\_\_\_\_  
MICHAEL J. HOPPER  
Deputy Corporation Counsel  
County of Maui

Date 4/26/21

## Statement of Work

### Purpose

The purpose of this agreement is for the United States Department of Agriculture, Natural Resources Conservation Service, hereinafter referred to as "NRCS", to work with the County of Maui, hereinafter referred to as "Sponsor", on development of a supplemental watershed plan-environmental document (Supplemental Plan-ED) for the Lahaina Watershed Flood Protection Project, developed under the Watershed Protection and Flood Prevention Act. This Supplemental Plan-ED specifically involves analyzing current planned works for the Lahaina Watershed Flood Protection Project - Phase 3B, Phase 4/5, and reasonable alternatives to meet project objectives.

### Objectives

The objective of this agreement is to provide the Sponsor and NRCS with a Supplemental Plan-ED for the Lahaina Watershed Flood Protection Project to meet requirements for technical assistance and funding for the purpose of implementing necessary, eligible watershed protection measures to meet the original purposes of the Lahaina Watershed Flood Protection Project.

A Supplemental Plan-ED is a document that reviews the purpose, scope, and major features of an existing plan, considers conditions requiring modification, and determines conditions significant enough to warrant a revised watershed project plan. The amount of detail included in a Supplemental Plan-ED depends on the nature and extent of the modifications and their effect on the overall project (National Watershed Planning Manual - 390-503.2.A).

The Supplemental Plan-ED will evaluate remaining measures in the Lahaina Watershed Flood Protection Project and reasonable alternatives to insure that proceeding with the project represents a sound investment. The social, environmental, and economical feasibility determined for the project, must be rechecked in light of current conditions, and consideration must be given to changes needed to address changed site conditions. The Sponsor and NRCS will determine the appropriate type of environmental document needed for this federal action - Supplemental Plan - Environmental Assessment or Supplemental Plan - Environmental Impact Statement. The Supplemental Plan-ED shall comply, both procedurally and analytically, with the requirements of the NRCS, CEQ regulations, the Hawaii Environmental Policy Act, and all applicable laws and executive orders. It shall also contain analyses, documentation, and inter-agency reviews mandated to include compliance with their procedural components.

The Sponsor will finalize a detailed Supplemental Plan-ED which concludes by describing the most physically, technically, economically, socially, and environmentally defensible alternative, as determined in consultation with NRCS and the West Maui SWCD. The final Supplemental Plan-ED will be issued by the NRCS, and any identified cooperating agency or agencies.

### Budget Narrative

The official budget (including cost category itemization as identified on the SF-424A) described in this Budget Narrative will be considered the "the total budget as last approved by the Federal awarding agency" for this award.

This project's budget includes \$1,229,230.00 from NRCS. The total project budget, including match is \$1,379,210.00. County of Maui will provide \$149,980.00 in in-kind assistance in salary and fringe, and meeting facilities, however the project will generate additional match in the form of stakeholders' time spent in one-on-one and group meetings in support of the project. While this match is not included in the budget, stakeholder participation will be recorded and reported as additional match by the recipient.

#### Breakdown of the requested Federal Budget

Contractual: \$1,229,230.00

Local contract for development of a Supplemental Plan-ED

#### Breakdown of the Non-Federal Budget

Personnel: \$79,424.00

Maui County will provide staff in support of advertising, bidding, and administering a contract to develop the Lahaina Watershed environmental document as part of reaffirming project feasibility.

Ty Takeno, Planning and Design Section Head, 10% of \$9,324/month for 33 months = \$30,769

Christy Chung, Civil Engineer IV, 20% of \$7,372/month for 33 months = \$48,655

Fringe: \$69,956.00

Maui County fringe benefit rate is 88.08%, and covers Employees' Retirement System, Social Security/Medicare,

Unemployment, Workers' Compensation, Medical, Drug, Dental, Vision, and Life Insurance, Other Post-Employment Benefits, and Vacation, Sick, Holiday and Other Leave.

$\$79,424 \times 88.08\% = \$69,956$

Other: \$600.00

Lahaina Civic Center Social Hall General Use Permit fees.

6 public meetings  $\times$  \$100/meeting = \$600

### **Responsibilities of the Parties:**

If inconsistencies arise between the language in this Statement of Work (SOW) and the General Terms and Conditions attached to the agreement, the language in this SOW takes precedence.

NRCS will:

1. Designate a Project Manager (PM) to serve as liaison and work with the Sponsor and identify that person's contact information with this executed agreement.
2. Consult with the Sponsor, as requested, in preparing the solicitation and awarding and administering the contract to develop the Supplemental Plan-ED.
3. Review the Supplemental Plan-ED preparation process to be used by the Sponsor's contractor to ensure NRCS NEPA policy and procedures are being followed.
4. Provide authorized assistance such as, but not limited to, review of contractor submittals and participation in coordination meetings, as requested by the Sponsor, and as its resources permit.
5. Review and concur with any concept designs and the Supplemental Plan-ED developed for or by the Sponsor.
6. NRCS will complete tasks assigned in Attachment A "Contractor and Supplemental Plan-ED Requirements"; this may include NRCS publishing the Notice of Availability (NOA) prepared by the Sponsor's Contractor in the non-legal section of the local newspaper or newspapers, as specified in the public participation plan.
7. Make payment to the Sponsor in accordance with the agreement budget for documented expenses upon receipt and approval of an SF-270, withholding the amount of damages sustained by NRCS as provided for in this agreement.

Recipient will:

1. Contract for services, as necessary, award and administer any contracts, with the concurrence of NRCS, to develop a Supplemental Plan-ED for the Lahaina Watershed Flood Protection Project. Tasks for development of a Supplemental Plan-ED will include an amount of engineering/design to accurately define, evaluate, and refine alternatives proposed in the Lahaina Watershed Flood Protection Project for technical feasibility, socioeconomic, benefits, and impacts.
2. Contracts for services described in this Agreement shall not be awarded to the Sponsor or to any firm in which any Sponsor's official or any member of such official's immediate family has direct or indirect interest in the pecuniary profits or contracts of such firms. Reference 2 CFR § 200.318 regarding standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts.
3. Follow planning policy set forth in the NRCS Title 390, National Watershed Program Manual (NWPM), Part 505, which is incorporated by reference. Sponsor may obtain a full copy of the above referenced manual at <http://directives.sc.egov.usda.gov/> or the NRCS Pacific Islands Area State Office.
4. Follow design policy set forth in the NRCS National Engineering Manual Part 511. This includes complying with and identifying all necessary permits, land rights, and easements that will need to be obtained in accordance with the policy directive section 505.36.
5. Ensure that requirements for compliance with environmental and cultural resource laws and Hawaii Environmental Policy Act requirements are incorporated into the Supplemental Plan-ED described in this agreement.
6. Designate a project liaison to serve between the Sponsor, NRCS, and the West Maui Soil and Water Conservation District. Identify the person's contact information with this executed agreement. Any change in the project liaison during the term of this agreement must be immediately communicated to NRCS and West Maui Soil and Water Conservation District.

7. Notify NRCS and West Maui SWCD of environmental clearance, modification of construction plans, and any unresolved concerns and issues identified in the development of the Supplemental Plan-ED.
8. Consult with NRCS, as needed, on solicitation and award of the contract to develop the Supplemental Plan-ED, review of the contractor's workplan for compliance with NRCS NEPA policy and procedures, and review of contractor submittals and coordination meetings.
9. Review and concur with any concept designs and the Supplemental Plan-ED developed. Obtain NRCS and West Maui SWCD review and concurrence of any concept designs and the Supplemental Plan-ED.
10. Upon determination of technical acceptability of the completed Supplemental Plan-ED, revise the project operation and maintenance (O&M) plan in accordance with Title 180, Part 500 of the NRCS Operation and Maintenance Manual and Title 390, Part 505, Subpart B, Section 505.11, of the NRCS National Watershed Program Manual.
11. Be responsible for all ineligible project costs to the extent such funds are allocated by the Maui County Council. Ineligible costs are costs not referenced in this agreement. The Sponsor is also responsible for all costs in excess of the federal cost-share in this agreement to the extent such funds are allocated by the Maui County Council. The County of Maui may not make commitments in excess of funds authorized by law or made administratively available.
12. Comply with the applicable requirements in the attached General Terms and Conditions of this agreement.
13. Ensure the information in the System for Award Management (SAM) is current and accurate until the final financial report (SF 425) under this award or final payment is received, whichever is later.
14. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of the contract awarded under this agreement. This includes, but is not limited to disputes, claims, protests of award, source evaluation, and litigation that may result from the project. Such actions will be at the expense of the Sponsor, including any legal expenses. The Sponsor will advise and consult with NRCS on any litigation matters in which NRCS could have a financial interest.
15. Be liable to the NRCS for damages sustained by the NRCS as a result of the contractor failing to complete the work within the specified time. The damages will be based upon the additional costs incurred by the NRCS resulting from the contractor not completing the work within the allowable performance period. These costs include but are not limited to personnel costs, travel, etc. The NRCS will have the right to withhold such amount out of any monies that may be then due or that may become due and payable to the Sponsor. This liability is not applicable to the extent that the contract performance time is extended by court judgment unless such judgment results from actions of the Sponsor not concurred in by NRCS.
16. Submit performance reports on an annual basis to the ezFedGrants system or the Farm Production and Conservation (FPAC) Grants and Agreements Division staff via email to: FPAC.BC.GAD@usda.gov. Reports are due 30 calendar days after the reporting period and are based on the agreement period of performance start date.
17. Submit SF425 Financial Reports on a semi-annual basis to the ezFedGrants system or the Farm Production and Conservation (FPAC) Grants and Agreements Division via email to: FPAC.BC.GAD@usda.gov. Reports are due 30 calendar days after the reporting period. Please note that financial reporting is based on the calendar year.
18. Submit payment requests to the ezFedGrants system or the Farm Production and Conservation (FPAC) Grants and Agreements Division via email to: FPAC.BC.GAD@usda.gov on a monthly or quarterly basis. Refer to the General Terms and Conditions for more information regarding payment requests.
19. The recipient (including subrecipients) is responsible for compliance with the prohibition on certain telecommunications and video surveillance services or equipment identified in 2 CFR 200.216. See Public Law 115-232, Section 889 for additional information. In accordance with 2 CFR 200.216, the recipient (including subrecipients) is prohibited from obligating or expending loan or grant funds for covered telecommunications equipment or services to:
  - a. procure or obtain, extend, or renew a contract to procure or obtain;
  - b. enter into a contract (or extend or renew a contract) to procure; or
  - c. obtain the equipment, services, or systems.
20. In accordance with 2 CFR 200.340, the recipient understands this agreement may be terminated in whole or in part as follows:
  - a. By the Federal awarding agency or pass-through entity, if a recipient fails to comply with the terms and conditions of a Federal award;

b. By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

c. By the Federal awarding agency or pass-through entity with the consent of the recipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or

d. By the recipient upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety.

#### **SPECIAL PROVISIONS**

1. The furnishing of financial, administrative, and/or technical assistance above the original funding amount by NRCS is contingent on there being sufficient unobligated and uncommitted funding in the Watershed Flood Prevention Operations Program that is available for obligation in the year in which the assistance will be provided. NRCS may not make commitments in excess of funds authorized by law or made administratively available. Congress may impose obligational limits on program funding that constrains NRCS's ability to provide such assistance.

2. NRCS, at its sole discretion, may refuse to cost share should the Sponsor, in administering the contract, elect to proceed without obtaining concurrences described in this agreement.

#### **Expected Accomplishments and Deliverables**

Recipient will:

1. Provide NRCS with a copy of all solicitations prior to release, as well as all awarded contracts and contract modifications.
2. Appoint a contracting officer and an authorized representative who will have authority to act for the contracting officer, listing their duties, responsibilities, and authorities. Furnish such information in writing to the NRCS PIA Director.
3. Prepare a Supplemental Plan-ED in accordance with NRCS planning criteria, NRCS design criteria, and standard engineering principles that comply with NRCS programmatic requirements.
4. Ensure contractor deliverables are provided to NRCS for review, and that deliverables identified as needing NRCS concurrence and approval are provided to NRCS in a timely manner. Sponsor must not allow its contractor to move to subsequent phases of work without concurrence and approval by NRCS of prior work.
5. Provide copies of site maps to appropriate Federal and State agencies for environmental review. Notify NRCS and West Maui SWCD of environmental clearance, modification of construction plans, or any unresolved concerns.
6. Provide NRCS with documentation of the actual cost incurred for the services acquired.
7. Dispose of all claims resulting from the contract; secure prior written concurrence of the NRCS PIA Director if NRCS funds are involved.

#### **Resources Required**

No resources required other than funding.

#### **Milestones**

Estimated Timeframe: Task - Deliverables

1st Quarter – 2nd Quarter (Months 1 - 6):

Contract for planning services – Solicitation, name of successful bidder, notice to proceed

3rd Quarter (Months 7 - 9)

Kick-off/scoping meeting to include NRCS and West Maui SWCD - Invitation, list of attendees and minutes  
Prepare public participation plan - Copy of plan  
Prepare, update, and maintain mailing lists - Copy of lists  
Review of Lahaina Watershed Flood Protection Project  
Site data collection - Listing of references and data sources  
Create existing conditions hydrologic and hydraulic models

4th Quarter - 6th Quarter (Months 10 - 18):

Evaluation of project need and feasibility  
Development and evaluation of design alternatives  
Contractor, Sponsor, NRCS and West Maui SWCD meeting to discuss findings - Meeting list of attendees and minutes with findings

7th Quarter - 9th Quarter (Months 19 - 27):

Select alternative(s) to move forward with - Meeting minutes or letter from Sponsor to contractor  
Pre-NEPA Interagency Meetings - Meeting list of attendees and minutes  
Draft Supplemental Plan-ED  
Respond to NRCS NWMC technical review comments

10th Quarter (Months 28 - 30):

Public meeting & Interagency Comments - Notice, list of attendees and minutes  
Respond to comments - Compilation of comments and responses to comments  
Final Supplemental Plan-ED and, if applicable a FONSI  
Respond to NRCS NHQ programmatic review comments

11th Quarter (Months 31 - 33)

Project close out - Final report, final payment

Attachment A Contractor and Supplemental Plan-ED Requirements  
Lahaina Watershed Flood Protection Project

1. For the preparation of the Supplemental Plan-ED – The Supplemental Plan-ED is a document that reviews the purpose, scope, and major features of an existing plan, considers conditions requiring modification, and determines conditions significant enough to warrant a revised watershed project plan. The amount of detail included in a supplemental plan depends on the nature and extent of the modifications and their effect on the overall project (National Watershed Planning Manual – 390-503.2.A). The Supplemental Plan-ED will evaluate remaining measures in the Lahaina Watershed Flood Protection Project and reasonable alternatives to insure that proceeding with the project represents a sound investment. The social, environmental, and economical feasibility determined for the project, must be rechecked in light of current conditions, and consideration must be given to changes needed to address changes in conditions. The Sponsor and NRCS will determine the appropriate Supplemental Plan-ED needed for the determined federal action – Supplemental Plan - Environmental Assessment or Supplemental Plan - Environmental Impact Statement.
2. For the preparation of the Supplemental Plan-ED – Environmental Assessment or Environmental Impact Statement – for measures identified in the Supplemental Plan-ED, the work will include the (a) identification of alternatives, (b) an analysis of the alternatives and (c) an analysis of economic and environmental impacts of the proposed alternative, their appropriate documentation and review under the requirements of the National Environmental Policy Act (NEPA). The NEPA analysis and documentation will identify and evaluate all relevant impacts, conditions, and issues associated with the selected/proposed alternative in accordance with the President's Council on Environmental Quality's (CEQ) Regulations outlined in 40 CFR parts 1500 - 1508, hereafter referred to as the CEQ regulations, the NRCS procedures for implementing NEPA found at 7 CFR Part 650, NRCS General Manual Part 410, the NRCS National Environment Compliance Handbook and the Hawaii Environmental Policy Act. The Supplemental Plan-ED will also be developed in accordance with the NRCS National Watershed Program Manual (NWPM-390-500-M, 4th Ed., Apr 2014, as amended January 2015); particularly Part 501-Development of Watershed Project Plans.
3. In addition to meeting the requirements of NEPA, the Supplemental Plan-ED must also document compliance with the related environmental impact analysis requirements of the following statutes and executive orders, to include their implementation regulations and guidelines: Clean Water Act; Clean Air Act; Safe Drinking Water Act; Federal Water Pollution Control Act; Farmland Protection Policy Act; Endangered Species Act; Wild and Scenic Rivers Act; National Historic Preservation Act; Archeological and Historic Preservation Act; Executive Order 11988, Floodplain Management; Executive Order 11990, Protection of Wetlands; and Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.
4. The Contractor shall be responsible for the professional and technical accuracy of all work or services rendered. The Contractor will work with the Sponsor to avoid duplication of efforts. Products submitted by the Contractor shall fully meet the requirements of the NRCS. Submittals will be reviewed by the Sponsor and NRCS for compliance with NRCS requirements and criteria. Errors and/or deficiencies resulting from the Contractor's performance shall be corrected by the Contractor at no additional cost to the Sponsor.
5. This description of the work and services provides the technical details expected from the Contractor. Any changes and additions to the contract scope must be authorized in writing by the Sponsor.
6. In completing this Supplemental Plan-ED, the Contractor will follow the technical criteria and guidance contained in the following documents: Council on Environmental Quality's Regulations For Implementing the Procedural Provisions of the National Environmental Policy Act; Council on Environmental Quality's "Forty Most Frequently Asked Questions"; Council on Environmental Quality's "Environmental Justice: Guidance Under the National Environmental Policy Act"; U.S. Water Resources Council's Floodplain Management Guidelines For Implementing Executive Order 11988; and other published federal regulations and guidelines for implementing the requirements listed in Section.

## Lahaina Watershed Flood Protection Project

The Supplemental Plan-ED will be formulated in accordance with the policy detailed in the NWPM-390-500-M, 4th Ed., Apr 2014, as amended January 2015, Section 501.12 Plan Formulation A.

The alternatives required in development of the Supplemental Plan-ED:

- 1) Current planned works and reasonable alternatives within the program authorities of the NRCS and preferred by Sponsor that address the purpose and need for action must be presented in the Supplemental Plan-ED. The future-without-project (FWOP) conditions or no- action alternative must be included in the Supplemental Plan-ED.
- 2) For alternatives that are eliminated from detailed study, the rationale for this elimination will be provided. All alternatives developed or considered will be documented as part of the administrative record.
- 3) All relevant public, Sponsor, NRCS, and West Maui SWCD-identified resource concerns noted during scoping must be addressed and/or analyzed by one or more alternatives in the Supplemental Plan-ED.
- 4) For a watershed project plan involving flood protection, consideration must be given to alternative measures to prevent or reduce flood damage, including but not limited to the following:
  - i. Flood-proofing of structures
  - ii. Floodplain regulation
  - iii. Acquisition of floodplain lands for recreational, fish and wildlife, and other public purposes
  - iv. Moving buildings and facilities
  - v. Conversion of land use to forest
- 5) Project land treatment measures will not be formulated to address onsite economic benefits such as reducing production costs or increasing yields. However, onsite benefits should be included in the documentation and evaluation of the alternative plans. All costs, including operation, maintenance, and replacement costs, expected to be incurred over the period of analysis must be included.

The following list of specific tasks must be completed. The contractor will coordinate with the Sponsor and NRCS to avoid duplication of efforts. Note: If it's determined during the planning process that an Environmental Impact Statement (EIS) level document is required, tasks may be adjusted to account for additional requirements deemed appropriate to finalize an EIS.

Tasks	Description of Tasks
1	Attend and Participate in Preconstruction/Kickoff Conference
2	Prepare Public Participation Plan
3	Prepare, Update, and Maintain Mailing Lists
4	Prepare Notice(s) of Scoping Meeting(s) and Issue Locally
5	Hold Scoping Meeting(s)
6	Prepare Scoping Report
7	Attend and Participate in Progress Review Meetings
8	Maintain Bibliography of References and Data Sources
9	Complete Inter-Agency Coordination, Documentation, and Data Compilation
10	Prepare Description of the Proposed Alternative
11	Prepare Draft Supplemental Watershed Plan-ED
12	Prepare Draft Supplemental Watershed Plan-ED for Distribution
13	Prepare Draft Supplemental Watershed Plan-ED Notice of Availability and Public Meeting Notice(s) for Draft Supplemental Watershed Plan-ED and Issue Locally
14	Hold Public Meeting on Draft Supplemental Watershed Plan-ED and Prepare Summary Report
15	Prepare Final Supplemental Watershed Plan-ED

### Lahaina Watershed Flood Protection Project

16	Prepare Final Supplemental Watershed Plan-ED for Distribution
17	Prepare Availability Notice for Final Supplemental Watershed Plan-ED
18	If applicable, draft a Finding of No Significant Impact (FONSI)
19	Maintain and Provide Administrative Record
20	Prepare and Manage Schedule for Supplemental Watershed Plan-ED Process
21	Quarterly Progress Reports
22	Attend Unscheduled Meetings

#### OBJECTIVE

- a. The principal objective of developing a Supplemental Plan-ED is to provide the Sponsor and NRCS with documents required for the Lahaina Watershed Flood Protection Project to meet requirements for technical assistance and funding for the purpose of implementing necessary, eligible watershed protection measures to meet the original purposes of the Lahaina Watershed Flood Protection Project, including a Supplemental Plan-ED- NEPA analyses and documents which are complete, including objective appraisals of the positive and negative effects of the proposed alternative implementation methods and sites, and mitigation measures. The Supplemental Plan-ED shall comply, both procedurally and analytically, with the requirements of the NRCS and CEQ regulations and all applicable laws and executive orders. It shall also contain analyses, documentation, and inter-agency reviews mandated to include compliance with their procedural components.
- b. The NRCS is the agency of record for this Supplemental Plan-ED. The NRCS, through the Sponsor, will be closely involved in the Supplemental Plan-ED preparation process and will review the Contractor's work products, to ensure NRCS NEPA policy and procedures are being followed. The final Supplemental Plan-ED will be issued by the NRCS, and any identified cooperating agency or agencies.

#### STUDY AREA

- a. The area of interest for evaluation of the environmental and socioeconomic effects is the West Maui region of the island of Maui. The Sponsor and NRCS shall provide available pertinent Lahaina Watershed Flood Protection Project and NEPA-related documents which may be used to ascertain data gaps needed for a complete Final Supplemental Plan-ED. All existing data, inventories, and reports should be utilized so as to not duplicate NEPA efforts in completion of the Plan-ED.

#### EXISTING DATA/DOCUMENTS AVAILABLE

The Sponsor and NRCS can provide, upon request, pertinent data readily available to help with completion of the Supplemental Plan-ED.

#### DESCRIPTIONS OF TASKS

The following section further defines the specific tasks that must be completed to fulfill the obligations of this SOW.

**Task 1: Attend and Participate in Kickoff Meeting/ Scoping Meeting.** Appropriate personnel from the Contractor's staff will participate in a meeting to be held at a location set by the Sponsor, within 21 days of the Notice to Proceed (NTP). The meeting will be chaired by the Sponsor and include NRCS, the West Maui SWCD, and any initially identified cooperating State and Federal agencies. The Contractor must be prepared to actively participate in the meeting and lead a discussion of the total time frame for the preparation of the Supplemental Plan-ED and the process to gain input from the public. The Sponsor's representative will make opening statements at the meeting. NRCS will be present to answer questions about the NEPA process. This meeting would initiate conversations with Federal, state, and local entities on relevant issues. See the NRCS National Environmental Compliance Handbook for additional information on how the

## Lahaina Watershed Flood Protection Project

scoping process is to be conducted by the Contractor. The Contractor will prepare a report summarizing the results of agency scoping coordination. The report will include a spreadsheet or other tabular format for compiling and sorting public responses obtained at the scoping meeting, and other public or agency scoping comments received. The Contractor will submit a draft report for Sponsor review and approval.

**Task 2: Prepare Public Participation Plan.** The Contractor will develop and implement a public participation plan. The plan will include public involvement opportunities including public in person or on-line meetings and newspaper notices. The Contractor will prepare a draft plan and coordinate its contents with all cooperating agencies prior to submitting it to the Sponsor for their review and approval. Any Sponsor comments will be incorporated into the final plan.

In developing the plan, the Contractor with the assistance of the Sponsor, NRCS, West Maui SWCD, and cooperating agencies will identify all interested stakeholders for inclusion in mailing lists and will assure that adequate cross-sections of the public are represented including interested citizens and environmental organizations, any affected low income or minority populations, affected local, state and federal agencies, and any other agencies with jurisdiction or special expertise concerning the environmental impacts to be addressed in the Supplemental Plan-ED.

The plan will address the timing of mail distributions and public notices. The latter will be issued at least two (2) weeks prior to the scheduled public meeting(s) and concurrent with filing of the Draft Supplemental Plan-ED. Notices will be published in the non-legal section of the newspaper(s) with copies sent to parties on the mailing lists. The Supplemental Plan-ED newspaper notice will include both the notice of availability of the Draft Supplemental Plan-ED and the schedule and location(s) for the Draft Supplemental Plan-ED public meeting(s). Notices will be drafted by the Contractor and submitted to the Sponsor for approval prior to their release to the media. Draft news releases will be submitted in time to accommodate processing by the Sponsor for publication in the news media (minimum 10 days prior to scheduled meetings or release of NEPA document). The Contractor will prepare one (1) news release concurrent with filing of the Draft Supplemental Plan-ED and prior to its public meeting(s).

The public participation plan will establish the appropriate format for the public meeting for receiving comments on the Draft Supplemental Plan-ED. The public meetings will be held in person near the location of the proposed alternative and in a facility convenient for the attendance of or on-line and available to the affected public.

In order to comply with Executive Order 12898 regarding environmental justice concerns, the public participation plan will incorporate means to include potentially affected minority and low-income populations within the public involvement program. The plan will also incorporate public participation and notice requirements that apply to the presence of specific environmental resources or conditions, such as those required by the executive orders on flood plain management and wetland protection. To the extent possible, these resource specific public participation/notice requirements will be completed concurrently with other public participation requirements. All public documents, notices, and meetings will be concise, understandable, and readily accessible to the public.

The contractor will also outline plans to utilize public facing websites and social media systems. This section of the public participation plan should describe in detail a timeline for postings and a detailed description of planned postings. A single point of contact for all social media communications will be established. In addition, the procedures for responding to inquiries will be outlined.

**Task 3: Prepare, Update and Maintain Mailing Lists.** The Contractor will prepare, continue to update and maintain the active public mailing list; including all interested or affected agencies, interested parties, various news media and public libraries throughout the area of environmental impact, and individuals commenting during the scoping process or during public review of the Draft Supplemental Plan-ED. The mailing list will also include the email addresses of organization and individual contacts. The public mailing list will be used for distribution of the notices of availability for the Draft Supplemental Plan-ED, public meeting announcements, news releases, other notices to the public, and distribution of the Draft Supplemental Plan-ED. The mailing list will be edited periodically to include those individuals responding to the scoping requests, other correspondents, and those individuals who attended public meetings or participating in on-line meetings; and to delete those requesting removal from the list, changes in addresses, and undeliverable addresses. Electronic versions of the mailing lists or printed labels will be provided to the Sponsor upon request.

## Lahaina Watershed Flood Protection Project

**Task 4: Attend and Participate in Progress Review Meetings.** The Contractor will, in consultation with the Sponsor, schedule and conduct progress review meetings with the cooperating agencies, at critical points within the Supplemental Plan-ED development. These meetings will be interactive in nature and will require at least one day per meeting. It is anticipated that all of these meetings will be held in a location approved by the Sponsor. The Contractor is expected to have in attendance or otherwise available sufficient members of the Contractor's team to adequately address the major issues and environmental impacts to be addressed during the meeting.

**Task 5: Maintain Bibliography of References and Data Sources.** The Contractor will develop and continue to update the bibliography, with data sources and reports noted. The updated bibliography will be incorporated into the Supplemental Plan-ED. The bibliography for the Supplemental Plan-ED will be limited to references used in the Supplemental Plan-ED.

**Task 6: Complete Inter-Agency Coordination, Documentation and Data Compilation.** Prior to beginning substantive analytical work on the Supplemental Plan-ED, the Contractor should become familiar with the available programs, site, and environmental data for the project.

The Contractor shall identify additional information needs and data gaps and proceed to identify sources of missing information and obtain that information or data.

The Contractor is required to identify and obtain baseline data to be furnished by the various cooperating agencies. The Contractor will maintain regular communications with the cooperating agencies throughout preparation of the Supplemental Plan-ED and will compile all data collected by the Contractor or provided by cooperating agencies. The Contractor will serve as the repository for all reference documents throughout the process. The collected information will be included in the administrative record at the conclusion of the contract. The Contractor will track agency progress and continue coordination with the agencies to obtain agency-provided data on a timely basis. Assistance with agency coordination will be provided by the Sponsor, as necessary or appropriate.

**Task 7: Prepare Description of Proposed Alternative.** The Contractor shall review information provided by the Sponsor, NRCS, and West Maui SWCD on the Lahaina Watershed Flood Protection Project. The information gathered shall be assembled into concise and descriptive statements of the proposed activities to be addressed in the development of the Supplemental Plan-ED. Information will be formatted for inclusion as the Description of Proposed Alternative section of the Supplemental Plan-ED. The narrative shall identify all the relevant data and activities necessary to describe the proposed alternative.

**Task 8: Prepare Draft Supplemental Plan-ED.** The Contractor shall prepare a Draft Supplemental Plan-ED in accordance with the following requirements:

- a) **Documentation of Baseline Environmental Conditions.** The Contractor will use the information/data furnished by the Sponsor, NRCS, West Maui SWCD and/or cooperating agencies to prepare narratives documenting baseline environmental and socio-economic conditions. The Contractor shall assemble and review existing data describing the environmental resources of the study area. The Contractor will visit the sites of the proposed alternative for the study area as well as gather additional existing information from other approved sources, as necessary. The information assembled must be sufficient to (1) assess the environmental, historic, economic, and social values that will be affected, either beneficially or adversely, by the proposed alternative in the study area and (2) demonstrate compliance with related environmental and NRCS programmatic requirements.
- b) Throughout the Supplemental Plan-ED process, pertinent data gaps that have a bearing on the analyses shall be reported to the Sponsor immediately upon identification. The Contractor will gather additional details from the other State and cooperating Federal agencies as well as other available sources to fully describe baseline conditions and projected future conditions. The Contractor shall coordinate with the Sponsor to determine the validity of data to be incorporated into the Draft Supplemental Plan-ED, regardless of the source. If the Sponsor concludes that additional data are required, an appropriate modification to the contract may be requested and negotiated.

## Lahaina Watershed Flood Protection Project

- c) Preparation of Draft Supplemental Plan-ED. Using information describing the proposed alternative, baseline environmental information, scoping information, and information resulting from the data gathering tasks and site visits, the Contractor will address the potential impacts anticipated in the study area proposed alternative. The Draft Supplemental Plan-ED will be prepared in conformance with the CEQ regulations, the NRCS National Watershed Program Manual (NWPM), the NRCS National Environmental Compliance Handbook and USDA Departmental Manual 9500-013.
- (1) **Analysis.** The Contractor is responsible for identifying, documenting, and analyzing relevant conditions, issues, and effects associated with the proposed alternative. The document should be structured so as to include only the data in the Affected Environment Section required to perform the analyses. Extraneous data, just because it is available, should not be included. The Analyses of Proposed Alternative Section should not introduce new data, but should assess the proposed alternative against the data base presented in the Affected Environment. The Contractor will incorporate appropriate analyses provided by cooperating agencies (e.g. engineering analyses and design as developed by partners) or other approved sources into the Draft Supplemental Plan-ED, in appropriate level of detail and editing to provide a consistently structured document.
- (2) **Format of the Draft Supplemental Plan-ED.** The format to be used is the one specified in the NRCS National Watershed Program Manual (NWPM) for Supplemental Plan-EDs. Other format and content requirements expressed in the CEQ regulations as well as the NRCS National Environmental Compliance Handbook and Hawaii Environmental Policy Act shall also be integrated into the Draft Supplemental Plan-ED. The text shall be error free, complete, clear, concise, and grammatically correct. The main text of the report shall be written in a manner suitable for reading by persons not professionally trained for the technical subject discussed. The Draft Supplemental Plan-ED will be an analytical document, with a minimum of attached reference material. Acronyms shall be used only on a limited basis. Any acronyms used shall be defined on first use and included in a list of acronyms page.
- (3) **Submittal No.1 of Draft Supplemental Watershed Plan-ED.** The Contractor shall submit an electronic copy of the Draft Supplemental Plan-ED to the Sponsor for transmittal to NRCS National Water Management Center (NWMC) and cooperating agencies for review and comment.
- (4) **Draft Supplemental Watershed Plan-ED Review Meeting.** After the Draft Supplemental Plan-ED has been submitted to the Sponsor, NRCS and cooperating agencies for review, the Sponsor, NRCS and cooperating agencies will furnish comments to the Contractor. A meeting between the Contractor, the Sponsor, the NRCS and the cooperating agencies will be held at a location approved by the Sponsor to discuss revisions to the Draft Supplemental Plan-ED. This meeting will discuss the comments and resolve any problems or questions that may arise. The meeting will also discuss the Notice of Availability (NOA) that will be required to announce the availability of the Draft Supplemental Plan-ED to the public and the upcoming public meeting. The Contractor's Project Manager, and any other key personnel that the Sponsor and NRCS deems necessary, will attend this Draft Supplemental Plan-ED review meeting.

**Task 9: Prepare Draft Supplemental Plan-ED for Distribution.** Following the review and acceptance of the Draft Supplemental Watershed Plan-ED, the Contractor shall proceed with preparation of the Draft Supplemental Watershed Plan-ED document for distribution.

- a) The front cover of the Draft Supplemental Watershed Plan-ED (and Final Supplemental Watershed Plan-ED) shall be a high quality cover, containing the title of the document, the NRCS and Sponsor name and those of any cooperating agencies, date of official release (month and year), and the name of the Contractor who prepared the document.
- b) The Contractor will adjust or update the Draft Supplemental Plan-ED based on the comments provided by the NWMC and any cooperating agencies. The Contractor will track any adjustments and changes made to the Draft

#### Lahaina Watershed Flood Protection Project

Supplemental Plan-ED in response to NWMC comments and document the disposition of each comment in a spreadsheet. After these adjustments are made the Contractor will provide the updated Draft Supplemental Plan-ED to the Sponsor, NRCS, and West Maui SWCD for review.

- c) Upon approval of the Draft Supplemental Plan-ED by the Sponsor and NRCS, the Contractor shall provide an electronic copy of the approved Draft Supplemental Watershed Plan-ED to the Sponsor. The Contractor will provide mailing labels for public distribution of the notice of availability of the Draft Supplemental Plan-ED.

#### **Task 10: Prepare Draft Supplemental Plan-ED Notice of Availability and Public Meeting Notice(s) for Draft Supplemental Plan-ED**

**Issue Locally.** The Contractor shall prepare a draft and final Notice of Availability (NOA) of the Draft Supplemental Plan-ED for Sponsor approval. The locally published NOA should also give the location and the date and time of the public meeting(s) for receiving comments on the Draft Supplemental Plan-ED. The Contractor shall also prepare a draft news release. The draft NOA and news release shall be submitted to the Sponsor for approval. The NOA and news release will be timed for publication concurrent with filing the Draft Supplemental Plan-ED, and at least 30 days prior to date of the public meeting(s). The Contractor shall distribute the NOA to the entire mailing list approximately 30 days prior to the scheduled meeting(s). NRCS will advertise the NOA in the non-legal section of the local newspaper or newspapers, as specified in the public participation plan.

**Task 11: Hold Public Meeting(s) on Draft Supplemental Plan-ED and Prepare Summary Report.** The Contractor, in consultation with the Sponsor, shall schedule, provide all logistic support, and conduct an in person or on-line public meeting(s) for Draft Supplemental Plan-ED review. The public meeting should be held no earlier than 30 days after the NOA is locally published. A Sponsor or NRCS representative can make an opening statement at the public meeting. The Contractor's Project Manager and other key personnel will be present at the public meeting to present the proposed alternative and evaluation framework, and to discuss the probable environmental effects of the proposed alternative. Sponsor, NRCS and other cooperating agencies will be present to assist in response to questions from the public. Graphical displays, including maps and charts, will be provided by the Contractor. The Contractor will provide audio/visual recording services to transcribe each meeting and prepare a summary report for each public meeting, with a hard copy of the transcript attached, for Sponsor review. See also NRCS National Environmental Compliance Handbook for additional guidance on conducting the public meeting for the Draft Supplemental Plan-ED.

**Task 12: Prepare Final Supplemental Plan-ED.** The Contractor shall prepare the Final Supplemental Plan-ED in accordance with the CEQ regulations and this task will include the following:

- a) Responses to Public Comments on Draft Supplemental Plan-ED. The Contractor, in coordination with the Sponsor, NRCS and the cooperating agencies, will prepare responses to public comments on the Draft Supplemental Plan-ED and provide an electronic and printed copies of the comments and drafted responses to the Sponsor, NRCS, West Maui SWCD, and cooperating agencies for review and comment. Responses to comments may also include additional tables, graphics or additional data for review and incorporation into the text or appendices of the Final Supplemental Plan-ED as well as corrected text from the Draft Supplemental Plan-ED. The Contractor will coordinate with the Sponsor on the method to be used for comment/response, identifying major comments and any conflicting comments. A one-day progress review meeting will be held at a location approved by the Sponsor to coordinate responses to comments. All responses will be subject to approval by the Sponsor prior to finalization for inclusion in the Final Supplemental Plan-ED.
- b) Final Supplemental Plan-ED. The Contractor shall incorporate the approved revisions and responses to comments into the Final Supplemental Plan-ED. An electronic copy of the Final Supplemental Plan-ED will be submitted to the Sponsor, NRCS, West Maui SWCD, and cooperating agencies for review and approval. Additional agency comments will be incorporated into the Final Supplemental Plan-ED, as directed by the Sponsor.
- c) Final Supplemental Plan-ED Programmatic Review. The Contractor will prepare a full version Final Supplemental Plan-ED for Sponsor review and approval. The Final Supplemental Plan-ED should show the contents, page layout, paper quality, cover quality, print quality, tables, graphics, photographs, and related appearance criteria. The Final Supplemental Plan-ED format will be the same as for the Draft Supplemental Plan-ED outlined above. The use of high-quality graphics, photos, and other illustrative materials is encouraged. Electronic and five (5)

## Lahaina Watershed Flood Protection Project

printed copies of any required revisions to the Final Supplemental Plan-ED will be furnished to the Sponsor for final review and approval. If necessary, a Final Supplemental Plan-ED programmatic review meeting will be held to resolve any open issues.

**Task 13: Prepare Final Supplemental Plan-ED for Distribution.** This task is completed in the same manner as the task for preparing the Draft Supplemental Plan-ED for distribution.

**Task 14: Prepare Final Supplemental Plan-ED.** The Contractor will provide the following support for preparation, filing, and notice of the final supplemental watershed plan and Plan-ED.

- a) Printing, and preparation for mailing and filing Final Supplemental Plan-ED. The Contractor will provide an electronic copy of the approved final supplemental watershed plan and Plan-ED and five (5) printed copies of the final supplemental watershed plan and Plan-ED to the Sponsor.

**Task 15: If Applicable Draft Finding of No Significant Impact (FONSI) and Prepare Availability Notice.** If applicable, the Contractor shall prepare a preliminary draft and final draft FONSI, as well as its NOA for publication locally, for NRCS to release. If the outcome is a FONSI, NRCS will finalize the FONSI and publish the NOA.

**Task 16: Maintain and Provide Administrative Record.** The Contractor shall prepare and assemble the Administrative Record and furnish it to the Sponsor. The Administrative Record is the entirety of the information relied upon to prepare the Final Supplemental Plan-ED. The Administrative Record is inclusive of all information and analyses either generated or obtained from other sources or used to support documentation and analyses. A complete Administrative Record is the entirety of the information relied upon within the Contractor's possession plus all information in other locations listed in the references. Information listed in the references at other locations does not have to be included. The Contractor shall organize the information composing the Administrative Record as an accessible file, indexed by topic to the extent possible, and submit this record to the Sponsor.

**Task 17: Prepare and Manage Schedule for the Supplemental Plan-ED Development.** The Contractor, with Sponsor and NRCS assistance, shall develop a specific milestone schedule to complete the supplemental watershed plan and Plan-ED process for this action. The detailed project schedule will be presented by the Contractor within 10 days following the "kickoff" meeting, indicating the critical path(s) of the efforts required to complete the supplemental watershed plan and Plan-ED as outlined in the tasks described above. The schedule will include, at a minimum, the milestones listed. The Sponsor will approve the schedule or recommend changes within 10 working days of receipt. The project schedule should reflect the Sponsor's goal to complete the Final Supplemental Plan-ED document as soon as reasonably possible, with a target goal for filing the Final Supplemental Plan-ED by March 31, 2024. This schedule will be used by the Contractor to manage work on the supplemental watershed plan and Plan-ED and by the Sponsor and NRCS to monitor the progress of work on a quarterly basis. The schedule will also include specific dates that demonstrate when milestones will be met. A copy of the schedule, with any revisions or updates, and status of the project milestones will be presented in the quarterly progress reports.

**Task 18: Prepare Progress Reports.** The Contractor will be required to prepare and submit brief quarterly progress reports on the status of the Supplemental Plan-ED to the Sponsor's Contracting Officer. The reports shall contain an accurate, up-to-date account of all major work accomplishments and outstanding issues. The reports will include a list of remaining milestones to be accomplished. Completion of work will be documented in these progress reports. The first quarterly progress report will be due three months after notice to proceed is given to the Contractor. Subsequent quarterly progress reports will be due by the 15th of every third month.

**Task 19: Attend Unscheduled Meetings.** The Sponsor reserves the right to request unscheduled meetings with the Contractor to review and discuss the progress and to discuss any problems or concerns that may arise. The Contractor may also request meetings with the Sponsor and NRCS. Dates and locations for these meetings shall be mutually agreed upon as necessary. It is anticipated that an estimated four (4) unscheduled meetings, to be attended by the Contractor's project manager, would involve travel to the Sponsor's or NRCS's office or a similar distance for meeting with cooperating agencies or other organizations. Unscheduled meetings involving travel would be limited to the Contractor's

project manager, unless approved by the Sponsor.

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## BACKGROUND WORK

**a. Data.** The Contractor will use existing data except for specific studies as needed to evaluate alternatives proposed in the Supplemental Plan-ED. The Sponsor and NRCS will furnish available project related information for the proposed alternative. The Contractor will use the information/data furnished to prepare the Description of the Proposed Alternative report. The Contractor shall assemble and review existing data describing the environmental resources, environmental conditions, historic and archeological properties, economy, and social structure of the areas to be potentially impacted. The Contractor shall use existing information from governmental agencies to the maximum extent possible. The information assembled must be sufficient to assess the environmental, historic, economic, and social values that will be affected, either beneficially or adversely, by the proposed alternative. Throughout this process, pertinent data gaps that have a bearing on the analyses shall be reported to the Sponsor and NRCS immediately upon identification.

To establish the data for the supplemental watershed plan and Plan-ED, the following services are required at a minimum:

**(1) Materials.** The Contractor will obtain materials including existing aerial photos, maps, documents, reports and correspondence, and lists of contacts.

**(2) Agency Communications.** The Contractor will establish communications with all activities or agencies who will be expected to either participate in the supplemental watershed plan and Plan-ED process or be consulted about it such as, U.S. Fish and Wildlife Service (USFWS), Environmental Protection Agency (EPA), Natural Resources Conservation Service (NRCS), and other appropriate Federal, State and local agencies. The Sponsor shall be informed of all concerns communicated by these agencies.

**(3) Site Visits/Field Surveys.** The Contractor shall conduct visits to the potentially impacted local areas, with a multi-disciplinary team, to become knowledgeable about the proposed alternative, obtain information, conduct interviews, and analyze impacts. Field surveys will be limited to gathering existing data required to complete analyses of project impacts. The Contractor will identify any data deficiencies that could require additional field research. If any specific, additional field surveys, research, or testing (i.e. geotechnical) is required and agreed to by Sponsor, a modification to the contract will be made and an equitable adjustment in the contract price will be negotiated.

**(4) Economic Impact Analyses.** The Contractor shall, in coordination with the NRCS PIA designated economist, perform regional economic impact analyses of the proposed alternative using accepted analysis techniques. Socioeconomic setting data will be gathered from existing sources. A qualified economist familiar with analysis as outlined in the "Guidance For Conducting Analyses Under The Principles, Requirements, And Guidelines For Water And Land Related Resources Implementation Studies And Federal Water Resource Investments" USDA Department Manual 9500-013 shall be used to adequately analyze the proposed alternatives in the Supplemental Plan-ED.

**(5) Cultural Resources.** In implementing as part of this Supplemental Plan-ED process the Contractor will, in coordination with the NRCS PIA Cultural Resources Specialist, review current historic property documents provided by the Sponsor, NRCS and the cooperating agencies. The Contractor shall also request documents from the State Historic Preservation Officer and relevant academic and local area sources. Relevant information from these documents must be included in the cultural resource sections of the Supplemental Plan-ED. These documents can include local or regional histories, archeological surveys, historic architectural inventories, cultural resource management plans, agreements, etc. All maps of any cultural resource sites that will be included in the Supplemental Plan-ED will be provided by the Contractor at a scale such that specific sites cannot be easily found, and the resources thereby protected.

**(6) Wetlands.** For the purpose of implementing and documenting the requirements of the Executive Order on Wetland Protection, the Contractor shall use existing information and data from traditional sources such as the U.S. Fish and Wildlife Service, U. S. Army Corps of Engineers, Natural Resource Conservation Service, and State water resource

## Lahaina Watershed Flood Protection Project

agencies. Based upon information provided, maps and other descriptive information will be adapted by the Contractor and included in the Supplemental Plan-ED in order to support the analysis of the extent, amount and importance of any wetlands to be impacted by the proposed alternative.

**(7) Threatened/Endangered Species.** For the purpose of implementing and documenting the consultation procedures under Section 7 of the Endangered Species Act, the Contractor will coordinate with NRCS and the U.S. Fish and Wildlife Service (USFWS), when appropriate, to determine possible impacts to (i) any threatened or endangered species that are either so listed or proposed (ii) candidate species, and (iii) listed or proposed critical habitat. Coordination with the NRCS, USFWS, and the State game and fish management agencies, as appropriate, will be documented. Potential impacts to State listed species must also be addressed in the Supplemental Plan-ED. Field surveys for protected species occurrence within the study areas are not included in this scope of work. Should the Sponsor conclude that sufficient baseline data are not available to adequately address potentially impacted areas, a modification to the contract will be negotiated to include an equitable adjustment in the contract price.

**(8) Environmental Justice.** The Contractor will obtain information on the presence of minority populations and low-income populations in the project area as part of the regional economic analyses. If initial studies indicate that a target population(s) is located within a geographic area to be impacted by the proposed alternative, per the previously referenced guidance on implementing Executive Order 12898, specific proactive steps must be implemented in order to include the identified target population(s) in the public participation plan. Should these proactive steps reasonably exceed the above referenced requirements for the public participation plan, a modification to the contract will be made and an equitable adjustment in the contract price will be negotiated. As described in Executive Order 12898, the potential or absence of effects of the proposed alternative on minority and low-income target populations will be specifically addressed in the Environmental Consequences section of the Supplemental Plan-ED.

**(9) Existing Environmental Pollution, Hazards, and Other Health and Safety Risks.** The Contractor will obtain information from the Environmental Protection Agency and Department of Health regarding any existing hazardous conditions at the site of the proposed alternative that may pose health and safety risks to future construction workers, employees, occupants, or general public.

**(10) Floodplains.** For the purpose of implementing and documenting the requirements of the Executive Order on Floodplain Management, the Contractor shall use existing information and data from the Federal Emergency Management Administration with proposed alternative sources being the U. S. Army Corps of Engineers, State water resources agency, or a region specific agency with special expertise. Based upon the information provided, maps and other descriptive information will be adapted by the Contractor and included in the Supplemental Plan-ED to support the analysis of the extent, amount, and importance of any floodplains to be impacted by the proposed alternative.

**(11) Noise and Light.** Existing data will be reviewed as well as literature examined to evaluate the potential noise and light impacts of the proposed alternative. The NRCS and the Sponsor will provide relevant data, if available, from similar operating facilities. The Contractor will address the projected changes of noise and light levels that will be generated by the proposed alternative, especially with respect to any sensitive receptors.

**(12) Mitigation.** During the course of performing the analyses and evaluations required to complete the Supplemental Plan-ED, the Contractor shall notify the Sponsor immediately of the identification of any potentially adverse impacts that could require the implementation of a mitigation measure(s) and the potential need for the development of an Environmental Impact Statement. The Contractor shall recommend to the Sponsor appropriate measures that would avoid or mitigate any adverse impacts which might be identified. Development of appropriate mitigation measures will be accomplished by the Contractor with the approval of the Sponsor and included in the Supplemental Plan-ED. All approved mitigation measures shall be discussed in a separate section of the Supplemental Plan-ED.

**(13) Maps.** The Contractor must obtain and/or adapt appropriate existing land use maps for inclusion in the Supplemental Plan-ED showing the location of study area boundaries and environmentally sensitive areas that may be affected by the proposed alternative. These maps shall include, but not be limited to, wetlands, cultural resource sites, endangered/threatened species habitat (State and Federal), floodplains and waterways, important farmlands, severely

### **Lahaina Watershed Flood Protection Project**

**eroded or erodible sites, and any sensitive natural areas. Maps will be adapted to assure that a balanced or equivalent presentation of information is shown throughout the document for each resource area. A map(s) displaying the regional and site locations of the proposed alternative must also be included in the Supplemental Plan-ED.**

## GENERAL TERMS AND CONDITIONS

Please reference the below link(s) for the General Terms and Conditions pertaining to this award

### U.S. DEPARTMENT OF AGRICULTURE FARM PRODUCTION AND CONSERVATION

#### GENERAL TERMS AND CONDITIONS GRANTS AND COOPERATIVE AGREEMENTS

The Farm Production and Conservation (FPAC) mission area encompasses the following USDA agencies: Natural Resources Conservation Service (NRCS), Farm Service Agency (FSA), Risk Management Agency (RMA), the Commodity Credit Corporation (CCC), and the FPAC Business Center.

#### I. APPLICABLE REGULATIONS

a. As a condition of this award, the recipient assures and certifies that it has and/or will comply and require subrecipients to comply with the requirements contained in the following statutes and regulations, as applicable. The full text of Code of Federal Regulations references may be found at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> and <http://www.ecfr.gov/>.

(1) 2 CFR Part 25, "Universal Identifier and System of Award Management" (2) 2 CFR Part 170, "Reporting Subaward and Executive Compensation Information" (3) 2 CFR Part 175, "Award Term for Trafficking in Persons" (4) 2 CFR Part 180, "OMB Guidelines to Agencies On Governmentwide Debarment And Suspension (Nonprocurement)" (5) 2 CFR Part 182, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)" (6) 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (7) 2 CFR Part 400, "Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards" (8) 2 CFR Part 417, "Nonprocurement Debarment and Suspension" (9) 2 CFR Part 418, "New Restrictions on Lobbying" (10) 2 CFR Part 421, "Requirements for Drug-Free Workplace (Financial Assistance)" (11) 2 CFR Part 422, "Research Institutions Conducting USDA-Funded Extramural Research; Research Misconduct"

b. Allowable project costs will be determined in accordance with the authorizing statute, the purpose of the award, and, to the extent applicable, to the type of organizations receiving the award, regardless of tier. The following portions of the Code of Federal Regulations are hereby incorporated by reference. The full text of Code of Federal Regulations references may be found at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> and <http://www.ecfr.gov/>.

(1) 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles And Audit Requirements For Federal Awards" (2) 48 CFR Part 31, "Contract Cost Principles and Procedures" c. For corporate recipients, by accepting this award the recipient acknowledges: (1) that it does not have a Federal tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) that it has not been convicted of a felony criminal violation under any Federal law within 24 months preceding the award, unless a suspending and debarring official of the USDA has considered suspension or debarment of the recipient corporation based on these convictions and/or tax delinquencies and determined that suspension or debarment is not necessary to protect the interests of the Government. If the recipient fails to comply with these provisions, the agency will annul this agreement and may recover any funds the recipient has expended in violation of the above cited statutory provisions.

#### II. UNALLOWABLE COSTS

The following costs are not allowed:

a. Costs above the amount authorized for the project. b. Costs incurred after the award period of performance end date. c. Costs not identified in the approved budget or approved budget revisions. d. Profit resulting from Federal financial assistance. Recipients may not earn and keep income resulting from an award. e. Costs of promotional items and memorabilia, including models, gifts, and souvenirs. f. Compensation for injuries to persons or damage to property arising from project activities.

This list is not exhaustive. For general information about the allowability of particular items of costs, please see 2 CFR Part 200, "Subpart E - Cost Principles", or direct specific inquiries to the administrative contact identified in the award.

The allowability of some items of costs may be difficult to determine. To avoid disallowance or dispute of such costs, the recipient may seek prior approval before incurring them. See 2 CFR 200.407. III. PRIOR APPROVAL REQUIREMENTS

Certain items of cost and award revisions require the prior written approval of the awarding agency. The following are the most common situations requiring prior approval. However, this list is not exhaustive, and the recipient is also bound by any other prior approval requirements identified in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

a. Pre-award costs.—To receive reimbursement for costs incurred prior to the award date, recipients must request written approval before incurring the costs. This restriction also applies to costs intended to meet cost-share requirements. FPAC agencies will not approve expenses incurred more than 90 calendar days before the period of performance start date. All costs incurred before the period of performance start date, even if approved, are at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). b. Revisions to scope, objective, or deliverables.—When it is necessary to modify the scope, objective, or deliverables of an award, the recipient authorized signatory must submit a written request and justification for the change along with the revised scope, objective, or deliverables of the award to the administrative contact. The request should contain the following information: 1. Grant or agreement number 2. Narrative explaining the requested modification to the project scope, objectives, or deliverables 3. A description of the revised scope, objectives, or deliverables

c. Additions or changes to subawards and contracts.—The subawarding, transferring, or contracting out of any work under a Federal award not identified in the original award budget or any changes to subaward or contracts requires prior written approval. The recipient must submit a justification for the proposed subaward/contract, a statement of work to be performed, and a detailed budget for the subaward/contract to the administrative contact. This provision does not apply to the acquisition of supplies, material, equipment, or general support services. d. Change in a key person specified in the application or award.—When there is a change in key personnel, the recipient must request prior written approval for the substitution or change. The request must identify the replacement personnel and provide his or her qualifications.

e. Absence or change in project leadership.—If the approved project director or principal investigator disengages from the project for more than three months or reduces time devoted to the project by 25 percent or more, the recipient must notify the administrative contact in writing, identifying who will be in charge during the project director's absence. The notification must include the qualifications of the replacement.

f. Budget revisions.—Recipients must request prior written approval for deviations from the approved budget in the instances described below. For all budget revisions, the recipient must submit a new SF 424A or 424C and budget narrative to support the request. 1. The inclusion of costs that require prior approval in accordance with Subpart E—Cost Principles of this part or 45 CFR part 75 Appendix IX, "Principles for Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable. 2. Where the cumulative amount of transfers of funds among direct cost categories or programs, functions, and activities exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency, and where the Federal share of the project exceeds the simplified acquisition threshold. 3. The transfer of funds budgeted for participant support costs to other categories of expense requires prior written approval. Participant support costs means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences or training projects. 4. Changes in the approved cost-sharing or matching provided by the recipient. 5. Additional Federal funds needed to complete the project. 6. Changes to negotiated indirect cost rates during the award period of performance. 7. Equipment purchases not specifically identified in the approved budget.

g. No-Cost Extensions of Time.—When a no-cost extension of time is required, the recipient authorized signatory must submit a written request to the FPAC administrative contact. Except in very limited circumstances, a no-cost extension of time cannot exceed 12 months. FPAC cannot approve requests for no-cost extensions received after the expiration of the award. In addition, time may not allow extension requests submitted less than 30 calendar days before the period of performance end date to be processed, so recipients are encouraged to submit requests as soon as possible. FPAC agencies cannot approve no-cost extensions requested merely to expend remaining funds. The request must contain the following: 1. Amount of additional time requested 2. Explanation for the need for the extension 3. A summary of progress to date and revised milestones

#### IV. PAYMENTS

a. Recipients must request reimbursement or advances using a properly completed and executed SF-270, submitted with supporting documentation to either the ezFedGrants system or to the e-mail address specified in the statement of work. FPAC agencies will make payment to the recipient on a reimbursable or advance basis in accordance with the frequency specified in the statement of work.

b. Recipients requesting advances should request payments in amounts necessary to meet their current needs pursuant

to procedures contained in the Federal administrative provisions and 31 CFR Part 205. At the end of each advance period, the recipient must provide a justification (i.e., documentation) showing the amount of advanced funds spent.

c. The method of payment between the recipient and its contractors will be in accordance with the policies and procedures established by the recipient except that the contractors may not use the USDA Office of Financial Management/National Finance Center method to request payments. If the recipient makes advance payments to contractors, the recipient must ensure that the timing of such payments is designed to minimize elapsed time between the advance payment and the disbursement of funds. Recipients must not submit requests from their contractors for review or approval.

d. Accounting records for all costs incurred under this award must be supported by source documentation. Such documentation includes, but is not limited to, canceled checks, paid bills, payroll records, and subaward documents. Labor cost charges to this award must be based upon salaries actually earned and the time actually worked on this award. All project costs must be incurred within the approved project period of this award, including any approved no-cost extension of time. Costs that cannot be supported by source documentation or that are incurred outside of the approved project period and budget may be disallowed and may result in award funds being returned to the Federal Government by the recipient. The level of detail and documentation required to be provided to support any individual payment request is at the discretion of the Government.

e. Recipients must pay all costs incurred (i.e., liquidate obligations) under the award not later than 90 calendar days after the period of performance end date.

## V. FINANCIAL REPORTING

a. Recipients must submit a Federal Financial Report (FFR), SF 425 in accordance with the schedule included in the award statement of work. Recipients must submit reports to either the ezFedGrants system or to the email address specified in the statement of work. Failure to submit reports as required may result in suspension or termination of award.

b. The recipient must submit a final financial report no later than 90 days after the period of performance end date. c. The FPAC awarding agency will withhold payments under this award if the recipient is delinquent in submitting required reports.

## VI. PERFORMANCE MONITORING AND REPORTING

a. The recipient is responsible for monitoring day-to-day performance and for reporting to FPAC. If the project involves subaward/contractual arrangements, the recipient is also responsible for monitoring the performance of project activities under those arrangements to ensure that approved goals and schedules are met.

b. The recipient must submit a written progress report at the frequency specified in the statement of work to either the ezFedGrants system or to the email address specified in the statement of work. Each report must cover— 1. A comparison of actual accomplishments with the goals and objectives established for the reporting period and, where project output can be quantified, a computation of the costs per unit of output.

2. The reasons why goals and objectives were not met, if appropriate.

3. Additional pertinent information including, where appropriate, analysis and explanation of cost overruns or high unit costs.

c. The recipient must submit a final performance report within 90 calendar days of the period of performance end date. d. The FPAC awarding agency will withhold payments under this award if the recipient is delinquent in submitting required reports.

## VII. AUDIT REQUIREMENTS

The recipient is responsible for complying with audit requirements in accordance with 2 CFR 200, Subpart F. A recipient entity that expends \$750,000 or more during the recipient's fiscal year in Federal awards must have a single or program-

specific audit conducted for that year.

## VIII. SPECIAL PROVISIONS

a. The recipient assures and certifies that it will comply with the minimum-wage and maximum-hour provisions of the Federal Fair Labor Standards Act.

b. Employees of FPAC agencies will participate in efforts under this agreement solely as representatives of the United States. They may not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of the recipient. They also may not assist the recipient with efforts to lobby Congress or to raise money through fundraising efforts. Further, FPAC employees must report to their immediate supervisor any negotiations with the recipient concerning future employment and must refrain from participation in projects or agreements with such recipients.

c. Employees of the recipient will not be considered Federal employees or agents of the United States for any purposes under this agreement. d. Except in very limited circumstances (e.g., construction agreements), no agreement period of performance can exceed a total of five years, including extensions. e. Recipients who engage or assist in scientific related activities on behalf of USDA must uphold the principles of scientific integrity established by Departmental Regulations 1074-001, Scientific Integrity. Covered activities include engaging in, supervising, managing, and reporting scientific work; analyzing and publicly communicating information resulting from scientific work; and utilizing information derived from scientific work in policy and decision making. f. Recipients of awards under covered programs (as defined in Executive Order 13858, January 31, 2019) are hereby notified that they are encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or subaward that is chargeable under the award. "Covered program" means a program that provides financial assistance for the alteration, construction, conversion, demolition, extension, improvement, maintenance, construction, rehabilitation, or repair of an infrastructure project in the United States. However, it does not include programs for which a domestic preference is inconsistent with law or programs providing financial assistance that are subject to comparable domestic preferences. g. The recipient and its employees are prohibited from promoting, recommending, or discussing the availability of specific commercial products or services with FPAC agency clients in the course of carrying out activities under this agreement, including any products or services offered by the recipient, except as may be specifically allowed in the agreement.

## IX. PATENTS, INVENTIONS, COPYRIGHTS, AND ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER

a. Allocation of rights of patents, inventions, and copyrights must be in accordance with 2 CFR Part 200.315. This regulation provides that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support.

b. In accordance with 37 CFR Section 401.14, each subject invention must be disclosed to the Federal agency within 2 months after the inventor discloses it in writing to contractor personnel responsible for patent matters. Invention disclosure statements pursuant to 37 CFR Section 401.14(c) must be made in writing to:

Farm Production and Conservation Business Center Grants and Acquisitions Division 1400 Independence Avenue, SW.  
Room 6819 South Building Washington, DC 20250

c. USDA receives a royalty-free license for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must manufacture it domestically.

d. The following acknowledgment of USDA support must appear in the publication of any material, whether copyrighted or not, and any products in electronic formats (World Wide Web pages, computer programs, etc.) that is substantially based upon or developed under this award:

"This material is based upon work supported by the U.S. Department of Agriculture, under agreement number [recipient should enter the applicable award number here]."

In addition, all publications and other materials, except scientific articles or papers published in scientific journals, must include the following statement:

"Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Agriculture. In addition, any reference to specific brands or types of products or services does not constitute or imply an endorsement by the U.S. Department of Agriculture for those products or services."

e. All publications printed with Federal Government funds will include the most current USDA nondiscrimination statement, available from the Public Affairs Division, Civil Rights Division, or on the USDA home page. If the material is too small to permit the full nondiscrimination statement to be included, the material must, at a minimum, include the statement:

"USDA is an equal opportunity provider and employer."

The recipient is responsible for ensuring that an acknowledgment of USDA is made during news media interviews, including popular media such as radio, television, and news magazines, that discuss work funded by this award in a substantial way.

#### **X. COST-SHARING REQUIREMENTS**

a. If the award has specific cost-sharing requirements, the cost-sharing participation in other projects may not be counted toward meeting the specific cost-share requirement of this award and must come from non-Federal sources unless otherwise stated in the applicable program authorizing statute. b. Cost share must be documented on each SF 425 and SF 270 and in source documentation as it is provided by the recipient or third party. The required cost-share or matching ratio must be met by the end of the agreement period of performance; however, it does not have to be maintained for every payment request.

c. Should the recipient become aware that it may be unable to provide the cost-sharing amount identified in this award, it must— 1. Immediately notify the FPAC administrative contact of the situation. 2. Specify the steps it plans to take to secure replacement cost sharing. 3. Indicate the plans to either continue or phase out the project in the absence of cost sharing. If the recipient's plans are not acceptable to FPAC, the award may be subject to termination. FPAC modifications to proposed cost sharing revisions are made on a case-by-case basis. Failure by the recipient to notify FPAC in accordance with this section may result in the disallowance of some or all the costs charged to the award, the subsequent recovery by FPAC of some of the FPAC funds provided under the award, and possible termination of the award. It may constitute a violation of the terms and conditions of the award so serious as to provide grounds for subsequent suspension or debarment.

d. The recipient must maintain records of all project costs that are claimed by the recipient as cost sharing as well as records of costs to be paid by FPAC. If the recipient's cost participation includes in-kind contributions, the basis for determining the valuation for volunteer services and donated property must be documented.

e. Recipients must provide notification to the agency administrative contact when adding or replacing sources of cost-share contributions.

#### **XI. PROGRAM INCOME**

Program income is the gross revenue generated by a Federally funded activity earned during the performance period of the award. Program income may be earned by recipients from fees charged for conference or workshop attendance, from rental fees earned from real property or equipment acquired with Federal funds, or from the sale of commodities or items developed under the grant or cooperative agreement. It must fall within the guidelines at 2 CFR 200.307. Unless identified and addressed in the award, the recipient must provide notification to the administrative contact and request the manner it would like to treat the income (i.e., deductive or additive). Program income may be used to meet recipient cost-share requirements with the approval of the Government. All program income must be reported on the applicable SF 270 and SF 425.

#### **XII. NONEXPENDABLE EQUIPMENT**

Recipients purchasing equipment or products with funds provided under this award are encouraged to purchase only American-made equipment and products. Title to nonexpendable equipment purchased with award funds will vest in the recipient upon completion of the award project and acceptance by FPAC of required final reports. When equipment is no longer needed by the recipient and the per-unit fair market value is less than \$5,000, the recipient may retain, sell, or dispose of the equipment with no further obligation to FPAC. However, if the per-unit fair market value is \$5,000 or more, the recipient must submit a written request to the FPAC administrative contact for disposition instructions.

#### **XIII. LIMIT OF FEDERAL LIABILITY**

The maximum financial obligation of FPAC to the recipient is the amount of funds indicated in the award as obligated by FPAC. However, if an erroneous amount is stated on the approved budget, or any supporting document relating to the award, FPAC will have the unilateral right to make the correction and to make an appropriate adjustment in the FPAC share of the award to align with the Federal amount authorized.

#### XIV. MODIFICATIONS AND TERMINATIONS

The parties may amend this award through an exchange of correspondence between the authorized signatory of each or via formal amendment document. The award is subject to termination if FPAC determines that the recipient has failed to comply with the terms and conditions of the award. If the award is terminated, the guidelines at 2 CFR 200.339-42 will govern the obligations of the parties.

#### XV. PRIVACY ACT AND PROHIBITION AGAINST CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS

a. Activities performed under this award may involve access to confidential and potentially sensitive information about governmental and landowner issues. The term "confidential information" means proprietary information or data of a personal nature about an individual, or information or data submitted by or pertaining to an organization. This information must not be disclosed without the prior written consent of FPAC.

b. The recipient's personnel will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. Section 552a, and implementing regulations and policies with respect to systems of records determined to be subject to the Privacy Act. The recipient's personnel must also comply with privacy of personal information relating to natural resources conservation programs in accordance with section 1244 of Title II of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171).

c. The recipient agrees to comply with the "Prohibition Against Certain Internal Confidentiality Agreements:"

1. You may not require your employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information. 2. You must notify your employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (1) of this award provision are no longer in effect. 3. The prohibition in paragraph (1) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information. 4. If FPAC determines that you are not in compliance with this award provision, FPAC: i. Will prohibit your use of funds under this award, in accordance with sections 743 and 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law; ii. May pursue other remedies available for your material failure to comply with award terms and conditions. XVI. ACKNOWLEDGMENT OF SECTION 1619 COMPLIANCE

The recipient agrees to comply with FPAC guidelines and requirements regarding the disclosure of information protected under Section 1619 of the Food, Conservation, and Energy Act of 2008 (PL 110-246), 7 U.S.C. 8791 as described below.

a. Responsibilities. 1. Acceptance of this award indicates acknowledgment and understanding that the recipient is legally bound by Federal statute to comply with the provisions of Section 1619 and that the recipient will not subsequently disclose information protected by section 1619 to any individual or organization that is not directly covered by this award. Any such subsequent disclosure of the protected information (except as permitted under Section 1619) will be considered a violation of Section 1619. The recipient will be held responsible should disclosure of the protected information occur.

2. Acceptance of this award legally binds every owner, manager, supervisor, employee, contractor, agent, and representative of the recipient to comply with the provisions in Section 1619. The recipient must consult with FPAC prior to providing protected information to an entity or individual outside of the recipient and as necessary to implement the program to ensure that such release is permissible.

3. The recipient will use the protected information only to perform work that is directly connected to this award. Use of the protected information to perform work that is not directly connected to this award is expressly prohibited.

4. The recipient must internally restrict access to the protected information to only those individuals who have a demonstrated need to know the protected information to perform work under this award.

5. The provisions in Section 1619 are continuing obligations. Even when the recipient is no longer a recipient, or when individuals currently affiliated with the recipient become no longer so affiliated, every person having been provided access to the protected information will continue to be legally bound to comply with these provisions.

6. The recipient must notify all managers, supervisors, employees, contractors, agents, and representatives about this provision and the requirements of Section 1619. Notifications about the existence of this provision must be made to those individuals who are new to the organization and periodic notifications must be sent throughout the organization (as well as to all contractors and agents) to remind all about the ongoing and continuing requirements.

7. When the recipient is unsure whether particular information is covered or protected by Section 1619, the recipient must consult with FPAC to determine whether the information must be withheld.
8. Use of the protected information for any purpose is expressly prohibited after the period of performance end date of this award. Upon the award end date, any protected information provided under this award must be immediately destroyed or returned to FPAC. The recipient must provide to FPAC written certification that the protected information (paper copy, electronic copy, or both) has been properly destroyed, removed from any electronic storage media, or both.
9. Any State's "sunshine law," "open records act" or other version of the Freedom of Information Act is superseded by section 1619 under the Supremacy Clause of the U.S. Constitution. Accordingly, information protected from disclosure by section 1619 must not be released under such State laws.

**b. Protected Information.**

1. Examples of the types of information prohibited by disclosure under Section 1619 include, but are not limited to, the following:
  - i. State identification and county number (where reported and where located).
  - ii. Producer or landowner name, business full address, phone number, Social Security Number, and similar personal identifying information.
  - iii. Farm, tract, field, and contract numbers.
  - iv. Production shares and share of acres for each Farm Serial Number (FSN) field.
  - v. Acreage information, including crop codes.
  - vi. All attributes for Common Land Units (CLUs) in USDA's Geospatial Information System.
  - vii. Any photographic, map, or geospatial data that, when combined with other maps, can be used to identify a landowner.
  - viii. Location of conservation practices.
2. Section 1619 allows disclosure of "payment information (including payment information and the names and addresses of recipients of payments) under any Department program that is otherwise authorized by law" (emphasis added). The names and payment information of producers generally may be provided to the public; however, the recipient shall consult with FPAC if there is any uncertainty as to the provision of such information.
3. Section 1619 also allows disclosure of otherwise protected information if "the information has been transformed into a statistical or aggregate form without naming any—(i) individual owner, operator, or producer; or (ii) specific data gathering cite." The recipient must consult with FPAC as to whether specific information falls within this exception prior to relying on this exception.
- c. Violations. The recipient will be held responsible for violations of this provision and Section 1619. A violation of this provision by the recipient may result in action by FPAC, including termination of the underlying Federal award.
- d. Effective Period. The requirements of this provision is effective on the date of the final signature and will continue until FPAC notifies the recipient that it is no longer required based on changes in applicable Federal law.

**XVII. AWARD CLOSEOUT**

- a. Award closeout is the process by which FPAC determines that all required project activities have been performed satisfactorily and all necessary administrative actions have been completed.
- b. The recipient must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the agreement, including documentation showing that match or cost-share requirements have been met. The awarding agency may approve extensions when requested by the recipient.
- c. Unless the awarding agency authorizes an extension, the recipient must liquidate all obligations incurred under the agreement not later than 90 calendar days after the end date of the period of performance.
- d. Recipients must submit all requests for reimbursements no later than 90 calendar days after the end date of the period of performance.
- e. The recipient must promptly refund any balances of unobligated cash that the awarding agency paid in advance or paid and that are not authorized to be retained by the recipient for use in other projects. See OMB Circular A-129 and see §200.345 Collection of amounts due, for requirements regarding unreturned amounts that become delinquent debts.
- f. Recipients must retain all records pertaining to the agreement in accordance with 2 CFR 200.333-337 and any additional requirements included in the agreement statement of work.
- g. Recipients must follow disposition requirements for property acquired with award funds in accordance with 2 CFR 200.310-316.