



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

www.deq.virginia.gov

David L. Bulova
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

SUBRECIPIENT AGREEMENT

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This Subrecipient Agreement is made by and between the **Virginia Department of Environmental Quality** (hereinafter referred to as the "Department") and _____ (hereinafter referred to as the "Subrecipient").

The Subrecipient has been approved by the Department to receive this pass-through of federal grant funds ("Subaward") subject to the terms and conditions herein.

ARTICLE I - DEFINITIONS

1. The capitalized terms contained in this Agreement shall have the meanings set forth below unless the context requires otherwise.
 - (a) "Agreement" means this Agreement between the Department and the Subrecipient, together with any amendments or supplements hereto.
 - (b) "Authorized Representative" means any member, official or employee of the Subrecipient authorized by resolution, ordinance or other official act of the governing body of the Subrecipient to perform the act or sign the document in question.
 - (c) "Extraordinary Conditions" means unforeseeable or exceptional conditions resulting from causes beyond the reasonable control of the Subrecipient such as, but not limited to fires, floods, strikes, acts of God, and acts of third parties that singly or in combination cause material breach of this Agreement.
 - (d) "Federal Grant Award" means the grant agreement between the federal funder and the Department authorizing the federal grant funds that are passed through, in whole or part, to the Subrecipient through this Subaward.
 - (e) "Subaward" means the particular subaward described in Section 4.0 of this Agreement, with such changes thereto as may be approved in writing by the Department and the Subrecipient.
 - (f) "Project" means all Subaward eligible activities of the particular project described in Exhibit A to this Agreement to be implemented by the Subrecipient with the Subaward, with such changes thereto as may be approved in writing by the Department and the Subrecipient.

(g) "Project Budget" means the itemized listing and amounts of approved Project Costs set forth in Exhibit B for which the Subrecipient may request reimbursement from Subaward funds, with such changes thereto as may be approved in writing by the Department and the Subrecipient.

(h) "Project Costs" means the approved expense items comprising the Project Budget as set forth in Exhibit B to this Agreement, with such changes thereto as may be approved in writing by the Department and the Subrecipient.

(i) "Project Engineer" means the Subrecipient's engineer who must be a licensed professional engineer registered to do business in Virginia and designated by the Subrecipient as the Subrecipient's engineer for the Project in a written notice to the Department or the equivalent thereof.

(j) "Reimbursement Package" means the documentation outlined in Section 4.4 that must be submitted by the Subrecipient in order to receive reimbursement from Subaward funds for incurred Project Costs.

(k) "Project Schedule" means the schedule for the Project as set forth in Exhibit C to this Agreement, with such changes thereto as may be approved in writing by the Department and the Subrecipient. The Project Schedule assumes timely approval of adequate plans and specifications and timely reimbursement in accordance with this Agreement by the Department.

ARTICLE II – SCOPE OF PROJECT

2. The Subrecipient shall cause the Project to be implemented as described in the Scope of Work set forth in Exhibit A to this Agreement and in accordance with the (i) schedule in Exhibit C to this Agreement and (ii) plans and specifications prepared by the Project Engineer or equivalent and approved by the Department. The Scope of Work set forth in Exhibit A may be modified by agreement of the parties to reflect changes to the Project or Project Budget. Any such agreed upon changes must be documented in a formal written modification to this Agreement signed by the Subrecipient and the Department, except as set forth in Section 4.2.

ARTICLE III – PROJECT PERIOD AND PROJECT SCHEDULE

3. The project shall commence on _____ and shall terminate no later than _____ (the "Project Period"). The Subrecipient will otherwise cause the Project to be completed in accordance with the Project Schedule outlined in Exhibit C to this Agreement. The Department is under no obligation to reimburse for expenses incurred or expended for any work performed outside of the Scope of Work set forth in Exhibit A and/or the Project Budget set forth in Exhibit B. The Department is under no obligation to reimburse for expenses incurred or expended for any work performed before the start or after the expiration of the Project Period. The Project Period may be modified by agreement of the parties to reflect changes to the Project or Project Budget. Any such agreed upon changes must be documented in a formal written modification to this Agreement signed by the Subrecipient and the Department.

ARTICLE IV – COMPENSATION

4.0 Subaward Amount. The amount of this Subaward is up to \$. The said sum, together with the Subrecipient matching funds of \$, shall include all expenses of the Project governed by this Subrecipient Agreement. The amount of the Subaward set forth herein may be modified from time to time by agreement of the parties to reflect changes to the Project or Project Budget. Any such agreed upon changes must be documented in a formal written modification to this Agreement signed by the Subrecipient and the Department, except as outlined in Section 4.2.

4.1 Application of Subaward Funds. The Subrecipient shall apply the Subaward funds solely and exclusively to the reimbursement of Project Costs. The Subrecipient shall spend the Subaward funds according to the specified categories of the Project Budget set forth in Exhibit B.

4.2 Project Budget Changes. Project Budget changes that exceed the lesser of \$100,000 or 10% of the Project Budget total must be approved in advance in writing by the Department through a formal Agreement modification issued in accordance with Section 7.14. The Subrecipient must notify the Department in advance via email of any Project Budget changes that do not exceed this threshold. This threshold is cumulative of all Project Budget changes made over time. Any Project Budget changes must be otherwise in accordance with this Agreement. The Department is under no obligation to reimburse any expenses that do not satisfy this provision.

4.3 Timing of Reimbursable Project Costs. Subrecipient shall use Subaward funds to underwrite only those Project Costs that are incurred during the Project Period. The Department will reject reimbursement requests for Project Costs that were incurred before the first day or after the last day of the Project Period.

4.4 Disbursement of Subaward Funds. The Department will disburse the Subaward to the Subrecipient not more frequently than once each calendar month for approved eligible reimbursement of a minimum of one thousand (\$1,000.00) dollars, excluding the final payment, upon receipt by the Department of a Reimbursement Package that includes:

- a) All information called for by, and otherwise being in the form of, Exhibit D of this Agreement
- b) Submission and acceptance by the Department of receipts, vouchers, statements, invoices and/or other evidence sufficient to document that the Project Costs for which reimbursement is requested have been incurred or expended and are in accordance with the Project and Project Budget.
- c) Timely submission and acceptance by the Department of Reporting required in Article X.
- d) Any additional requirements outlined in Exhibit A.

The Department reserves the right to request additional documentation to justify reimbursement as needed.

The final reimbursement request must be submitted to the Department by the last day of the Liquidation Period detailed in Section 4.5 and marked as FINAL.

The Department reserves the right to withhold a minimum of 95% of total Subaward funds until all services, reports, and deliverables are received and approved by the Department. Satisfactory completion includes the submittal to the Department of i) the Responsibilities & Maintenance Plan required by Article V and ii) Notice of Substantial Completion required by Section 4.7.

The Department shall request disbursement of the Subaward to the Subrecipient in accordance with the reimbursement request to the extent approved by the Department and otherwise in accordance with the terms of this Agreement.

Disbursement is contingent upon availability of funds.

4.5 Subaward Closeout. Subrecipient has up to 30 days following the last day of the Project Period to submit its final reimbursement request to the Department (“Liquidation Period”). Subrecipient has up to 60 days following the last day of the Liquidation Period to expend any remaining Subaward funds allocable to Project Costs incurred during the Project Period (“Closeout Period”).

4.6 Interest, Other Income and Unexpended Funds. DEQ requires reporting of any interest or other income generated by the subaward funds. Any interest must be used for the Project. At the end of the Subaward Period, any remaining Interest must be applied to support activities complementary to the Project or returned to the Commonwealth. If a prepayment is required, 2 CFR §200.305. Any Subaward funds that will not be expended or that have not been expended as of the last day of the Closeout Period must be returned to the Department in a timely manner. Please contact the Programmatic Subaward Contact listed in Exhibit I if a return of Subaward funds is required.

4.7 Notice of Substantial Completion. If applicable, when the Project has been completed, the Subrecipient shall promptly deliver to the Department a certificate signed by the Authorized Representative and by the Project Engineer or equivalent stating (i) that the Project has been completed substantially in accordance with the approved plans and specifications and addenda thereto, and in substantial compliance with all material applicable laws, ordinances, rules, and regulations; (ii) the date of such completion; (iii) that all certificates of occupancy and operation necessary for start-up for the Project have been issued or obtained; and (iv) the amount, if any, to be released for payment of the final Project Costs.

ARTICLE V – RESPONSIBILITIES AND MAINTENANCE PLAN

5.0 Plan Submittal. No later than thirty (30) days from the date of the Notice of Substantial Completion, the Grantee shall submit to the Department a Responsibilities and Maintenance Plan for the Project.

5.1 Plan Elements. The plan required by Section 5.0 shall include a description of the project type, a recommended schedule of inspection and maintenance and the identification of a person, persons or position within an organization responsible for administering and maintaining the plan for the useful service life of the installed facilities. If the Project includes construction on private property, the plan shall document the Grantee’s right to access the Project for purposes of implementing the plan required by Section 5.0.

5.2 Recordation. Long-term responsibility and maintenance requirements for Project facilities located on private property shall be set forth in an instrument recorded in the local land records and shall be consistent with applicable regulations.

ARTICLE VI – MATERIAL BREACH

6.0 Material Breach. Any failure or omission by the Subrecipient to perform its obligations under this Agreement, unless excused by the Department, is a material breach.

6.1 Notice of Material Breach. If at any time the Subrecipient determines that it is unable to perform its obligations under this Agreement, the Subrecipient shall promptly provide written notification to the

Department. This notification shall include a statement of the reasons it is unable to perform, any actions to be taken to secure future performance and an estimate of the time necessary to do so.

6.2 Extraordinary Conditions.

- a) The Subrecipient may assert and it shall be a defense to any action by the Department to collect Subaward funds or otherwise secure performance of this Agreement that the alleged non-performance was due to Extraordinary Conditions, provided that the Subrecipient:
 - 1) Takes reasonable measures to effect a cure or to minimize any non-performance with the Agreement, and
 - 2) Provides written notification to the Department of the occurrence of Extraordinary Conditions, together with an explanation of the events or circumstances contributing to such Extraordinary Conditions, no later than 10 days after the discovery of the Extraordinary Conditions.
- b) If the Department disagrees that the events or circumstances described by the Subrecipient constitute Extraordinary Conditions, the Department must provide the Subrecipient with a written objection within sixty (60) days of Subrecipient's notice under paragraph 6.3(a)(2), together with an explanation of the basis for its objection.

6.3 Resolution and Remedy. If no resolution is reached by the parties, the Department may pursue remedies outlined in 2 CFR 200.

6.4 Indemnification. To the extent permitted by law and subject to legally available funds, the Subrecipient shall indemnify and hold the Department and their respective members, directors, officers, employees, attorneys and agents (the "Indemnitees"), harmless against any and all liability, losses, damages, costs, expenses, penalties, taxes, causes of action, suits, claims, demands and judgments of any nature arising from or in connection with any misrepresentation, breach of warranty, noncompliance or default by or on behalf of the Subrecipient under this Agreement, including, without limitation, all claims or liability, such indemnification to include the reasonable costs and expenses of defending itself or investigating any claim of liability and other reasonable expenses and attorneys' fees incurred by any of the Indemnitees in connection therewith. This paragraph shall not constitute an express or implied waiver of any applicable immunity afforded the Subrecipient.

ARTICLE VII – GENERAL PROVISIONS

7.0 Compliance with Federal Requirements. The Subrecipient shall comply with all applicable Federal statutes and regulations. The Subrecipient shall comply with all applicable terms and conditions of the Federal Grant Award(s) that are included as Exhibit H. The Department may pursue remedies outlined in 2 CFR 200 if the Subrecipient does not comply with Federal requirements.

7.1 Acknowledgment of Required Information. In accordance with 2 CFR 200.332 and related Federal requirements for pass-through entities, Subrecipient hereby acknowledges receipt of Exhibit E hereto and the additional information set forth therein.

7.2 Unique Entity Identifier Requirement. Pursuant to 2 CFR Part 25, Subrecipient must have a Unique Entity Identifier (UEI) in order to receive Subaward funds. Information regarding how to obtain a UEI is available online at <https://www.sam.gov/SAM>. Subrecipients are not required to complete a full System for Award Management (SAM) registration to obtain a UEI.

7.3 Records Availability. The Subrecipient agrees to maintain complete and accurate books and records of the Project Costs, and further, to retain all books, records, and other documents relative to this Agreement for three (3) years after final payment. The Department shall have access to all Subrecipient's records relating to the Project and Project Costs including but not limited to canceled checks, invoices, vouchers, purchase orders, subcontracts, time sheets, mileage records, and all other records relating to services and expenditures. Subrecipient agrees to provide or make available such records to the Department upon request. Subrecipient must cooperate and provide reasonable assistance to authorized representatives of the Department. The Department, its authorized agents, and/or State auditors will have full access to and the right to examine any of said materials during said period. Additionally, the Department and/or its representatives will have the right to access work sites during normal business hours, after reasonable notice to the Subrecipient, for the purpose of ensuring that the provisions of the Subaward are properly carried out. The Subrecipient also agrees to furnish any records or documents necessary for the Department to carry out its reporting requirements for the federal funds that are being passed through to the Subrecipient via this Subaward.

7.4 Single Audit. If applicable, Subrecipient must comply with the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.

7.5 Internal Controls. Subrecipient must:

(a) Establish and maintain effective internal controls over the Subaward that provide reasonable assurance that the Subrecipient is managing the Subaward in compliance with applicable statutes, regulations, and terms and conditions.

(b) Comply with applicable statutes, regulations, and terms and conditions.

(c) Evaluate and monitor the Subrecipient's compliance with statutes, regulations, and the terms and conditions of the Federal Grant Award.

(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

(e) Take reasonable measures to safeguard protected personally identifiable information.

7.6 Subrecipient / Contractor Monitoring. The Subrecipient, when passing funds along to another subrecipient or contractor must be in compliance with the applicable requirements outlined in 2 CFR Part 200.

7.7 Procurement, Suspension & Debarment. Subrecipient is responsible for ensuring that any procurement using Subaward funds, or payments under procurement contracts using Subaward funds, are consistent with the procurement standards outlined in 2 CFR Part 200. Subrecipient shall ensure adherence to all other applicable local, State, and Federal procurement laws and regulations.

7.8 Compliance with Applicable Law. Subrecipient shall comply with all applicable federal, state, and local law. This includes environmental and permitting laws and regulations.

7.9 Civil Rights Compliance. Subrecipient and its subrecipients or contractors are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal and Commonwealth funds. The Subrecipient further agrees that every subcontract entered into for the performance of any

contract or purchase order resulting here from, will contain a provision requiring non-discrimination in employment, service delivery, and access, as herein specified binding upon each subrecipient. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

7.10 Capital Expenditures.

a) Among other requirements contained in 2 CFR Part 200, all contracts made by a recipient or subrecipient in excess of \$100,000 with respect to a capital expenditure that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5).

b) Projects Involving Construction. If Subaward funds are used for new construction, Subrecipient shall ensure that all new facilities or alterations to existing facilities are designed and constructed to be readily accessible to and usable by persons with disabilities. If the grant is for new construction and the Subrecipient cannot ensure accessibility and usability, Subrecipient must submit to the Department a written explanation detailing how a regulatory exception in 40 CFR 7.70 applies. For purposes of this provision, “construction” is defined in RAIN-2019-G02 Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance available at <https://www.epa.gov/grants/epa-grants-policy-resources>.

7.11 Repayment of Subaward. If the United States or Virginia lawfully requires repayment of some or all of the Federal Grant Award, Subrecipient agrees to repay the related portion of this Subaward to the Department within twenty (20) days of any such requirement.

7.12 Further Cooperation. The Department and the Subrecipient shall cooperate with each other as reasonably necessary to confirm or bring about the transfers contemplated by this Subaward.

7.13 Governing Law; Severability. This Agreement shall be construed in accordance with and governed for all purposes by the laws of the Commonwealth of Virginia. If any word or provision of this Subaward as applied to any Party or to any circumstance is adjudged by a court to be invalid or unenforceable, the same shall in no way affect any other circumstance or the validity or enforceability of any other word or provision. The Subrecipient further agrees to comply with all laws and regulations applicable to the Subrecipient’s performance of its obligations pursuant to this Subaward.

7.14 Entire Agreement; Amendments. This Agreement contains the entire integrated agreement between the Department and the Subrecipient as to the subject matter hereof and supersedes all previous written and oral negotiations, commitments, proposals, and writings. No alterations, amendments, or modifications may be made to this Agreement unless agreed to by both parties and documented in a formal written modification to this Agreement signed by the Subrecipient and the Department, except as set forth in Section 4.2. Where there exists any inconsistency between this Agreement and other provisions of collateral contractual agreements which are made a part of this Agreement by reference, the provisions of this Agreement shall control.

7.15 Counterparts; Signatures; Copies. This Agreement may be executed in counterparts, both of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A scanned signature may substitute for and have the same legal effect as an original signature. Any copy of this executed Subaward made by photocopy or scanner shall be considered the original for all purposes.

7.16 Authorization. The Department and the Subrecipient each represent that its execution, delivery and performance under this Agreement have been duly authorized by all necessary action on its behalf, and do not and will not violate any provision of its charter or enabling legislation or result in a material breach of or constitute a material default under any agreement, indenture, or instrument of which it is a party or by which it or its properties may be bound or affected.

7.17 Effect of the Agreement on Permits. This Agreement shall not be deemed to relieve the Subrecipient of its obligations to comply with the terms of, or obviate the need to obtain, where required, any State or Federal permit(s).

7.18 Disclaimer. Nothing in this Agreement shall be construed as authority for either the Department or the Subrecipient to make commitments which will bind the other Party beyond the covenants contained herein.

7.19 Exhibits. All exhibits to this Agreement are incorporated herein by reference.

7.20 Non-Waiver. No waiver by the Department of any one or more defaults by the Grantee in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default or defaults of whatever character.

7.21 Notices. All notices given hereunder shall be in writing and shall be sent by United States certified mail, return receipt requested, postage prepaid, and shall be deemed to have been received at the earliest of: (a) the date of actual receipt of such notice by the addressee, (b) the date of the actual delivery of the notice to the address of the addressee set forth below, or (c) five (5) days after the sender deposits it in the mail properly addressed. All notices required or permitted to be served upon either party hereunder shall be directed to the Department and/or Subaward Contacts outlined in **Exhibit I**.

ARTICLE VIII – FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

8. Federal Funding Accountability and Transparency Act. If requested by the Department, Subrecipient is required to provide to the Department the information needed for the Department to satisfy the subaward reporting requirement of the Federal Funding Accountability and Transparency Act (FFATA).

ARTICLE IX – CREDIT GENERATION

9. Any land area generating stream or wetland mitigation credits from the Project is not eligible for the generation of any other environmental credits. Any project designs approved by the Department under the Subaward may not meet the design requirements for approval from other State or Federal water programs. The Subrecipient is responsible for obtaining information on design and permit requirements for the type of environmental credit they are seeking.

ARTICLE X -- REPORTING REQUIREMENTS

- **Financial Reports**

Location: Exhibit D of this Agreement

Due Date: Per Exhibit A of this Agreement

- **Programmatic Reports**

Location: Exhibit D of this Agreement

Due Date: Per Exhibit A of this Agreement

- **Disclosure of Lobbying Activities Form**

Location: <https://www.epa.gov/grants/epa-grantee-forms>

Due Date: Upon execution of this Agreement

- **MBE/WBE Utilization Form** for the appropriate Federal Fiscal Year (10/1 – 9/30)

Location: Exhibit J of this Agreement

Due Dates: October 15th each year of the Project Period

AND

45 days after close of Project Period (Final MBE/WBE Form)

Note: In the final year of the Project Period, if the 45-day deadline occurs before October 15th, only the Final MBE/WBE Form is required (and must be submitted by the 45-day deadline). In this case, a second MBE/WBE Form would not be required by October 15th.

- **EPA Form 5700-53 – Lobbying and Litigation Certificate**

Location: <https://www.epa.gov/grants/epa-grantee-forms>

Due Date: 30 days after the close of the Project Period

IN WITNESS THEREOF, the parties have caused this Subrecipient Agreement to be duly executed intending to be bound thereby.

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

Alvie Edwards, Director of Administration

Date

SUBRECIPIENT ENTITY NAME

Signature

Date

Signatory Name, Title (please print or type)