

West Central Vermont CEDS 2020 Planning Grant

CFDA Number: 11-302

Sub-Grantee Contract

Prepared By: Chittenden County Regional Planning Commission

Funded By: U.S. Economic Development Administration (EDA)

Contract with: Central Vermont Regional Planning Commission

1. **Parties:** This is a Contract between the Chittenden County Regional Planning Commission, a public body formed by its member municipalities, as enabled under 24 VSA 4341, with its principal place of business at 110 West Canal Street, Suite 202, Winooski, VT hereinafter referred to as CCRPC, and Central Vermont Regional Planning Commission, 29 Main Street, Montpelier, VT 05602 (hereinafter called “Sub-grantee”). It is the Sub-grantee’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the Sub-grantee is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter:** The subject matter of this Contract is to carry out a Scope of Work as described in Attachment A. The purpose of EDA planning investments is to provide support to planning organizations for the development, implementation, revision, or replacement of Comprehensive Economic Development Strategies (CEDS) pursuant to Section 203 of PWEDA and EDA’s regulations at 13 CFR part 303. The scope of work will include five specific tasks: CEDS and EDD planning, regional economic profile and strategies, engagement, develop CEDS and evaluation framework, and economic trends and statewide CEDS coronavirus appendix.
3. **Maximum Amount:** In consideration of the services to be performed by Sub-grantee, CCRPC agrees to pay Sub-grantee, in accordance with the payment provisions specified in Attachment B, **a sum not to exceed \$37,100 (78.9% of budget).**
4. **Match Requirement:** Sub-grantee agrees to provide **a non-federal match of \$9,900 (21.1% of budget).** Sub-grantee further agrees to provide CCRPC with adequate documentation of how this match was met. Match may not be comprised of federal funds and must only be services specific to this project. Staff labor is considered cash match by EDA.
5. **Contract Term:** The period of Sub-grantee’s performance shall begin October 1, 2020 and end on September 30, 2022.
6. **Amendment:** No changes, modifications, or amendments in the terms and conditions of this Contract shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the CCRPC and Sub-grantee.
7. **Cancellation:** This Contract may be suspended or cancelled by either party by giving written notice at least 10 days in advance.
8. **Contacts:**

Sub-grantee: Central Vermont RPC c/o Bonnie Waninger 29 Main Street, Suite 4 Montpelier, VT 05602 802-229-0389 bwaninger@cvregion.com	Grant Administrator: Chittenden County Regional Planning Commission c/o Charles Baker, Executive Director 110 West Canal Street, Suite 202 Winooski, VT 05404-2109 802-846-4490 Email: cbaker@ccrpcvt.org
--	--
9. **Attachments:** This Contract includes the following attachments that are incorporated herein by reference
Attachment A – Sub-grantee Scope of Work, Schedule & Budget
Attachment B – Payment Provisions and Monitoring/Reporting Requirements
Attachment C – Standard Contract Provisions for Contracts and Grants

Attachment D – Other Provisions

Attachment E – CCRPC Official Accepted Special Award Conditions

Attachment F – Department of Commerce Financial Assistance Standard Terms and Conditions

10. Pass-through Provisions: The Terms and Conditions of the Contract between CCRPC and EDA as included in the attachments and, as may be modified by EDA, pass-through to all tiers of Sub-grantees or Sub-recipients.
11. DUNS Requirement: The following information is required. If the Sub-grantee does not have a current DUNS⁽¹⁾ number and registration with the Central Contractor Registration (CCR)⁽²⁾ the Sub-grantee must obtain or update existing DUNS record and register with the CCR. The Sub-grantee shall not be paid until a DUNS number is on file with CCRPC.

Legal Name and D-U-N-S® Number on File with the Federal Central Contractor Registration ⁽¹⁾:

D-U-N-S®

Print Legal CCR Name

⁽¹⁾ The D-U-N-S Number is a unique nine-digit identification number assigned and maintained solely by Dun & Bradstreet (D&B). D-U-N-S Number assignment is FREE for all businesses required to register with the US Federal government for contracts or grants. Created in 1962, the Data Universal Numbering System or D-U-N-S® Number is D&B's copyrighted, proprietary means of identifying business entities. Register at:

https://eupdate.dnb.com/requestoptions.asp?cm_re=HomepageB*TopNav*DUNSNumberTab

⁽²⁾ The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of Central Contractor Registry (CCR), Federal Agency Registration (FedReg), Online Representations and Certifications Application (ORCA), and Excluded Parties List System (EPLS). Entries may register at no cost directly at: <http://www.sam.gov>

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT.

By the Chittenden County Regional Planning Commission (CCRPC):

Date:

Signature: _____

Name: Michael O'Brien

Title: Chair

Agency: Chittenden County Regional Planning Commission

By the Sub-grantee:

Date:

Signature: _____

Name: Bonnie Waninger

Title: Executive Director

Agency: Central Vermont Regional Planning Commission

Attachment A

Task 0: Grant Administration

			Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8
	Description	Repsonsible Partner	Oct 2020 - Dec 2020	Jan 2021 - Mar 2021	Apr 2021 - June 2021	July 2021 - Sept 2021	Oct 2021 - Dec 2021	Jan 2022 - Mar 2022	Apr 2022 - June 2022	July 2022 - Sept 2022
1	Grant Reporting	All Partners with CCRPC Lead	Quarterly Report Due: 1.15.21	Quarterly Report Due: 4.16.21	Quarterly Report Due: 7.16.21	Quarterly Report Due: 10.15.21	Quarterly Report Due: 1.14.22	Quarterly Report Due: 4.15.22	Quarterly Report Due: 7.15.22	Quarterly Report Due: 10.14.22

Task 1: CEDS and EDD Planning

	Description	Repsonsible Partner	Oct 2020 - Dec 2020	Jan 2021 - Mar 2021	Apr 2021 - June 2021	July 2021 - Sept 2021	Oct 2021 - Dec 2021	Jan 2022 - Mar 2022	Apr 2022 - June 2022	July 2022 - Sept 2022
1	CEDS Strategy Committee and Stakeholder Engagement Plan	ACRPC	Form CEDS Strategy Committee	Stakeholder Engagement Plan Complete						
2	Partnership Organization	ACRPC		Draft MOU/bylaws/financial reporting plan complete		Final MOU/bylaws/financial reporting plan complete				
3	Create Web Site for CEDS with Indicator Dashboard	RRPC			Create CEDS website					Create CEDS Dashboard

Task 2: Regional Economic Profile and Strategies

	Description	Repsonsible Partner	Oct 2020 - Dec 2020	Jan 2021 - Mar 2021	Apr 2021 - June 2021	July 2021 - Sept 2021	Oct 2021 - Dec 2021	Jan 2022 - Mar 2022	Apr 2022 - June 2022	July 2022 - Sept 2022
1	Regional Economic Profile	CVRPC and RRPC		Draft Regional Economic Profile	Final Economic Profile					
2	Economic Development Strategies and SWOT Analysis	CVRPC and RRPC		Draft SWOT Analysis Complete; Draft list of economic development goals and strategies			Final SWOT Analysis Complete; Final list of economic development goals and strategies.			

Task 3: Engagement

	Description	Repsonsible Partner	Oct 2020 - Dec 2020	Jan 2021 - Mar 2021	Apr 2021 - June 2021	July 2021 - Sept 2021	Oct 2021 - Dec 2021	Jan 2022 - Mar 2022	Apr 2022 - June 2022	July 2022 - Sept 2022
1	Stakeholder Engagement and Education	All Partners		Stakholder ourreach	Initial stakeholder meetings	Initial stakeholder meetings; Summary of stakeholder engagement due.				
2	Draft CEDS Engagement	All Partners							Draft CEDS Stakeholder Meetings; Summary of comments on draft CEDS due.	

Task 4: Develop CEDS and Evaluation Framework

	Description	Repsonsible Partner	Oct 2020 - Dec 2020	Jan 2021 - Mar 2021	Apr 2021 - June 2021	July 2021 - Sept 2021	Oct 2021 - Dec 2021	Jan 2022 - Mar 2022	Apr 2022 - June 2022	July 2022 - Sept 2022
1	Draft CEDS	CCRPC					Strategic Action Plan and Evaluation Framework Complete	Draft CEDS Complete		
2	Final CEDS	CCRPC								Final CEDS Complete

Task 5: Economic Trends and Statewide CEDS Coronavirus Appendix

	Description	Repsonsible Partner	Oct 2020 - Dec 2020	Jan 2021 - Mar 2021	Apr 2021 - June 2021	July 2021 - Sept 2021	Oct 2021 - Dec 2021	Jan 2022 - Mar 2022	Apr 2022 - June 2022	July 2022 - Sept 2022
1	National, Regional, and Statewide Economic Trends	ACCD	National, Regional, and Statewide Economic Trends Memo and Presentation Due							
2	Statewide CEDS Coronavirus Appendix and Regional CEDS Synthesis	ACCD		Statewide CEDS Coronavirus Appendix		Draft CEDS Synthesis Policy Document		Final CEDS Synthesis Policy Document		
3	CEDS Website	ACCD							Comprehensive CEDS website complete.	

Budget by Cost Classification									
COST CLASSIFICATION	ACRPC	CCRPC	CVRPC	RRPC	ACEDC	GBIC	CVEDC	ACCD	Total
Personnel	\$13,374	\$23,828	\$17,452	\$26,821	\$16,176	\$14,500	\$16,299	\$23,242	\$151,690
Fringe Benefits	\$5,884	\$11,175	\$4,289	\$12,788	\$2,958	\$5,075	\$2,843	\$16,992	\$62,004
Travel	\$941	\$1,946	\$227	\$1,427	\$953	\$765	\$944	\$743	\$7,946
Equipment	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Supplies	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Contractual	\$0	\$20,000	\$0	\$0	\$0	\$0	\$0	\$5,000	\$25,000
Construction	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Direct Charges	\$20,199	\$56,948	\$21,969	\$41,035	\$20,087	\$20,340	\$20,085	\$45,977	\$246,640
Indirect Charges	\$14,301	\$29,052	\$25,031	\$25,464	\$1,913	\$1,660	\$1,914	\$4,023	\$103,359
TOTAL PROJECT COST	\$34,500	\$86,000	\$47,000	\$66,500	\$22,000	\$22,000	\$22,000	\$50,000	\$350,000
Grant Amount	\$27,100	\$72,300	\$37,100	\$52,200	\$17,100	\$17,100	\$17,100	\$40,000	\$280,000
Match Amount (In-kind)	\$7,400	\$13,700	\$9,900	\$14,300	\$4,900	\$4,900	\$4,900	\$5,000	\$65,000
Match Amount (Cash)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$5,000	\$5,000

Budget by Task							
Organization	Task 1	Task 2	Task 3	Task 4	Task 5	Project Management	Total
Chittenden County Regional Planning Commission	\$2,500.00		\$12,500	\$45,000		\$6,000	\$66,000.00
Addison County Regional Planning Commission	\$15,000.00		\$12,500	\$7,000			\$34,500.00
Addison County Economic Development Corporation	\$2,500.00		\$12,500	\$7,000			\$22,000.00
Central Vermont Regional Planning Commission	\$2,500.00	\$25,000	\$12,500	\$7,000			\$47,000.00
Central Vermont Economic Development Corporation	\$2,500.00		\$12,500	\$7,000			\$22,000.00
Greater Burlington Industrial Corporation	\$2,500.00		\$12,500	\$7,000			\$22,000.00
Rutland Regional Planning Commission	\$7,500.00	\$25,000	\$25,000	\$9,000			\$66,500.00
Vermont Agency of Commerce and Community Development		\$5,000			\$45,000		\$50,000.00
Engagement Consultants			\$20,000				\$20,000.00
	\$35,000.00	\$55,000	\$120,000	\$89,000	\$45,000	\$6,000	\$350,000.00

ATTACHMENT B
Payment Provisions and Monitoring/Reporting Requirements

Payment Provisions

The funds used to support this Contract, in full or in part, are provided through the U.S. Department of Commerce Economic Development Administration (EDA); this Contract therefore is subject to payment criteria and specific reporting requirements mandated by EDA.

The CCRPC will **reimburse** the Sub-grantee for actual expenses incurred by the Sub-grantee within 30 days of submission of an invoice by the Sub-grantee, unless other special arrangements are made between the CCRPC and the Sub-grantee. Documentation sufficient to reflect all costs claimed to have been incurred in performing this grant shall be submitted with the invoice. Actual expenses will be reimbursed at the following rate: 78.9% from grant and 21.1% from local match.

All invoices submitted by the Sub-grantee to the CCRPC will be at least quarterly, but no more frequently than monthly.
Invoices should be emailed.

Certification of Costs:

All invoices must include the following statement and a signature of the authorizing official:

“By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”

General Payment Criteria:

The CCRPC agrees to compensate the Sub-grantee for services performed as defined in the Sub-grantee budget, up to the maximum amounts below, provided such services are within the scope of the grant and are authorized as provided for under the terms and conditions of this grant.

The Sub-grantee budget is described in the Sub-grantee’s proposal, included as Attachment A.

Maximum amount payable: \$37,100

The Sub-grantee agrees that all funds shown in the budget, and the match, are to be spent as detailed by cost classification and by task. If funds are not to be spent as detailed in the budget, the Sub-grantee must obtain written approval from the Grant Administrator prior to the expenditure of such funds.

Submit Invoices to: Chittenden County Regional Planning Commission
c/o Forest Cohen, Senior Business Manager
110 West Canal Street, Suite 2020
Winooski, VT 05404-2109
fcohen@ccrpcvt.org

Copy to: Charles Baker, Executive Director
cbaker@ccrpcvt.org

Monitoring and Reporting

Reporting is **REQUIRED** under this Contract. Reporting elements are still being refined and additional information may be required. Reporting under this Contract includes, but is not necessarily limited to:

- X Regular Progress Reporting as requested
- X Quarterly Progress Reporting submitted with invoices
- X Final Reporting
- X Other Reports as may be required by EDA
- X Federal Funding Accountability and Transparency Act of 2006 (IF APPLICABLE)
- X Incident Reporting

ATTACHMENT B

Payment Provisions and Monitoring/Reporting Requirements (Continued)

CCRPC must submit reports to EDA that, at a minimum, contains the information specified in Attachment E, Reporting section. It is imperative that the Sub-grantee supply the CCRPC with the necessary information so that the CCRPC can provide these reports in a timely manner.

Periodic reports, certified by an authorized agent of the **Sub-grantee**, utilizing the form(s) provided by the CCRPC, shall be submitted as required. Failure to submit timely, accurate and fully executed reports shall constitute an “Event of Default” and will result in a mandate to **return the funds** already disbursed under this Contract, and/or the withholding of current and future payments under this Contract until such time as the reporting irregularities are resolved to the CCRPC’s satisfaction.

Regular Progress Reporting

Accompanying each invoice will be a succinct and specific report on the progress that has been achieved on the Sub-grantee’s Scope of Work with regard to milestones, deliverables, and schedule, and in relation to the expenditures the Sub-grantee is invoicing for reimbursement. Labor and fringe costs are based on actual costs. Indirect costs, if charged, must be in accordance with grant requirements.

Quarterly Progress Reporting

Regardless of whether invoices have been submitted by the Sub-grantee or not, a progress report outlining activities undertaken, obstacles encountered and solutions achieved, accomplishments, and expected progress in the period is required. The report shall be submitted by the date shown in the scope of work or within 10 days of the request by CCRPC to submit the report on a different date. **Expenses shall be shown by task and by expense category.**

Final Report

A final report is required to be submitted within 15 days after the earlier of the grant period expiration date or project completion date. The final report “need not be lengthy, but should be of a quality and detail to provide freestanding description to any outside reader” of the Sub-grantees work under the grant. Details and more information on the requirements will follow.

Federal Funding Accountability and Transparency Act of 2006 Compliance

With the exception of Sub-grantees receiving less than \$25,000 of Federal funds through this grant program, and/or for entities with previous tax year gross income less than \$300,000; the CCRPC is required by law to report at least the following information regarding the Sub-grantee into the OMB federal website, USASpending.gov.

1. The name of the entity receiving the award;
2. The amount of the award;
3. Information on the award, including the transaction type, funding agency, the North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number (where applicable), program source, and an award title descriptive of the purpose of each funding action;
4. The location of the entity receiving the award and primary location of performance under the award, including the city, state, congressional district, and country;
5. A unique identifier of the entity receiving the award and of the parent entity of the recipient (the DUNS number), should the entity be owned by another entity; and
6. Any other relevant information specified by OMB.

CCRPC will collect the information listed above as needed to ensure compliance with the Act.

Incident Report

The recipient must report the following events by e-mail as soon as possible after they occur:

- 1) Developments that have a significant favorable impact on the project.
- 2) Problems, delays, or adverse conditions which materially impair the recipient's ability to meet the objectives of the award
- 3) A change or anticipated change in staffing assigned to the EDA scope of work.

ATTACHMENT C
Standard Contract Provisions for Contracts and Grants

- 1. Entire Agreement:** This Agreement, whether in the form of a Contract, CCRPC Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
- 2. Applicable Law:** This Contract will be governed by the laws of the State of Vermont.
- 3. Definitions:** For purposes of this Attachment, “Party” shall mean the Contractor, Sub-grantee or Sub-recipient, with whom the CCRPC is executing this Contract.
- 4. Appropriations:** If this Contract extends into more than one fiscal year of the CCRPC (July 1 to June 30), and if appropriations are insufficient to support this Contract, the CCRPC may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Contract is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the CCRPC may suspend or cancel this Grant immediately, and the CCRPC shall have no obligation to pay Sub-recipient from CCRPC revenues.
- 5. No Employee Benefits For Party:** The Party understands that the CCRPC will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to CCRPC employees, nor will the CCRPC withhold any CCRPC or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Contract. The Party understands that all tax returns required by the Internal Revenue Code and the CCRPC, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Contract income will be provided by the CCRPC to the Internal Revenue Service and the Vermont Department of Taxes.
- 6. Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the CCRPC.

The Party shall defend the CCRPC and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The CCRPC shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Franklin Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

The Party shall indemnify the CCRPC and its officers and employees in the event that the CCRPC, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

- 7. Insurance:** Prior to initiating work under this Contract, CCRPC will require all consultants or contractors to provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the CCRPC through the term of the Contract. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party’s operations. These are solely minimums that have been established to protect the interests of the CCRPC.

Workers Compensation: With respect to all operations performed, the Party shall carry workers’ compensation insurance in accordance with the laws of the State.

General Liability and Property Damage: With respect to all operations performed under the contract, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

- a. Premises - Operations
- b. Products and Completed Operations
- c. Personal Injury Liability
- d. Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

- e. \$1,000,000 Per Occurrence
- f. \$1,000,000 General Aggregate
- g. \$1,000,000 Products/Completed Operations Aggregate
- h. \$ 50,000 Fire/ Legal/Liability

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Contract. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

8. **Reliance by the CCRPC on Representations:** All payments by the CCRPC under this Contract will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
9. **Subrecipient Monitoring:** CCRPC is required to monitor the activities of the Subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward, and that subaward performance goals are achieved. As such, our monitoring of the Subrecipient shall include reviewing required financial and programmatic reports, ensuring that Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award, and issuing a management decision for audit findings pertaining to the Federal award provided to the Subrecipient from CCRPC. Depending on the risk assessment, CCRPC may provide the Subrecipient with training and technical assistance on program-related matters, perform on-site reviews of Subrecipient's program operations or arrange for agreed-upon procedures engagement for audit services. Finally, we will verify that each Subrecipient is audited as required in 2CFR §200.501 Audit Requirements, when it is expected that the Subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold, and will obtain copies of Subrecipient's annual audit and management letter. If conditions necessitate, adjustments to the CCRPC's records will be made and enforcement actions will be taken against noncompliant subrecipients as described in 2CFR §200.3398 Remedies for noncompliance.
10. **Access to records and Retention Requirements:** The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the CCRPC, or any of their authorized representatives, must have the right of access to any documents, paper, or other records of Subrecipient which are pertinent to this Federal award, in order to make audits, examinations, excerpts and transcripts. The right includes timely and reasonable access to Subrecipient's personnel for the purpose of interview and discussion related to such documents. Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to the Federal award must be retained for a period of three years from the date of submission of the final expenditure report. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
11. **Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990 that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Contract. Party further agrees to include this provision in all subcontracts.

- 12. Taxes Due to the State:** As required by law (32 V.S.A. Section 3113) the Party hereby certifies, under the pains and penalties of perjury, that it is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont as of the date the Party signs the Contract.
- 13. Sub-Agreements:** Party shall not assign, subcontract or sub-grant the performance of this Contract or any portion thereof to any other Party without the prior written approval of the CCRPC. Party also agrees to include in all subcontract or sub-grant agreements a tax certification in accordance with paragraph 11 above.
- 14. No Gifts or Gratuities:** Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the CCRPC during the term of this Contract.
- 15. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date this Contract is signed, neither Party nor Party's principals (officers, directors, owners or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs or programs supported in whole or in part by federal funds.
- 16. Prohibited Activities:** Food and beverages are not allowable costs under this award and may not be charged to the Federal Share of the project.

ATTACHMENT D
Other Provisions

- 1. Cost of Materials:** Sub-grantee will not buy materials and resell to the CCRPC at a profit.
- 2. Work Product Ownership:** All interim and final reports and any other specified deliverables shall be owned by the government and held for the benefit of the public which shall include Grantee and Grantee's sub-recipients.
- 3. Prior Approval of Press Releases/Credit for Funding:** Any notices, information pamphlets, press releases, research reports, or similar other publications prepared and released in written or oral form by the Sub-grantee under this Contract shall be submitted to the Grant Administrator for approval prior to release. The Sub-grantee will credit funding for the project to the EDA in any of the aforementioned materials.
- 4. Ownership of Equipment:** Any equipment purchased by or furnished to the Sub-grantee by the CCRPC under this Contract is provided on a loan basis only and remains the property of the CCRPC.
- 5. Confidential Information.** During the course of the work contemplated in this Contract, the Sub-grantee shall not on its own enter into any agreements which pertain to information to be used in performing such work and which restrict access to information or denominate information as confidential, allegedly confidential, or protected from disclosure.

During the course of the work contemplated in this Contract, the Sub-grantee may be asked by the CCRPC to use information which has been denominated as allegedly confidential information and protected from disclosure under a protective agreement entered into by the Board. Any and all personnel of the Sub-grantee, including Sub-grantees, who are to use such information shall sign the appropriate schedule to the protective agreement and shall protect the information from disclosure to persons who have not agreed to be bound by that agreement. The Sub-grantee shall ensure that its personnel and Sub-grantees comply with the protective agreement and shall return all copies of the allegedly confidential information within twenty-one (21) days of completion of its use or promptly upon request of the Board.

This paragraph concerns a breach of an agreement which restricts access to information or denominates information as confidential, allegedly confidential, or protected from disclosure ("a breach of protective agreement"). The Sub-grantee shall be solely responsible for any costs, liabilities, or obligations incurred by the Sub-grantee because of the Sub-grantee's breach of a protective agreement. Also with respect to the Sub-grantee's breach of a protective agreement, the Sub-grantee shall be solely responsible for any liabilities or obligations, including but not limited to judgments and legal costs, of the CCRPC to a party who signed or is the beneficiary of such an agreement. In the event that an action is brought against the CCRPC arising out of the Sub-grantee's breach of a protective agreement, the Sub-grantee shall be responsible for the legal costs of the CCRPC.

- 6. Lobbying:** Sub-grantee certifies to the best of his or her knowledge and belief that:
 - A. No federal appropriated funds have been paid nor will be paid, by or on behalf of the Sub-grantee, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
 - B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this grant, the Sub-grantee shall complete and submit Standard Form-LLL, A Disclosure Form to Report Lobbying, and in accordance with its instructions.

- C. The Sub-grantee shall require that the language of this certification be included in the award documents for all grants or subcontracts and that all Sub-grantees shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this contract was entered into. Submission of this certification is a prerequisite for entering into this contract imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- 7. Additional Conditions.** Sub-grantees must meet all conditions and requirements included in Attachment A.
- 8. Taxability of Grants:** In most instances, the grant payments made under this program will be treated as taxable income by the IRS and the State of Vermont. It is the responsibility of the Sub-recipient of this incentive payment to consult with their tax advisor to determine the correct treatment of these payments for Federal and State tax purposes.
- 9. Right to Reclaim Funds:** If any fixed asset purchased in whole or in part with grant funds is not used for its intended purpose as detailed in the Contract's Scope of Work, the CCRPC has the right to require repayment of all or part of the grant funds provided.

SPECIFIC AWARD CONDITIONS
U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION (EDA)

NON-CONSTRUCTION PROJECTS: Economic Adjustment Assistance, Short Term Planning, and Technical Assistance Programs under Sections 203, 207, and 209 of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. §§ 3143, 3147 & 3149

Project Title: West Central Vermont Comprehensive Economic Development Strategy		This contract attachment is 62 pages. It has not been included. The full contract is posted to CVRPC's website with the full meeting packet.
Recipient Name: Chittenden County Regional Planning Commission	Project Number: ED20PHI3020087	

1. The *Authorized Scope of Work* for this project includes:
2. This EDA Award supports the work described in the approved final scope of work attached hereto as Exhibit 1, which is incorporated by reference into this Award as the *Authorized Scope of Work*.

All work on this project must be consistent with the *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work in writing through an amendment memorialized by a fully executed Form CD-451.

3. The Recipient Contact's name, title, address, telephone number, and email address are:

Charles Baker Executive Director Phone: (802) 846-4490 Email: cbaker@ccrpc.org	Chittenden County Regional Planning Commission 110 West Canal Street; Suite 202 Winooski, Vermont 05404-2109
---	--

4. The Grants Officer is authorized to award, amend, suspend, and terminate financial assistance awards. The Grants Officer is:

Linda Cruz-Carnall Regional Director Phone: (215) 597-4603 Fax: (215) 597-1063 Email: lcruz-carnall@eda.gov	Economic Development Administration Philadelphia Regional Office Robert Nix Federal Building 900 Market Street, Room 602 Philadelphia, PA 19107
---	---

5. The Federal Program Officer (Area Director) oversees the programmatic aspects of this Award. The Federal Program Officer is:

Marguerite McGinley Area Director Phone: (215) 597-8822 Fax: (215) 597-1063 Email: mmcginley@eda.gov	Economic Development Administration Philadelphia Regional Office Robert Nix Federal Building 900 Market Street, Room 602 Philadelphia, PA 19107
--	---

6. The EDA Project Officer is responsible for day-to-day administration and liaison with the Recipient and receives all reports and payment requests. The Project Officer is:

Matthew Suchodolski Management Analyst Phone: (215) 316-2472 Fax: (215) 597-1063 Email: msuchodolski@eda.gov	Economic Development Administration Philadelphia Regional Office Robert Nix Federal Building 900 Market Street, Room 602 Philadelphia, PA 19107
--	---

7. **ADDITIONAL INCLUDED DOCUMENTS:** In addition to the regulations, documents, or authorities incorporated by reference on the Financial Assistance Award (Form CD-450), the following additional documents are incorporated by reference into this Award:

- The Recipient's application, including any attachments, project descriptions, schedules, and subsequently submitted supplemental documentation;
- Authorized Scope of Work (Exhibit 1)
- Authorized Staffing Plan (Exhibit 2)

Should there be a discrepancy among these documents, the Specific Award Conditions (this document), including any attachments, shall control.

8. **PROJECT DEVELOPMENT TIME SCHEDULE:** The Recipient agrees to the following Project Development Time Schedule:

Return of Executed Financial Assistance Award	No later than 30 calendar days after receipt of Form CD-450
Authorized Award End Date.....	24 months from the Date of Award
Submission of Final Project Progress Report	No later than 90 days from the Authorized Award End Date
Submission of Final Financial Documents (SF-425).....	No later than 90 days from the Authorized Award End Date

The Recipient shall diligently pursue the development and implementation of the project upon receipt of the EDA Award so as to ensure completion within this time schedule, and shall promptly notify EDA in writing of any event that could substantially delay meeting any of the time limits set forth above. The Recipient further acknowledges that failure to meet the Project Development Time Schedule may result in EDA pursuing remedies for

non-compliance, potentially including termination of the Award, in accordance with the regulations set forth at 2 C.F.R. §§ 200.338–200.342.

9. PROJECT REPORTING AND FINANCIAL DISBURSEMENT INSTRUCTIONS:

A. AWARD DISBURSEMENTS: Reimbursement basis only. EDA will make disbursements using the Department of the Treasury’s Automated Standard Application for Payments (ASAP) system. The Recipient is required to furnish documentation required by ASAP. Complete information concerning the ASAP system may be obtained by visiting <https://www.fiscal.treasury.gov/asap/>.

To receive disbursements, the Recipient must submit a “*Request for Reimbursement*” (Form SF-270 or any successor form) for the applicable period electronically to the Project Officer, who will review and process the request.

Prior to the initial disbursement, the Recipient must complete an “*ACH Vendor/Miscellaneous Payment Enrollment Form*” (Form SF-3881 or any successor form) and submit it to NOAA’s Accounting Office by fax at (301) 528-3675. (*Fax is required to secure confidentiality of sensitive information.*) The form must be completed by the respective parties (EDA, Recipient Bank, and Recipient) at the start of each new award.

B. REPORTS:

a. Project Progress Reports: The Recipient agrees to provide the Project Officer with project progress reports, communicating the important activities and accomplishments of the project, on a semi-annual basis for the periods ending **March 31** and **September 30**, or any portion thereof, for the entire project period. Reports are due no later than one month following the end of the semi-annual period.

Performance progress reports shall be submitted to EDA in an electronic format no later than the due date. Reports shall be in a clear format, not exceeding six pages, and shall:

- i. Provide a concise overview of the activities undertaken during the semi-annual reporting period;
- ii. Document accomplishments, benefits, and impacts of the project. The Recipient should identify activities that have led to specific outcomes, such as job creation/retention, private investment, increased regional collaboration, engagement with historically excluded groups or regions, enhanced regional capacity, or other positive economic development benefits;
- iii. Identify any upcoming or potential press events or opportunities for collaborative press engagements to highlight the benefits of the EDA investment;

- iv. Compare progress on the project with the targeted schedule, explaining any departures, identifying how those departures will be remedied, and projecting the course of work for the next semi-annual reporting period;
- v. Outline challenges impeding or that may impede progress on the project over the next semi-annual reporting period and identify ways to address those challenges;
- vi. Outline any areas in which EDA assistance is needed to support the project; and
- vii. Provide any other information that would be helpful for your EDA Project Officer to know.

Final Project Reports may be posted on EDA's website, used for promotional materials or policy reviews, or otherwise shared. Recipients should not include any copyrighted or other sensitive business information in these reports. There is no page limit for Final Project Reports; however, such reports should concisely communicate key project information and should:

- i. Provide a high-level overview of the activities undertaken;
- ii. Outline the specific regional need the project was designed to address and explain how the project addressed that need and advanced economic development;
- iii. Document the expected and actual economic benefits of the project as of the time the report is written;
- iv. Detail lessons learned during the project that may be of assistance to EDA or other communities undertaking similar efforts; and
- v. Provide any other information necessary to understand the project and its impacts.

- b. *Financial Reports*: The Recipient shall submit a "*Federal Financial Report*" (Form SF-425 or any successor form) on a semi-annual basis for the periods ending **March 31** and **September 30**, or any portion thereof, for the entire project period. Form SF-425 and instructions for completing it are available at: <https://www.grants.gov/forms/post-award-reporting-forms.html>. Reports are due no later than one month following the end of the semi-annual period.

A final Form SF-425 must be submitted no more than 90 calendar days after the Award End Date specified on the Form CD-450 (or any subsequently executed Form CD-451). Final Financial Reports should follow the instructions for submitting mid-term financial reports, but should ensure that all fields accurately reflect the total outlays for the entire project period and that all matching funds and program income (if applicable) are fully reported. **Determination of the final grant rate and final balances owed to the government will be determined based on the information on the final Form SF-425, so it is imperative that it be submitted in a timely and accurate manner.**

- 10. ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined after the final financial documents are submitted in accordance with the applicable authorities specified on the Financial Assistance Award (form CD-450), including the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* at 2 C.F.R. part 200.

Line Item Budget:

- A.** The total approved budget is:

Federal Share (EDA Amount)	\$280,000
Non-Federal Matching Share	\$70,000
Total Project Cost	\$350,000

- B.** The total approved line item budget is:

COST CLASSIFICATION	Proposed	Approved
Personnel	\$151,690	\$151,690
Fringe Benefits	\$62,004	\$62,004
Travel	\$7,947	\$7,947
Equipment	--	--
Supplies	--	--
Contractual	\$25,000	\$25,000
Construction	--	--
Other	--	--
Total Direct Charges	\$246,641	\$246,641
Indirect Charges	\$103,359	\$103,359
TOTAL PROJECT COST	\$350,000	\$350,000

- 11. FEDERAL SHARE:** The EDA participation in total eligible project costs will be limited to the EDA grant amount or the EDA share of total allowable project costs, as stated on the Form CD-450, whichever is less.
- 12. MATCHING SHARE:** The Recipient agrees to provide the Recipient's Non-Federal Matching Share contribution for eligible project expenses in proportion to the Federal Share requested for such project expenses. By accepting the Award, the Recipient also certifies that the Matching Share of the project costs is committed to the project, is not encumbered in any way that would prevent its use for the project, and will be available as needed for the project.
- 13. Refund Checks, Interest, or Unused Funds:** If the Recipient needs to return money to EDA, it may use one of the following two methods:

- i. The first is the pay.gov website, which allows the Recipient to pay EDA online. The Recipient will have the option to make a one-time payment or to set up an account to make regular payments.
- ii. The second is paper check conversion. All checks must be made payable to “Department of Commerce, Economic Development Administration” and include the award number and a description of no more than two words identifying the reason for the payment. A copy of the check should be provided to the EDA Project Officer. The check should be mailed to NOAA’s Accounting Office, which processes EDA’s accounting functions, at the following address:

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Finance Office, AOD, EDA Grants
20020 Century Boulevard
Germantown, MD 20874

When funds are remitted to EDA by check, the check will be converted into an electronic funds transfer (EFT) by using the account information on the check to debit the payor’s account electronically. The debit from the payor’s account will usually occur within 24 hours. EDA will not return the check; the original will be destroyed and a copy will be retained. If the EFT cannot be completed because of insufficient funds, EDA will charge a one-time fee of \$25.00, which will be collected by EFT.

- 14. PLANNING COORDINATION:** In keeping with regional economic development principles, the Recipient should coordinate economic development planning and implementation projects with other economic development organizations active in the project area, especially EDA-funded recipients such as state and urban planning grantees, adjoining Economic Development Districts (EDDs) and Indian Tribes, and University Centers (UCs).
- 15. PROCUREMENT:** The Recipient agrees that all procurement transactions will be in accordance with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* at 2 C.F.R. §§ 200.317–200.326.
- 16. SIMPLIFIED ACQUISITION THRESHOLD:** In accordance with OMB Memorandum M-18-18 (June 20, 2018), the Simplified Acquisition Threshold (see 2 C.F.R. § 200.88) and Micro-purchase Threshold (see 2 C.F.R. § 200.67) applicable to this Award are \$250,000 and \$10,000, respectively. The Recipient may utilize Small Purchase Procedures or Procurement by Micro-purchases, as applicable, for purchases below those thresholds (see 2 C.F.R. § 200.320).
- 17. NON-RELOCATION:** By accepting this Award of financial assistance, the Recipient attests that EDA funding is not intended by the Recipient to assist efforts to induce the relocation or movement of existing jobs from one region to another region in competition for those jobs. In the event EDA determines that its assistance was used for such purposes,

EDA reserves the right to pursue appropriate enforcement actions, including suspension of disbursements, termination of the Award (which may include the establishment of a debt requiring the Recipient to reimburse EDA), and disallowance of any costs attributable, directly or indirectly, to the relocation.

- 18. PERFORMANCE MEASURES:** The Recipient agrees to report on program performance measures and program outcomes in such form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993 and the Government Performance and Results Modernization Act of 2010. The Recipient must retain sufficient documentation so that they can submit these required reports. Failure to submit the required reports may adversely impact the ability of the Recipient to secure future funding from EDA.

Performance measures and reporting requirements applicable to program activities funded by this investment will be provided in a separate GPRA information collection document, if applicable. EDA staff will contact the Recipient in writing within a reasonable period prior to the time of submission of the reports with information on how the required data should be submitted.

- 19. STAFFING CHANGES:** In the event of a change in the professional staff positions funded with the EDA grant, the Recipient shall provide the name of the individual selected to fill the position to the Project Officer and a copy of his or her resume within 30 business days of the selection.
- 20. CEDS CONTENT REQUIREMENTS:** In addition to the requirements currently listed in 13 CFR § 303.7, Recipients shall include an economic resiliency component in the Comprehensive Economic Development Strategy (CEDS). This component may specifically focus on a strategy to promote disaster resiliency but is encouraged to be a broader analysis of the economic resiliency of the region. The Resiliency Strategy shall detail the Recipient's planning, response, and recovery activities to be implemented should an economic disruption (disaster or otherwise) occur. The Resiliency Strategy shall also contain a list of implementation priorities and steps to stabilize and support a region's overall economic resiliency. A timeline associated with the implementation priorities and the identification of key stakeholders responsible for implementing those priorities should be included.
- 21. REAFFIRMATION OF APPLICATION:** The Recipient acknowledges that the Recipient's application for this Award may have been submitted and signed by the Recipient, or by an authorized representative of the Recipient, electronically. Regardless of the means by which the Recipient submitted its application or whether the Recipient or an authorized representative of the Recipient signed the application, the Recipient hereby reaffirms and states that:
- i. All data in the application and documents submitted with the application are true and correct as of the date the application was submitted and remain true and correct as of the date of this Award;
 - ii. The application was, as of the date of submission and the date of this Award, duly authorized as required by local law by the governing body of the Recipient; and

- iii. Recipient has read, understood, and will comply with all terms of this Award, including all Assurances and Certifications submitted with the application.

The term “application” includes all documentation and any information provided to the Government as part of, or in furtherance to, the request for funding, including submissions made in response to requests for information made by EDA after submission of the initial application.

- 22. **TECHNICAL ASSISTANCE TO BUSINESSES:** Any technical assistance offered to businesses under this Award shall be as widely advertised and accessible to potentially benefitting businesses as is reasonably permitted by the EDA Project Scope of Work and Budget. The Recipients shall maintain adequate documentation of any technical assistance offered and/or provided to benefitting businesses under this Award.
- 23. **SUBAWARDS:** It is understood that certain work activities undertaken as part of the project funded through this Financial Assistance Award will be accomplished through a subaward by the Recipient to the partner organizations identified in the application (Subawardees). Before a Subawardee undertakes any work to be funded through this Award, the Recipient shall enter into a written subaward agreement with the Subawardee governing the Subawardee’s work activities. The subaward agreement shall meet the requirements of 2 C.F.R. § 200.331(a) and shall include a requirement that the Subawardee comply with all of the terms and conditions of this Financial Assistance Award, including but not limited to the Standard and Specific Award conditions and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. part 200). The Recipient shall be responsible for monitoring the Subawardee’s performance under the Subaward in accordance with the requirements of 2 C.F.R. § 200.331.

All awardees of applicable grants and cooperative agreements are required to report to the Federal Subaward Reporting System (FSRS) available at www.FSRS.gov on all sub-awards over \$25,000. Please see the OMB guidance published at 2 C.F.R. part 170 (2015), which can be accessed at <http://www.gpo.gov/fdsys/pkg/CFR-2015-title2-vol1/pdf/CFR-2015-title2-vol1-part170.pdf>.

Exhibit 1

Authorized Scope of Work

The purposes of the West Central Vermont Comprehensive Economic Development Strategy (CEDS) project is to develop a CEDS for the Counties of Addison, Chittenden, Rutland and Washington Counties.

Task 1: CEDS and Partnership Planning

Develop a CEDS Strategy Committee and Stakeholder Engagement Plan:

Regional partners will create a CEDS Strategy Committee composed of the Executive Director of each RPC and RDCs serving the region. The Strategy Committee will identify a broad range of regional stakeholders, representing the business community, labor force, municipalities, and other organizations involved in economic development and resilience. The Strategy Committee will draft a proposed stakeholder engagement plan to be used when developing the CEDS (events, means of communication, coordination, standard reporting form).

Partnership Organization:

The Strategy Committee will develop and formalize the partnership between regional partners. This task will include the development of a MOU between partners, bylaws, a financial reporting plan, or other documents to guide the future implementation of the CEDS.

Create Web Site for CEDS with Indicator Dashboard:

The regional partners will develop a website as a public portal for the CEDS. Regional partners may utilize the web public engagement process to assist with the public engagement process. The website will be the location of a CEDS “indicator dashboard” designed to display progress during CEDS implementation.

Task 2: Regional Economic Profile and Strategies

Development of a Regional Economic Profile:

Regional partners will develop a regional economic profile. The regional economic profile will serve to establish regional context and baseline data for both the CEDS region and each individual region. The regional economic profile will also identify regional business linkages (clusters, suppliers, value chains) and economic trends.

Define Economic Development Strategies and Conduct a SWOT Analysis (Strengths, Weaknesses, Opportunities and Threats):

Regional partners will review current State CEDS, Chittenden County CEDS, and other municipal and regional plans/strategies to catalogue existing regional economic development strategies and efforts. Regional partners will distill existing economic development and resilience goals and strategies into a succinct, comprehensive list of mutually agreed upon economic development goals and strategies applicable to the region. The regional partners will particularly focus on developing goals and strategies focused on ensuring community resiliency in response to the coronavirus pandemic. The regional partners will also conduct an internal SWOT analysis. This SWOT analysis will be further refined through the public engagement process under Task 3.

Task 3: Engagement

Conduct Stakeholder Engagement and Education:

Regional partners will conduct outreach to identified stakeholders confirming interest and ability to participate in the CEDS development process. Regional partners will conduct stakeholder meetings (a minimum of 3 per RPC/RDCs territory) with key employers and economic development-related organizations in each region. Each regional partner will have flexibility to tailor the stakeholder engagement and educational outreach to meet the needs of their geographic territory. Regional partners may also utilize online engagement and survey tools. Consultants with experience conducting public outreach to underserved portions of the business community (e.g. women and minority-owned businesses, New Americans, small businesses) will be hired to ensure that the regional partners hear from a broad range of stakeholders during the development of the CEDS.

Conduct CEDS Draft Plan Engagement: Regional partners will conduct public engagement related to the draft CEDS (minimum of 2 per RPC/RDCs territory). Regional partners may also utilize online engagement and survey tools.

Task 4: Develop CEDS and Evaluation Framework

Draft CEDS: Regional partners will develop a draft CEDS. The CEDS will include a strategic direction/action plan and evaluation framework (“indicators”). The strategic direction and action plan will build on findings from the SWOT analysis and incorporate/integrate elements from other regional plans as determined by the regional partners. The plan will also identify the stakeholder(s) responsible for implementation, timetables, and opportunities for the integrated use of other local, state, and federal funds. The evaluation framework (“indicators” or “performance measures”) will be developed to evaluate both the region’s implementation of the CEDS, and its impact on the regional economy, but also general economic conditions and long-term resiliency of the region. A particular focus of this document will be on preventing, preparing for, and responding to coronavirus or a similar pandemic in the future. The draft CEDS will be submitted to the EDA Regional Office for review.

Final CEDS: The regional partners will revise the CEDS based on comments received during second round public engagement.

Task 5: Economic Trends and Statewide CEDS Coronavirus Appendix

The Vermont Agency of Commerce and Community Development (ACCD) will inform and add value to the development of the West Central Vermont CEDS by assessing post-coronavirus economic trends on a national, regional, and statewide basis. This context will assist the regional partners, and community stakeholders, in developing effective CEDS and a more resilient region in the future. This work may also be utilized by other regions in the state with a CEDS during their next CEDS update.

National, Regional, and Statewide Economic Trends: ACCD will evaluate anticipated changes to the US, regional and Vermont economy due to the coronavirus. This may

include changes to retail (bricks and mortar to on-line), higher education, manufacturing (globalization and onshoring), health care (both the delivery of services and the aging of the population), and professional services (remote work). ACCD will summarize these trends in a memo and within a presentation document (e.g. PowerPoint or similar software). ACCD will present its findings to the Strategy Committee and at a least one stakeholder meeting within each region. ACCD's final deliverables from this task shall be shared with Economic Development Districts in Vermont with a CEDS.

Statewide CEDS Coronavirus Appendix and Regional CEDS Synthesis: ACCD will develop two documents looking at both short-term recovery from coronavirus and long-term economic resiliency.

Exhibit 2

Authorized Staffing Plan

Explanation	Total Salary for Position	Amount of time spent on EDA grant	Calculation AxB	How much of C is Federal \$	How Much of C is Match \$	D+E
Addison CRPC						
Executive Director	\$199,016	4%	\$7,961	\$6,369	\$1,592	\$7,961
Community Planner	\$109,200	3%	\$3,276	\$2,621	\$655	\$3,276
Emergency Management Planner	\$71,230	3%	\$2,137	\$1,710	\$427	\$2,137
Chittenden CRPC						
Executive Director	\$225,347	4%	\$9,014	\$7,211	\$1,803	\$9,014
Planning Program Manager	\$180,752	2%	\$3,615	\$2,892	\$723	\$3,615
Senior Planner	\$139,984	8%	\$11,199	\$8,959	\$2,240	\$11,199
Central Vermont RPC						
Executive Director	\$176,678	5%	\$8,834	\$7,067	\$1,767	\$8,834
Senior Planner	\$109,550	2%	\$2,191	\$1,753	\$438	\$2,191
Assistant Planner	\$91,822	7%	\$6,428	\$5,142	\$1,286	\$6,428
Rutland RPC						
Executive Director	\$180,343	6%	\$10,821	\$8,656	\$2,164	\$10,821
Community Planner	\$100,000	16%	\$16,000	\$12,800	\$3,200	\$16,000
Addison CEDC						
Executive Director	\$180,264	6%	\$10,816	\$8,653	\$2,163	\$10,816
Finance Director	\$134,000	4%	\$5,360	\$4,288	\$1,072	\$5,360
Greater Burlington Industrial Development Corp.						
Executive Director	\$200,000	3%	\$6,000	\$4,800	\$1,200	\$6,000
Executive Vice President	\$150,000	3%	\$4,500	\$3,600	\$900	\$4,500
Vice President	\$80,000	5%	\$4,000	\$3,200	\$800	\$4,000
Central Vermont EDC						
Executive Director	\$161,522	7%	\$11,307	\$9,045	\$2,261	\$11,307
Assistant Director	\$83,200	6%	\$4,992	\$3,994	\$998	\$4,992
Vermont Agency of Commerce & Community Development						
Economic Research Analyst	\$155,542	10%	\$15,554	\$12,443	\$3,111	\$15,554
Partnerships and Community Engagement	\$153,754	5%	\$7,688	\$6,150	\$1,538	\$7,688
Total Salary						\$151,690
Total Fringe						\$62,004
Total Indirect Costs						\$103,359
Total Travel						\$7,946
Total Contractor						\$25,000
Total Costs (Salary, Fringe, Indirect, Travel, Contractor)	\$2,882,204		\$151,690	\$121,352	\$30,338	\$350,000

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS



DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS

Table of Contents

PREFACE	5
A. PROGRAMMATIC REQUIREMENTS	6
.01 Reporting Requirements	6
.02 Revisions of Program Plans	8
.03 Other Federal Awards with Similar Programmatic Activities	8
.04 Prohibition against Assignment by a Non-Federal Entity	9
.05 Disclaimer Provisions	9
.06 Unsatisfactory Performance or Non-Compliance with Award Provisions	9
B. FINANCIAL REQUIREMENTS.....	10
.01 Financial Management.....	10
.02 Award Payments	10
.03 Federal and Non-Federal Sharing	11
.04 Budget Changes and Transfer of Funds among Categories.....	12
.05 Program Income.....	12
.06 Indirect or Facilities and Administrative Costs	13
.07 Incurring Costs or Obligating Federal Funds Before and After the Period of Performance	15
.08 Tax Refunds	15
.09 Internal Controls	16
C. PROPERTY STANDARDS.....	16
.01 Standards.....	16
.02 Real and Personal Property.....	16
.03 Intellectual Property Rights	17
D. AUDITS	18
.01 Organization-Wide, Program-Specific, and Project Audits.....	19
.02 Audit Resolution Process	20
E. DEBTS	20
.01 Payment of Debts Owed to the Federal Government	20
.02 Late Payment Charges	21

.03	Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees.....	21
.04	Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs.....	22
F.	CONFLICT OF INTEREST, CODE OF CONDUCT AND OTHER REQUIREMENTS PERTAINING TO DOC FINANCIAL ASSISTANCE AWARDS, INCLUDING SUBAWARDS AND PROCUREMENTS ACTIONS	22
.01	Conflict of Interest and Code of Conduct	22
.02	Nonprocurement Debarment and Suspension.....	23
.03	Requirements for Subawards	23
.04	Requirements for Procurements.....	23
.05	Whistleblower Protections	23
.06	Small Businesses, Minority Business Enterprises and Women’s Business Enterprises	24
G.	NATIONAL POLICY REQUIREMENTS	24
.01	United States Laws and Regulations.....	24
.02	Non-Discrimination Requirements	25
a.	Statutory Provisions	25
b.	Other Provisions.....	26
c.	Title VII Exemption for Religious Organizations	26
.03	LOBBYING RESTRICTIONS.....	26
a.	Statutory Provisions	26
b.	Disclosure of Lobbying Activities	27
.04	Environmental Requirements.....	27
a.	The National Environmental Policy Act (42 U.S.C. §§ 4321 <i>et seq.</i>)	27
b.	The National Historic Preservation Act (16 U.S.C. §§ 470 <i>et seq.</i>)	28
c.	Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands)	28
d.	Clean Air Act (42 U.S.C. §§ 7401 <i>et seq.</i>), Federal Water Pollution Control Act (33 U.S.C. §§ 1251 <i>et seq.</i>) (Clean Water Act), and Executive Order 11738 (“Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans”)	28
e.	The Flood Disaster Protection Act (42 U.S.C. §§ 4002 <i>et seq.</i>)	29
f.	The Endangered Species Act (16 U.S.C. §§ 1531 <i>et seq.</i>).....	29
g.	The Coastal Zone Management Act (16 U.S.C. §§ 1451 <i>et seq.</i>).....	29
h.	The Coastal Barriers Resources Act (16 U.S.C. §§ 3501 <i>et seq.</i>).....	29
i.	The Wild and Scenic Rivers Act (16 U.S.C. §§ 1271 <i>et seq.</i>)	29
j.	The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. §§ 300f <i>et seq.</i>)	29

k.	The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 <i>et seq.</i>).....	29
l.	The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) (42 U.S.C. §§ 9601 <i>et seq.</i>) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 note <i>et seq.</i>).....	29
m.	Executive Order 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations”)	30
n.	The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 <i>et seq.</i>)	30
o.	Clean Water Act (CWA) Section 404 (33 U.S.C. § 1344)	30
p.	Rivers and Harbors Act (33 U.S.C. § 407)	30
q.	The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 <i>et seq.</i>), and Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds, January 10, 2001)	30
r.	Executive Order 13112 (Invasive Species, February 3, 1999)	31
s.	Fish and Wildlife Coordination Act (16 U.S.C. § 661 <i>et seq.</i>)	31
.05	OTHER NATIONAL POLICY REQUIREMENTS	31
a.	Buy-American Preferences	31
b.	Criminal and Prohibited Activities	31
c.	Drug-Free Workplace	32
d.	Foreign Travel.....	32
e.	Increasing Seat Belt Use in the United States.....	33
f.	Federal Employee Expenses and Subawards or Contracts Issued to Federal Employees or Agencies	34
g.	Minority Serving Institutions Initiative	34
h.	Research Misconduct	34
i.	Research Involving Human Subjects	35
j.	Care and Use of Live Vertebrate Animals	36
k.	Management and Access to Data and Publications	36
l.	Homeland Security Presidential Directive.....	37
m.	Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations	38
n.	The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 C.F.R. Part 175	40
o.	The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)	42
p.	Recipient Integrity and Performance Matters (Appendix XII to 2 C.F.R. Part 200)	47

q.	Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown	49
----	--	----

PREFACE

This document sets out the standard terms and conditions (ST&Cs) applicable to this U.S. Department of Commerce (DOC or Commerce) financial assistance award (hereinafter referred to as the DOC ST&Cs or Standard Terms). A non-Federal entity¹ receiving a DOC financial assistance award must, in addition to the assurances made as part of the application, comply and require each of its subrecipients, contractors, and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (E.O.s), Office of Management and Budget (OMB) circulars, provisions of the OMB *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (codified at 2 C.F.R. Part 200) (OMB Uniform Guidance), provisions of these Standard Terms, and any other terms and conditions incorporated into this DOC financial assistance award. In addition, unless otherwise provided by the terms and conditions of this DOC financial assistance award, Subparts A through E of 2 C.F.R. Part 200 and the Standard Terms are applicable to for-profit entities, foreign public entities and to foreign organizations that carry out a DOC financial assistance award.²

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in terms and conditions specified in the award will be resolved according to the following order of precedence: federal laws and regulations, applicable notices published in the *Federal Register*, E.O.s, OMB circulars, DOC ST&Cs, agency standard award conditions (if any), and specific award conditions.³ A specific award condition may amend or take precedence over a Standard Term on a case-by-case basis, when indicated by the specific award condition.

Some of the Standard Terms herein contain, by reference or substance, a summary of the pertinent statutes, regulations published in the *Federal Register* or Code of Federal Regulations (C.F.R.), E.O.s, OMB circulars, or the certifications and assurances provided by applicants through Standard Forms (*e.g.*, SF-424, SF-424B, or SF-424D) or through DOC forms (*e.g.* Form CD-511). To the extent that it is a summary, such Standard Term provision is not in derogation

¹ Please note that the OMB Uniform Guidance uses the term “non-Federal entity” to generally refer to an entity that carries out a Federal award as a recipient or subrecipient. Because some of the provisions of these DOC ST&Cs apply to recipients rather than subrecipients, or vice versa, for clarity, these DOC ST&Cs use the terms “non-Federal entity,” “recipient,” and “subrecipient” consistent with their meanings in the OMB Uniform Guidance. In addition, the OMB Uniform Guidance uses the term “pass-through entity” to refer to a non-Federal entity that makes a subaward.

“Non-Federal entity” is defined at 2 C.F.R. § 200.69 as “a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.”

“Recipient” is defined at 2 C.F.R. § 200.86 as “a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients.”

“Subrecipient” is defined at 2 C.F.R. § 200.93 as “a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.”

“Pass-through entity” is defined at 2 C.F.R. § 200.74 as “a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.”

² See 2 C.F.R. § 200.46 for the definition of “foreign public entity” and 2 C.F.R. § 200.47 for the definition of “foreign organization.”

³ To match the terminology used in the OMB Uniform Guidance, the DOC now uses the phrase “specific award condition” in lieu of “special award condition.”

of, or an amendment to, any such statute, regulation, E.O., OMB circular, certification, or assurance.

DOC commenced implementation of the Research Terms and Conditions (RT&Cs) for Federal awards effective October 1, 2017; the RT&Cs address and implement the Uniform Guidance issued by OMB. For awards designated on the Form CD-450 (Financial Assistance Award) as Research, both the ST&Cs and the RT&Cs as implemented by the Department apply to the award. The RT&Cs as well as the Department's implementation statement, agency specific requirements, prior approval matrix, and subaward requirements are posted on the National Science Foundation's website – <https://www.nsf.gov/awards/managing/rtc.jsp>. The ST&Cs and the RT&Cs are generally intended to harmonize with each other; however, where the ST&Cs and the RT&Cs differ in a Research award, the RT&Cs prevail, unless otherwise indicated in a specific award condition.

A. PROGRAMMATIC REQUIREMENTS

.01 Reporting Requirements

a. Recipients must submit all reports as required by DOC, electronically or, if unable to submit electronically, in hard copy, as outlined below and as may be supplemented by the terms and conditions of a specific DOC award.

b. Performance (Technical) Reports. Recipients must submit performance (technical) reports to the Program Officer. Performance (technical) reports should be submitted in the same frequency as the Form SF-425 (Federal Financial Report), unless otherwise directed by the Grants Officer.

1. Performance (technical) reports must contain the information prescribed in 2 C.F.R. § 200.328 (Monitoring and reporting program performance), unless otherwise specified in the award conditions.
2. As appropriate and in accordance with the format provided by the Program Officer (or other OMB-approved information collections), recipients are required to relate financial data to the performance accomplishments of this Federal award. When applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The recipient's performance will be measured in a way that will help DOC to improve program outcomes, share lessons learned, and spread the adoption of best or promising practices. As described in 2 C.F.R. § 200.210 (Information contained in a Federal award), DOC will identify the timing and scope of expected performance by the recipient as related to the outcomes intended to be achieved by the Federal program.

c. Financial Reports. In accordance with 2 C.F.R. § 200.327 (Financial reporting), the recipient must submit a Form SF-425 (Federal Financial Report) or any successor form on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a specific award condition. Reports must be submitted to DOC as directed by the Grants Officer, in accordance with the award conditions and are due no later than

30 calendar days following the end of each reporting period. A final Form SF-425 must be submitted within 90 calendar days after the expiration of the period of performance. A recipient may submit a final financial report in lieu of an interim financial report due at the end of the period of performance (*e.g.*, in lieu of submitting a financial report for the last semi-annual or other reporting under an award, a recipient may submit a final (cumulative) financial report covering the entire award period).

d. Real Property, Tangible Personal Property and Intangible Property Reports and Requests for Dispositions. Unless otherwise required by the terms and conditions of a DOC financial assistance award, where real property, tangible personal property or intangible property is acquired or improved (in the case of real property or tangible personal property), or produced or acquired (in the case of intangible property), pursuant to a DOC award, non-Federal entities are required to submit the following real property, tangible personal property and intangible property reports (as appropriate):

1. Real Property Status Reports and Requests for Dispositions: Non-Federal entities must submit reports using Form SF-429 (Real Property Status Report) or any successor form, including appropriate attachments thereto, at least annually disclosing the status of real property that is Federally-owned property or real property in which the Federal Government retains a Federal Interest, unless the Federal Interest in the real property extends 15 years or longer. In cases where the Federal Interest attached is for a period of 15 years or more, the DOC or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (*e.g.*, every two years or every three years, not to exceed a five-year reporting period; or, the DOC or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years). In addition, DOC or a pass-through entity may require a non-Federal entity to submit Form SF-429, with appropriate attachments, relating to a non-Federal entity's request to acquire, improve or contribute real property under a DOC financial assistance award. Non-Federal entities wishing to dispose of real property acquired or improved, in whole or in part, pursuant to a DOC award must request disposition instructions, including the submission of Form SF-429, with appropriate attachments, from the Grants Officer in accordance with the requirements set forth in 2 C.F.R. § 200.311(c). *See also* the real property standards set forth in Section C. of these Standard Terms (Property Standards).

2. Tangible Personal Property Status Reports and Requests for Dispositions: DOC or a pass-through entity may also require a non-Federal entity to submit periodic reports using Form SF-428 (Tangible Personal Property Report) or any successor form, including appropriate attachments thereto, concerning tangible personal property that is Federally-owned or tangible personal property in which the Federal Government retains an interest. In addition, DOC or a pass-through entity may require a non-Federal entity to submit Form SF-428 in connection with a non-Federal entity's request to dispose of, tangible personal property acquired under a DOC financial assistance award. Non-Federal entities wishing to dispose of tangible personal property acquired or improved, in whole or in part, pursuant to a DOC award must request disposition instructions, including the submission of Form SF-428, with appropriate attachments, from the Grants Officer in accordance with the requirements

set forth in 2 C.F.R. § 200.313(e). *See also* the tangible property standards set forth in Section C. of these Standard Terms (Property Standards).

3. Intangible Property Status Reports and Requests for Dispositions: The specific requirements governing the development, reporting, and disposition of rights to intangible property, including inventions and patents resulting from DOC awards, are set forth in 37 C.F.R. Part 401, which is hereby incorporated by reference into this award. Non-Federal entities are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S. manufacture, electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Non-Federal entities may obtain a waiver of this electronic submission requirement by providing to the Grants Officer compelling reasons for allowing the submission of paper reports. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in 2 C.F.R. § 200.313(e). *See also* the intangible property standards set forth in Section C. of these Standard Terms (Property Standards).

e. Subawards and Executive Compensation Reports. For reporting requirements on subawards and Executive Compensation, see paragraph G.05.o of these Standard Terms (The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)).

f. Recipient Integrity and Performance Matters. For reporting requirements pertaining to integrity and performance matters, see paragraph G.05.p of these Standard Terms (Recipient Integrity and Performance Matters (Appendix XII to 2 C.F.R. Part 200)).

g. Research Performance Progress Reports. All research awards shall submit the Research Performance Progress Report (RPPR) in accordance with instructions set forth in the following link: [RPPR Instructions](#).

.02 Revisions of Program Plans

In accordance with 2 C.F.R. § 200.308 (Revisions of budget and program plans) and 2 C.F.R. § 200.407 (Prior written approval (prior approval)), the recipient must obtain prior written approval from the DOC Grants Officer for certain proposed programmatic change requests, unless otherwise provided by the terms and conditions of a DOC award. Requests for prior approval for changes to program plans must be submitted to the Federal Program Officer (or electronically for awards administered through Grants Online). Requests requiring prior DOC approval are not effective unless and until approved in writing by the DOC Grants Officer.

.03 Other Federal Awards with Similar Programmatic Activities

The recipient must immediately provide written notification to the DOC Program Officer and the DOC Grants Officer if, subsequent to receipt of the DOC award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the DOC award. DOC will not pay for costs that are funded by other sources.

.04 Prohibition against Assignment by a Non-Federal Entity

A non-Federal entity must not transfer, pledge, mortgage, assign, encumber or hypothecate a DOC financial assistance award or subaward, or any rights to, interests therein or claims arising thereunder, to any party or parties, including but not limited to banks, trust companies, other financing or financial institutions, or any other public or private organizations or individuals without the express prior written approval of the DOC Grants Officer or the pass-through entity (which, in turn, may need to obtain prior approval from the DOC Grants Officer).

.05 Disclaimer Provisions

a. The United States expressly disclaims all responsibility or liability to the non-Federal entity or third persons (including but not limited to contractors) for the actions of the non-Federal entity or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any subaward, contract, or subcontract under this award.

b. The acceptance of this award or any subaward by the non-Federal entity does not in any way constitute an agency relationship between the United States and the non-Federal entity or the non-Federal entity's contractors or subcontractors.

.06 Unsatisfactory Performance or Non-Compliance with Award Provisions

a. Failure to perform the work in accordance with the terms of the award and maintain satisfactory performance as determined by DOC may result in the imposition of additional award conditions pursuant to 2 C.F.R. § 200.207 (Specific conditions) or other appropriate enforcement action as specified in 2 C.F.R. § 200.338 (Remedies for noncompliance).

b. Failure to comply with the provisions of an award will be considered grounds for appropriate enforcement action pursuant to 2 C.F.R. § 200.338 (Remedies for noncompliance), including but not limited to: the imposition of additional award conditions in accordance with 2 C.F.R. § 200.207 (Specific conditions); temporarily withholding award payments pending the correction of the deficiency; changing the payment method to reimbursement only; the disallowance of award costs and the establishment of an accounts receivable; wholly or partially suspending or terminating an award; initiating suspension or debarment proceedings in accordance with 2 C.F.R. Parts 180 and 1326; and such other remedies as may be legally available.

c. 2 C.F.R. §§ 200.339 (Termination) through 200.342 (Effects of suspension and termination) apply to an award that is terminated prior to the end of the period of performance due to the non-federal entity's material failure to comply with the award terms and conditions. In addition, the failure to comply with the provisions of a DOC award may adversely impact the availability of funding under other active DOC or Federal awards and may also have a negative impact on a non-Federal entity's eligibility for future DOC or Federal awards.

B. FINANCIAL REQUIREMENTS

.01 Financial Management

a. In accordance with 2 C.F.R. § 200.302(a) (Financial Management), each State must expend and account for the Federal award in accordance with State laws and procedures for expending and accounting for the State's own funds. In addition, the State's and any other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used in accordance with Federal statutes, regulations, and the terms and conditions applicable to the Federal award. *See also* 2 C.F.R. § 200.450 (Lobbying) for additional management requirements to verify that Federal funds are not used for unallowable lobbying costs.

b. The financial management system of each non-Federal entity must provide all information required by 2 C.F.R. § 200.302(b). *See also* 2 C.F.R. §§ 200.333 (Retention requirements for records); 200.334 (Requests for transfer of records); 200.335 (Methods for collection, transmission and storage of information); 200.336 (Access to records); and 200.337 (Restrictions on public access to records).

.02 Award Payments

a. Consistent with 2 C.F.R. § 200.305(a) (Payment), for States, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 C.F.R. Part 205 (Rules and Procedures for Efficient Federal-State Funds Transfers) and Treasury Financial Manual Volume I, 4A-2000 (Overall Disbursing Rules for All Federal Agencies).

b. Consistent with 2 C.F.R. § 200.305(b), for non-Federal entities other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the U.S. Treasury or the pass-through entity and the disbursement by the non-Federal entity.

1. The Grants Officer determines the appropriate method of payment and, unless otherwise stated in a specific award condition, the advance method of payment must be authorized. Advances must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. Unless otherwise provided by the terms and conditions of a DOC award, non-Federal entities must time advance payment requests so that Federal funds are on hand for a maximum of 30 calendar days before being disbursed by the non-Federal entity for allowable award costs.

2. If a non-Federal entity demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity or if a non-Federal entity otherwise fails to continue to qualify for the advance method of payment, the Grants Officer or the pass-through entity may change the

method of payment to reimbursement only.

c. Unless otherwise provided for in the award terms, payments from DOC to recipients under this award will be made using the Department of Treasury's Automated Standard Application for Payment (ASAP) system. Under the ASAP system, payments are made through preauthorized electronic funds transfers directly to the recipient's bank account, in accordance with the requirements of the Debt Collection Improvement Act of 1996. To receive payments under ASAP, recipients are required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information will be required to make withdrawals under ASAP:

1. ASAP account number – the Federal award identification number found on the cover sheet of the award;
2. Agency Location Code (ALC); and
3. Region Code.

d. Recipients enrolled in the ASAP system do not need to submit a Form SF-270 (Request for Advance or Reimbursement), for payments relating to their award. Awards paid under the ASAP system will contain a specific award condition, clause, or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system.

e. When the Form SF-270 (Request for Advance or Reimbursement) or successor form is used to request payment, the recipient must submit the request no more frequently than monthly, and advances must be approved for periods to cover only expenses reasonably anticipated over the next 30 calendar days. Prior to receiving payments via the Form SF-270, the recipient must complete and submit to the Grants Officer, the Form SF-3881 (ACH Vendor Miscellaneous Payment Enrollment Form) or successor form along with the initial Form SF-270. Form SF-3881 enrollment must be completed before the first award payment can be made via a Form SF-270 request.

f. The Federal award identification number must be included on all payment-related correspondence, information, and forms.

g. Non-Federal entities receiving advance award payments must adhere to the depository requirements set forth in 2 C.F.R. §§ 200.305(b)(7) through (b)(9). Interest amounts up to \$500 per non-Federal entity's fiscal year may be retained by the non-Federal entity for administrative expenses.

.03 Federal and Non-Federal Sharing

a. Awards that include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares must be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs exceed the total

approved budget, the Federal share must not exceed the total Federal dollar amount authorized by the award.

b. The non-Federal share, whether in cash or third party in-kind contributions, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or third party in-kind contributions. In any case, the recipient must meet its cost share commitment as set forth in the terms and conditions of the award; failure to do so may result in the assignment of specific award conditions or other further action as specified in Standard Term A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions). The non-Federal entity must create and maintain sufficient records justifying all non-Federal sharing requirements to facilitate questions and audits; see Section D of these Standard Terms (Audits), for audit requirements. *See* 2 C.F.R. § 200.306 for additional requirements regarding cost sharing.

.04 Budget Changes and Transfer of Funds among Categories

a. Recipients are required to report deviations from the approved project budget and request prior written approval from DOC in accordance with 2 C.F.R. § 200.308 (Revision of budget and program plans) and 2 C.F.R. § 200.407 (Prior written approval (prior approval)). Requests for such budget changes must be submitted to the Grants Officer (or electronically for awards serviced through Grants Online) who will notify the recipient of the final determination in writing. Requests requiring prior DOC approval do not become effective unless and until approved in writing by the DOC Grants Officer.

b. In accordance with 2 C.F.R. § 200.308(e), transfers of funds by the recipient among direct cost categories are permitted for awards in which the Federal share of the project is \$250,000 or less. For awards in which the Federal share of the project exceeds \$250,000, transfers of funds among direct cost categories must be approved in writing by the Grants Officer when the cumulative amount of such direct costs transfers exceeds 10 percent of the total budget as last approved by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same requirements apply to the cumulative amount of transfer of funds among programs, functions, and activities. This transfer authority does not authorize the recipient to create new budget categories within an approved budget without Grants Officer approval. Any transfer that causes any Federal appropriation, or part thereof, to be used for an unauthorized purpose is not and will not be permitted. In addition, this provision does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget. *See* 2 C.F.R. § 200.308 (Revision of budget and program plans) (as applicable) for specific requirements concerning budget revisions and transfer of funds between budget categories.

.05 Program Income

Unless otherwise indicated in the award terms, program income may be used for any required cost sharing or added to the project budget, consistent with 2 C.F.R. § 200.307 (Program income).

.06 Indirect or Facilities and Administrative Costs

a. Indirect costs (or facilities and administration costs (F&A)) for major institutions of higher education and major nonprofit organizations can generally be defined as costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. Indirect (F&A) costs will not be allowable charges against an award unless permitted under the award and specifically included as a line item in the award's approved budget.

b. Unrecovered indirect costs, including unrecovered indirect costs on cost sharing or matching, may be included as part of cost sharing or matching as allowed under 2 C.F.R. § 200.306(c) (Cost sharing or matching) or the terms and conditions of a DOC award.

c. Cognizant Agency for Indirect (F&A) Costs. OMB established the cognizant agency concept, under which a single agency represents all others in dealing with non-Federal entities in common areas. The cognizant agency for indirect costs reviews and approves non-Federal entities' indirect cost rates. In accordance with Appendices III – VII to 2 C.F.R. Part 200 the cognizant agency for indirect costs reviews and approves non-Federal entities' indirect cost rates. With respect to for-profit organizations, the term cognizant Federal agency generally is defined as the agency that provides the largest dollar amount of negotiated contracts, including options. *See* 48 C.F.R. § 42.003. If the only Federal funds received by a commercial organization are DOC award funds, then DOC becomes the cognizant Federal agency for indirect cost negotiations.

1. General Review Procedures Where DOC is the Cognizant Agency.

i. Within 90 calendar days of the award start date the recipient must submit to the Grants Officer any documentation (indirect cost proposal, cost allocation plan, etc.) necessary to allow DOC to perform the indirect cost rate proposal review. Below are two sources available for guidance on how to put an indirect cost plan together:

- (A) Department of Labor: <https://www.dol.gov/oasam/boc/dcd/np-comm-guide.htm>
or
- (B) Department of the Interior: <https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/>.

ii. The recipient may use the rate proposed in the indirect cost plan as a provisional rate until the DOC provides a response to the submitted plan.

iii. The recipient is required to annually submit indirect cost proposals – no later than six months after the recipient's fiscal year end, except as otherwise provided by 2 C.F.R. § 200.414(g).

2. When DOC is not the oversight or cognizant Federal agency, the recipient must provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate

agreement within 30 calendar days of receipt of a negotiated rate agreement or submission of a negotiated rate proposal.

3. If the recipient is proposing indirect costs as part of a project budget, but is not required to have a negotiated rate agreement pursuant to 2 C.F.R. Part 200, Appendix VII, Paragraph D.1.b (*i.e.*, a governmental department or agency that receives \$35 million or less in direct Federal funding), the recipient may be required to provide the Grants Officer with a copy of its Certificate of Indirect Costs as referenced in 2 C.F.R. Part 200, Appendix VII, Paragraph D.3. or such other documentation, acceptable in form and substance to the Grants Officer, sufficient to confirm that proposed indirect costs are calculated and supported by documentation in accordance with 2 C.F.R. Part 200, Appendix VII. In cases where the DOC is the recipient's cognizant Federal agency, the DOC reserves the right, pursuant to 2 C.F.R. Part 200, Appendix VII, Paragraph D.1.b, to require the recipient to submit its indirect cost rate proposal for review by DOC.

d. If the recipient fails to submit required documentation to DOC within 90 calendar days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DOC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.

e. The maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient is the lesser of:

1. The line item amount for the Federal share of indirect costs contained in the approved award budget, including all budget revisions approved in writing by the Grants Officer; or
2. The Federal share of the total indirect costs allocable to the award based on the indirect cost rate approved by the cognizant agency for indirect costs and applicable to the period in which the cost was incurred, provided that the rate is approved on or before the award end date.

f. In accordance with 2 CFR § 200.414(c)(3), DOC set forth policies, procedures, and general decision-making criteria for deviations from negotiated indirect cost rates. These policies and procedures are applicable to all Federal financial assistance programs awarded and administered by DOC bureaus as Federal awarding agencies and may be found at http://www.osec.doc.gov/oam/grants_management/policy/documents/FAM%202015-02.pdf.

g. In accordance with 2 CFR § 200.414(g), any non-Federal entity that has a negotiated indirect cost rate may apply to the entity's cognizant agency for indirect costs for a one-time extension of a currently negotiated indirect cost rate for a period of up to four years, reducing the frequency of rate calculations and negotiations between an institution and its cognizant agency.

h. In accordance with 2 CFR § 200.414(f), any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Paragraph D.1.b

of Appendix VII to 2 CFR Part 200, may elect to charge a de minimis rate of 10 percent of modified total direct costs.

.07 Incurring Costs or Obligating Federal Funds Before and After the Period of Performance

a. In accordance with 2 C.F.R. § 200.309 (Period of performance) and the terms and conditions of a DOC award, a non-Federal entity may charge to the Federal award only allowable costs incurred during the period of performance, which is established in the award document. As defined at 2 C.F.R. § 200.77, the “period of performance” is “the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award.” The period of performance may sometimes be referred to as the project period or award period. This Standard Term is subject to exceptions for allowable costs pertaining to: (i) pre-award costs (*see* 2 C.F.R. § 200.458); (ii) publication and printing costs (*see* 2 C.F.R. § 200.461); and administrative costs incurred relating to the close-out of an award (*see* 2 C.F.R. § 200.343).

b. Reasonable, necessary, allowable and allocable administrative award closeout costs are authorized for a period of up to 90 calendar days following the end of the period of performance. For this purpose, award closeout costs are those strictly associated with close-out activities and are typically limited to the preparation of final progress, financial, and required project audit reports, unless otherwise approved in writing by the Grants Officer. A non-Federal entity may request an extension of the 90-day closeout period, as provided in 2 C.F.R. § 200.343 (Closeout).

c. Unless authorized by a specific award condition, any extension of the period of performance may only be authorized by the Grants Officer in writing. This is not a delegable authority. Verbal or written assurances of funding from anyone other than the Grants Officer does not constitute authority to obligate funds for programmatic activities beyond the end of the period of performance.

d. The DOC has no obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the period of performance is at the sole discretion of DOC.

.08 Tax Refunds

The non-Federal entity shall contact the Grants Officer immediately upon receipt of the refund of any taxes, including but not limited to Federal Insurance Contributions Act (FICA) taxes, Federal Unemployment Tax Act (FUTA) taxes, or Value Added Taxes (VAT) that were allowed as charges to a DOC award, regardless of whether such refunds are received by the non-Federal entity during or after the period of performance. The Grants Officer will provide written disposition instructions to the non-Federal entity, which may include the refunded taxes being credited to the award as either a cost reduction or a cash refund, or may allow the non-Federal entity to use such refunds for approved activities and costs under a DOC award. *See* 2 C.F.R. § 200.470 (Taxes (including Value Added Tax)).

.09 Internal Controls

Each recipient must comply with standards for internal controls described at 2 C.F.R. § 200.303 (Internal controls). The “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States referenced in § 200.303 are available online at <http://www.gao.gov/assets/80/76455.pdf> and the “Internal Control Integrated Framework” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) is available online at <http://www.coso.org/documents/Internal%20Control-Integrated%20Framework.pdf>.

C. PROPERTY STANDARDS

.01 Standards

Each non-Federal entity must comply with the Property Standards set forth in 2 C.F.R. §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship).

.02 Real and Personal Property

a. In accordance with 2 C.F.R. § 200.316 (Property trust relationship), real property, equipment, and other personal property acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. This trust relationship exists throughout the duration of the property’s estimated useful life, as determined by the Grants Officer in consultation with the Program Office, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest). During the duration of the Federal Interest, the non-Federal entity must comply with all use and disposition requirements and restrictions as set forth in 2 C.F.R. §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship), as applicable, and in the terms and conditions of the Federal award.

b. The Grants Officer may require a non-Federal entity to execute and to record (as applicable) a statement of interest, financing statement (form UCC-1), lien, mortgage or other public notice of record to indicate that real or personal property acquired or improved in whole or in part with Federal funds is subject to the Federal Interest, and that certain use and disposition requirements apply to the property. The statement of interest, financing statement (form UCC-1), lien, mortgage or other public notice must be acceptable in form and substance to the DOC and must be placed of record in accordance with applicable State and local law, with continuances re-filed as appropriate. In such cases, the Grants Officer may further require the non-Federal entity to provide the DOC with a written statement from a licensed attorney in the jurisdiction where the property is located certifying that the Federal Interest has been protected, as required under the award and in accordance with applicable State and local law. The attorney’s statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, must be returned to the Grants Officer. Without releasing or excusing the non-Federal entity from these obligations, the non-Federal entity, by execution of the financial assistance award or by expending Federal financial assistance funds (in the case of a subrecipient),

authorizes the Grants Officer and/or program office to file such notices and continuations as it determines to be necessary or convenient to disclose and protect the Federal Interest in the property. The Grants Officer may elect not to release any or a portion of the Federal award funds until the non-Federal entity has complied with this provision and any other applicable award terms or conditions, unless other arrangements satisfactory to the Grants Officer are made.

.03 Intellectual Property Rights

a. General. The rights to any work or other intangible property, produced or acquired under a Federal award are determined by 2 C.F.R. § 200.315 (Intangible property). The non-Federal entity owns any work produced or purchased under a Federal award subject to the DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work or authorize others to receive, reproduce, publish, or otherwise use the work for Government purposes.

b. Inventions. Unless otherwise provided by law, the rights to any invention made by a non-Federal entity under a DOC financial assistance award are determined by the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified in 35 U.S.C. § 200 *et seq.*, and modified by E.O. 12591 (52 FR 13414), as amended by E.O. 12618 (52 FR 48661). 35 U.S.C. § 201(h) defines "small business firm" as "a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration." Section 1(b)(4) of E.O. 12591 extended the Bayh-Dole Act to non-Federal entities "regardless of size" to the extent permitted by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from Federal awards are described in more detail in 37 C.F.R. Part 401, which implements 35 U.S.C. 202 through 204 and includes standard patent rights clauses in 37 C.F.R. § 401.14, which is hereby incorporated by reference into this award.

The Bayh-Dole regulations set forth in 37 C.F.R. part 401 and 404 were amended by 83 FR 15954, with an effective date of May 14, 2018 (Amended Bayh-Dole Regulations). The Amended Bayh-Dole Regulations apply to all new financial assistance awards issued on or after May 14, 2018. The Amended Bayh-Dole Regulations do not apply to financial assistance awards issued prior to May 14, 2018, including amendments made to such awards, unless an award amendment includes a specific condition incorporating the Amended Bayh-Dole Regulations into the terms and conditions of the subject award.

1. Ownership. A non-Federal entity may have rights to inventions in accordance with 37 C.F.R. Part 401. These requirements are technical in nature and non-Federal entities are encouraged to consult with their Intellectual Property counsel to ensure the proper interpretation of and adherence to the ownership rules. Unresolved questions pertaining to a non-Federal entities' ownership rights may further be addressed to the Grants Officer.

2. Responsibilities - iEdison. The non-Federal entity must comply with all the requirements of the standard patent rights clause and 37 C.F.R. Part 401, including the standard patent rights clause in 37 C.F.R. § 401.14. Non-Federal entities are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S. manufacture, electronically using the Interagency Edison extramural invention reporting

system (iEdison) at www.iedison.gov. Non-Federal entities may obtain a waiver of this electronic submission requirement by providing the Grants Officer with compelling reasons for allowing the submission of paper reports.

c. **Patent Notification Procedures.** Pursuant to E.O. 12889 (58 FR 69681), the DOC is required to notify the owner of any valid patent covering technology whenever the DOC or a non-Federal entity, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the non-Federal entity uses or has used patented technology under this award without a license or permission from the owner, the non-Federal entity must notify the Grants Officer.

This notice does not constitute authorization or consent by the Government to any copyright or patent infringement occurring under the award.

d. A non-Federal entity may copyright any work produced under a Federal award, subject to the DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work, or authorize others to do so for Government purposes. Works jointly authored by DOC and non-Federal entity employees may be copyrighted, but only the part of such works authored by the non-Federal entity is protectable in the United States because, under 17 U.S.C. § 105, copyright protection is not available within the United States for any work of the United States Government. On occasion and as permitted under 17 U.S.C. § 105, DOC may require the non-Federal entity to transfer to DOC a copyright in a particular work for Government purposes or when DOC is undertaking primary dissemination of the work.

e. **Freedom of Information Act (FOIA).** In response to a FOIA request for research data relating to published research findings (as defined by 2 C.F.R. § 200.315(e)(2)) produced under a Federal award that were used by the Federal government in developing an agency action that has the force and effect of law, the DOC will request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA.

D. AUDITS

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, §§ 1 *et seq.*, an audit of the award may be conducted at any time. The Inspector General of the DOC, or any of his or her duly authorized representatives, must have the right to access any pertinent books, documents, papers, and records of the non-Federal entity, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. This right also includes timely and reasonable access to the non-Federal entity's personnel for interview and discussion related to such documents. *See* 2 C.F.R. § 200.336 (Access to records). When the DOC Office of Inspector General (OIG) requires a program audit on a DOC award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with DOC, or any other Federal, State, or local audit entity.

.01 Organization-Wide, Program-Specific, and Project Audits

a. A recipient must, within 90 days of the end of its fiscal year, notify the Grants Officer of the amount of Federal awards, including all DOC and non-DOC awards, that the recipient expended during its fiscal year.

b. Recipients that are subject to the provisions of Subpart F of 2 C.F.R. Part 200 and that expend \$750,000 or more in a year in Federal awards during their fiscal year must have an audit conducted for that year in accordance with the requirements contained in Subpart F of 2 C.F.R. Part 200. Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted electronically to the Federal Audit Clearinghouse (FAC) through the FAC's Internet Data Entry System (IDES) (<https://harvester.census.gov/facides/>). In accordance with 2 C.F.R. § 200.425, the recipient may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer.

c. Unless otherwise specified in the terms and conditions of the award, entities that are not subject to Subpart F of 2 C.F.R. Part 200 (e.g., for-profit entities, foreign public entities and foreign organizations) and that expend \$750,000 or more in DOC funds during their fiscal year (including both as a recipient and a subrecipient) must submit to the Grants Officer either: (i) a financial related audit of each DOC award or subaward in accordance with Generally Accepted Government Auditing Standards (GAGAS); or (ii) a project specific audit for each award or subaward in accordance with the requirements contained in 2 C.F.R. § 200.507. Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted to the Grants Officer. In accordance with 2 C.F.R. § 200.425, the recipient may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer. Entities that are not subject to Subpart F of 2 C.F.R. Part 200 and that expend less than \$750,000 in DOC funds in a given fiscal year are not required to submit an audit(s) for that year, but must make their award-related records available to DOC or other designated officials for review and audit.

d. Recipients are responsible for compliance with the above audit requirements and for informing the Grants Officer of the status of their audit, including when the relevant audit has been completed and submitted in accordance with the requirements of this section. Failure to provide audit reports within the timeframes specified above may result in appropriate enforcement action, up to and including termination of the award, and may jeopardize eligibility for receiving future DOC awards.

e. In accordance with 2 C.F.R. § 200.331(d)(3), pass-through entities are responsible for issuing a management decision for any audit findings pertaining to the Federal award provided by the pass-through entity to a subrecipient.

.02 Audit Resolution Process

a. An audit of the award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (account receivable) due to DOC. For this reason, the recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.

b. A recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:

1. The recipient has 30 calendar days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.
2. The recipient has 30 calendar days from the date of the transmittal of the final audit report to submit written comments and documentary evidence.
3. The DOC will review the documentary evidence submitted by the recipient and will notify the recipient of the results in an *Audit Resolution Determination Letter*. The recipient has 30 calendar days from the date of receipt of the *Audit Resolution Determination Letter* to submit a written appeal, unless this deadline is extended in writing by the DOC. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence to the DOC to dispute the validity of the audit resolution determination.
4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of applicable interest, penalties and administrative fees on the debt in accordance with 15 C.F.R. Part 19. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively.
5. The DOC will review the recipient's appeal and notify the recipient of the results in an *Appeal Determination Letter*. After the opportunity to appeal has expired or after the appeal determination has been rendered, DOC will not accept any further documentary evidence from the recipient. No other administrative appeals are available in DOC.

E. DEBTS

.01 Payment of Debts Owed to the Federal Government

a. The non-Federal entity must promptly pay any debts determined to be owed to the Federal Government. Any funds paid to a non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal government. In accordance with 2 C.F.R. § 200.345 (Collection of amounts due), if not paid within 90 calendar days after demand, DOC may reduce a debt owed to the Federal Government by:

1. Making an administrative offset against other requests for reimbursement;

2. Withholding advance payments otherwise due to the non-Federal entity; or
3. Taking any other action permitted by Federal statute.

The foregoing does not waive any claim on a debt that DOC may have against another entity, and all rights and remedies to pursue other parties are preserved.

b. DOC debt collection procedures are set out in 15 C.F.R. Part 19. In accordance with 2 C.F.R. § 200.345 (Collection of amounts due) and 31 U.S.C. § 3717, failure to pay a debt owed to the Federal Government must result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 C.F.R. § 901.9. Commerce entities will transfer any Commerce debt that is delinquent for more than 120 calendar days to the U.S. Department of the Treasury's Financial Management Service for debt collection services, a process known as cross-servicing, pursuant to 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12, and 15 C.F.R. § 19.9. DOC may also take further action as specified in DOC ST&C A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions). Funds for payment of a debt must not come from other Federally-sponsored programs, and the DOC may conduct on-site visits, audits, and other reviews to verify that other Federal funds have not been used to pay a debt.

.02 Late Payment Charges

a. Interest will be assessed on the delinquent debt in accordance with section 11 of the Debt Collection Act of 1982, as amended (31 U.S.C. § 3717(a)). The minimum annual interest rate to be assessed is the U.S. Department of the Treasury's Current Value of Funds Rate (CVFR). The CVFR is available online at https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr_home.htm and also published by the Department of the Treasury in the *Federal Register* (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>) and in the *Treasury Financial Manual Bulletin*. The assessed rate must remain fixed for the duration of the indebtedness.

b. Penalties will accrue at a rate of not more than six percent per year or such other higher rate as authorized by law.

c. Administrative charges, i.e., the costs of processing and handling a delinquent debt, will be determined by the Commerce entity collecting the debt, as directed by the Office of the Chief Financial Officer and Assistant Secretary for Administration.

.03 Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees

Pursuant to 31 U.S.C. § 3720B and 31 C.F.R. § 901.6, unless waived by DOC, the DOC is not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

.04 Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs

Pursuant to 28 U.S.C. § 3201(e), unless waived by the DOC, a debtor who has a judgment lien against the debtor's property for a debt to the United States is not eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

F. CONFLICT OF INTEREST, CODE OF CONDUCT AND OTHER REQUIREMENTS PERTAINING TO DOC FINANCIAL ASSISTANCE AWARDS, INCLUDING SUBAWARDS AND PROCUREMENTS ACTIONS

.01 Conflict of Interest and Code of Conduct

a. **DOC Conflict of Interest Policy.** In accordance with 2 C.F.R. § 200.112 (Conflict of interest), the non-Federal entity must disclose in writing any potential conflict of interest to the DOC or pass-through entity. In addition, a non-Federal entity will establish and maintain written standards of conduct that include safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of an award. It is the DOC's policy to maintain the highest standards of conduct and to prevent real or apparent conflicts of interest in connection with DOC financial assistance awards.

b. A conflict of interest generally exists when an interested party participates in a matter that has a direct and predictable effect on the interested party's personal or financial interests. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. A conflict also may exist where there is an appearance that an interested party's objectivity in performing his or her responsibilities under the project is impaired. For example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an interested party is unable to render impartial assistance, services or advice to the recipient, a participant in the project or to the Federal Government. Additionally, a conflict of interest may result from non-financial gain to an interested party, such as benefit to reputation or prestige in a professional field. For purposes of the DOC Conflict of Interest Policy, an interested party includes, but is not necessarily limited to, any officer, employee or member of the board of directors or other governing board of a non-Federal entity, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. This also includes immediate family and other persons directly connected to the interested party by law or through a business arrangement.

c. **Procurement-related conflict of interest.** In accordance with 2 C.F.R. § 200.318 (General procurement standards), non-Federal entities must maintain written standards of conduct

covering conflicts of interest and governing the performance of their employees engaged in the selection, award and administration of contracts. *See* paragraph F.04 of these Standard Terms (Requirements for Procurements).

.02 Nonprocurement Debarment and Suspension

Non-Federal entities must comply with the provisions of 2 C.F.R. Part 1326 (Nonprocurement Debarment and Suspension), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions, and which set forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

.03 Requirements for Subawards

The recipient or pass-through entity must require all subrecipients, including lower tier subrecipients, to comply with the terms and conditions of a DOC financial assistance award, including applicable provisions of the OMB Uniform Guidance (2 C.F.R. Part 200), and all associated Terms and Conditions set forth herein. *See* 2 C.F.R. § 200.101(b)(1) (Applicability), which describes the applicability of 2 C.F.R. Part 200 to various types of Federal awards and §§ 200.330-332 (Subrecipient monitoring and management).

.04 Requirements for Procurements

a. States. Pursuant to 2 C.F.R. § 200.317 (Procurements by states), when procuring property and services under this Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State must comply with 2 C.F.R. § 200.322 (Procurement of recovered materials), and ensure that every purchase order or other contract includes any clauses required by 2 C.F.R. § 200.326 (Contract provisions).

b. Other Non-Federal Entities. All other non-Federal entities, including subrecipients of a State, must follow the requirements of 2 C.F.R. §§ 200.318 (General procurement standards) through 200.326 (Contract provisions) which includes the requirement that non-Federal entities maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.

.05 Whistleblower Protections

This award is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information), which generally provide that an employee or contractor (including subcontractors and personal services contractors) of a non-Federal entity may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a

Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subaward, or contract under a Federal award or subaward. These persons or bodies include:

- a. A Member of Congress or a representative of a committee of Congress.
- b. An Inspector General.
- c. The Government Accountability Office.
- d. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
- e. An authorized official of the Department of Justice or other law enforcement agency.
- f. A court or grand jury.
- g. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Non-Federal entities and contractors under Federal awards and subawards must inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

.06 Small Businesses, Minority Business Enterprises and Women's Business Enterprises

In accordance with 2 C.F.R. § 200.321 (Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms), the recipient must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus areas firms are used when possible. DOC encourages non-Federal entities to use small businesses, minority business enterprises and women's business enterprises in contracts under financial assistance awards. The Minority Business Development Agency within the DOC will assist non-Federal entities in matching qualified minority business enterprises with contract opportunities. For further information visit MBDA's website at <http://www.mbda.gov>. If you do not have access to the Internet, you may contact MBDA via telephone or mail:

U.S. Department of Commerce
Minority Business Development Agency
Herbert C. Hoover Building
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230
(202) 482-0101

G. NATIONAL POLICY REQUIREMENTS

.01 United States Laws and Regulations

This award is subject to the laws and regulations of the United States. The recipient must comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

.02 Non-Discrimination Requirements

No person in the United States must, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity receiving Federal financial assistance. The recipient agrees to comply with the non-discrimination requirements below:

a. Statutory Provisions

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and DOC implementing regulations published at 15 C.F.R. Part 8 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;
3. The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 C.F.R. Part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance.

For purposes of complying with the accessibility standards set forth in 15 C.F.R. § 8b.18(c), non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) (28 C.F.R. part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 C.F.R. part 36; 75 FR 56164, as amended by 76 FR 13286). The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design” (2010 Standards), which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects;

5. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and DOC implementing regulations published at 15 C.F.R. Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance; and
6. Any other applicable non-discrimination law(s).

b. Other Provisions

1. Parts II and III of E.O. 11246 (Equal Employment Opportunity, 30 FR 12319),⁴ which requires Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of E.O. 11246 and Department of Labor regulations implementing E.O. 11246 (41 C.F.R. § 60-1.4(b)).
2. E.O. 13166 (65 FR 50121, Improving Access to Services for Persons with Limited English Proficiency), requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. The DOC issued policy guidance on March 24, 2003 (68 FR 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that non-Federal entities provide meaningful access to their LEP applicants and beneficiaries.

c. Title VII Exemption for Religious Organizations

Generally, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, provides that it is an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination based on religion, "a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities."

.03 LOBBYING RESTRICTIONS

a. Statutory Provisions

Non-Federal entities must comply with 2 C.F.R. § 200.450 (Lobbying), which incorporates the provisions of 31 U.S.C. § 1352; and OMB guidance and notices on lobbying restrictions. In addition, non-Federal entities must comply with the DOC regulations published at 15 C.F.R. Part 28, which implement the New Restrictions on Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal Government in connection with the award and require the disclosure of the use of non-Federal funds for lobbying. Lobbying includes attempting to improperly influence, meaning any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter, either directly or indirectly. Costs incurred to improperly influence are unallowable. *See* 2 C.F.R. § 200.450(b) and (c).

⁴ As amended by E.O. 11375(32 FR 14303), E.O. 11478 (34 FR 12985), E.O. 12086 (43 FR 46501), E.O. 12107 (44 FR 1055), E.O. 13279 (F67 FR 77141), E.O. 13665 (79 FR 20749), and E.O. 13672 (79 FR 42971).

b. Disclosure of Lobbying Activities

Any recipient that receives more than \$100,000 in Federal funding and conducts lobbying with non-federal funds relating to a covered Federal action must submit a completed Form SF-LLL (Disclosure of Lobbying Activities). The Form SF-LLL must be submitted within 30 calendar days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit any required Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

.04 Environmental Requirements

Environmental impacts must be considered by Federal decision makers in their decisions whether or not to approve: (1) a proposal for Federal assistance; (2) the proposal with mitigation; or (3) a different proposal having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts that projects funded with Federal assistance may have on the environment. Each non-Federal entity must comply with all environmental standards, to include those prescribed under the following statutes and E.O.s, and must identify to the awarding agency any impact the award may have on the environment. In some cases, award funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

a. The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*)

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) implementing regulations (40 C.F.R. Parts 1500 through 1508) require that an environmental analysis be completed for all major Federal actions to determine whether they have significant impacts on the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements when the award activities remain subject to Federal authority and control. Non-Federal entities are required to identify to the awarding agency any direct, indirect or cumulative impact an award will have on the quality of the human environment, and assist the agency in complying with NEPA. Non-Federal entities may also be requested to assist DOC in drafting an environmental assessment or environmental impact statement if DOC determines such documentation is required, but DOC remains responsible for the sufficiency and approval of the final documentation. Until the appropriate NEPA documentation is complete and in the event that any additional information is required during the period of performance to assess project environmental impacts, funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit the appropriate environmental information and NEPA documentation sufficient to enable DOC to make an assessment on any impacts that a project may have on the environment.

b. The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*)

Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f) and the Advisory Council on Historic Preservation (ACHP) implementing regulations (36 C.F.R. Part 800) require that Federal agencies take into account the effects of their undertakings on historic properties and, when appropriate, provide the ACHP with a reasonable opportunity to comment. Historic properties include but are not necessarily limited to districts, buildings, structures, sites and objects. In this connection, archeological resources and sites that may be of traditional religious and cultural importance to Federally-recognized Indian Tribes, Alaskan Native Villages and Native Hawaiian Organizations may be considered historic properties. Non-Federal entities are required to identify to the awarding agency any effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Non-Federal entities may also be requested to assist DOC in consulting with State or Tribal Historic Preservation Officers, ACHPs or other applicable interested parties necessary to identify, assess, and resolve adverse effects to historic properties. Until such time as the appropriate NHPA consultations and documentation are complete and in the event that any additional information is required during the period of performance in order to assess project impacts on historic properties, funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit any information sufficient to enable DOC to make the requisite assessment under the NHPA.

Additionally, non-Federal entities are required to assist the DOC in assuring compliance with the Archeological and Historic Preservation Act of 1974 (54 U.S.C. § 312502 *et seq.*, formerly 16 U.S.C. § 469a-1 *et seq.*); Executive Order 11593 (Protection and Enhancement of the Cultural Environment, May 13, 1971); Executive Order 13006 (Locating Federal Facilities on Historic Properties in Our Nation's Central Cities, May 21, 1996); and Executive Order 13007 (Indian Sacred Sites, May 24, 1996).

c. Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands)

Non-Federal entities must identify proposed actions in Federally defined floodplains and wetlands to enable DOC to decide whether there is an alternative to minimize any potential harm.

d. Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*) (Clean Water Act), and Executive Order 11738 ("Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans")

Non-Federal entities must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Clean Water Act (33 U.S.C. §§ 1251 *et seq.*), and E.O. 11738 (38 FR 25161), and must not use a facility on the Excluded Parties List (EPL) (located on the System for Award Management (SAM) website, SAM.gov) in performing any award that is nonexempt under 2 C.F.R. § 1532, and must notify the Program Officer in writing if it intends to use a

facility that is on the EPL or knows that the facility has been recommended to be placed on the EPL.

e. The Flood Disaster Protection Act (42 U.S.C. §§ 4002 *et seq.*)

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas. Per 2 C.F.R. § 200.447(a), the cost of required flood insurance is an allowable expense, if it is reflected in the approved project budget.

f. The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*)

Non-Federal entities must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions under Federal assistance awards and conduct the reviews required under the Endangered Species Act, as applicable.

g. The Coastal Zone Management Act (16 U.S.C. §§ 1451 *et seq.*)

Funded projects must be consistent with a coastal State's approved management program for the coastal zone.

h. The Coastal Barriers Resources Act (16 U.S.C. §§ 3501 *et seq.*)

Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

i. The Wild and Scenic Rivers Act (16 U.S.C. §§ 1271 *et seq.*)

This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

j. The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. §§ 300f *et seq.*)

This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer so as to threaten public health.

k. The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*)

This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and provides that non-Federal entities give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

l. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) (42 U.S.C. §§ 9601 *et seq.*) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 note *et seq.*)

These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community

involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

m. Executive Order 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations”)

Federal agencies are required to identify and address the disproportionately high and adverse human health or environmental effects of Federal programs, policies, and activities on low income and minority populations.

n. The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*)

Non-Federal entities must identify to DOC any effects the award may have on essential fish habitat (EFH). Federal agencies which fund, permit, or carry out activities that may adversely impact EFH are required to consult with the National Marine Fisheries Service (NMFS) regarding the potential effects of their actions, and respond in writing to NMFS recommendations. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. In addition, NMFS is required to comment on any state agency activities that would impact EFH. Provided the specifications outlined in the regulations are met, EFH consultations will be incorporated into interagency procedures previously established under NEPA, the ESA, Clean Water Act, Fish and Wildlife Coordination Act, or other applicable statutes.

o. Clean Water Act (CWA) Section 404 (33 U.S.C. § 1344)

CWA Section 404 regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as levees and some coastal restoration activities), and infrastructure development (such as highways and airports). CWA Section 404 requires a permit from the U.S. Army Corps of Engineers before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities).

p. Rivers and Harbors Act (33 U.S.C. § 407)

A permit may be required from the U.S. Army Corps of Engineers if the proposed activity involves any work in, over or under navigable waters of the United States. Recipients must identify any work (including structures) that will occur in, over or under navigable waters of the United States and obtain the appropriate permit, if applicable.

q. The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 *et seq.*), and Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds, January 10, 2001)

Many prohibitions and limitations apply to projects that adversely impact migratory birds and bald and golden eagles. Executive Order 13186 directs Federal agencies to enter a Memorandum of Understanding with the U.S. Fish and Wildlife Service to promote

conservation of migratory bird populations when a Federal action will have a measurable negative impact on migratory birds.

r. Executive Order 13112 (Invasive Species, February 3, 1999)

Federal agencies must identify actions that may affect the status of invasive species and use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them. In addition, an agency may not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere.

s. Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*)

During the planning of water resource development projects, agencies are required to give fish and wildlife resources equal consideration with other values. Additionally, the U.S. Fish and Wildlife Service and fish and wildlife agencies of states must be consulted whenever waters of any stream or other body of water are “proposed or authorized, permitted or licensed to be impounded, diverted... or otherwise controlled or modified” by any agency under a Federal permit or license.

.05 OTHER NATIONAL POLICY REQUIREMENTS

a. Buy-American Preferences

Strengthening Buy-American Preferences for Infrastructure Projects. Recipients of covered programs (as defined in Executive Order 13858, 31 January 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 sub-award that is chargeable under this Award.

b. Criminal and Prohibited Activities

1. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including money representing grants, loans, or other benefits).
2. The False Claims Amendments Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively), provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United

States must be subject to imprisonment of not more than five years and must be subject to a fine in the amount provided by 18 U.S.C. § 287.

3. The Civil False Claims Act (31 U.S.C. §§ 3729 - 3733), provides that suits can be brought by the government, or a person on behalf of the government, for false claims made under Federal assistance programs.

4. The Copeland Anti-Kickback Act (18 U.S.C. § 874), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract. The Copeland Anti-Kickback Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

5. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and implementing regulations issued at 15 C.F.R. Part 11, which provides for fair and equitable treatment of displaced persons or of persons whose property is acquired as a result of Federal or Federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

6. The Hatch Act (5 U.S.C. §§ 1501-1508 and 7321-7326), which limits the political activities of employees or officers of state or local governments whose principal employment activities are funded in whole or in part with Federal funds.

7. To ensure compliance with Federal law pertaining to financial assistance awards, an authorized representative of a non-Federal entity may be required to periodically provide certain certifications to the DOC regarding Federal felony and Federal criminal tax convictions, unpaid federal tax assessments, delinquent Federal tax returns and such other certifications that may be required by Federal law.

c. Drug-Free Workplace

The non-Federal entity must comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8102) and DOC implementing regulations published at 2 C.F.R. Part 1329 (Government wide Requirements for Drug-Free Workplace – Financial Assistance), which require that the non-Federal entity take certain actions to provide a drug-free workplace.

d. Foreign Travel

1. Each non-Federal entity must comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 through 301-10.143.

2. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as

when a U.S. flag air carrier is unavailable or use of U.S. flag air carrier service will not accomplish the agency's mission.

3. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral "Open Skies Agreements" (U.S. Government Procured Transportation) that allow federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple "Open Skies Agreements" currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA website <http://www.gsa.gov/portal/content/103191>. Information on the Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State's website <http://www.state.gov/e/eeb/tra/>.

4. If a foreign air carrier is anticipated to be used for any portion of travel under a DOC financial assistance award the non-Federal entity must receive prior approval from the Grants Officer. When requesting such approval, the non-Federal entity must provide a justification in accordance with guidance provided by 41 C.F.R. § 301-10.142, which requires the non-Federal entity to provide the Grants Officer with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel; name of the air carrier and flight number for each leg of the trip; and a statement explaining why the non-Federal entity meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the non-Federal entity must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer must make the final determination and notify the non-Federal entity in writing (which may be done through the recipient in the case of subrecipient travel). Failure to adhere to the provisions of the Fly America Act will result in the non-Federal entity not being reimbursed for any transportation costs for which any non-Federal entity improperly used a foreign air carrier.

Note: When using code-sharing flights (two or more airlines having flight numbers assigned to the same flight) involving U.S. flag carriers and non-U.S. flag carriers, the airline symbol and flight number of the U.S. flag carrier must be used on the ticket to qualify as a U.S. flag carrier (e.g. "*Delta Airlines Flight XXXX, operated by KLM*"). Conversely, if the ticket shows "[*Foreign Air Carrier*] XXX, *operated by Delta*," that travel is using a foreign air carrier and is subject to the Fly America Act and must receive prior approval from the Grants Officer as outlined in paragraph G.05.d.4.

e. Increasing Seat Belt Use in the United States

Pursuant to E.O. 13043 (62 FR 19217), non-Federal entities should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally owned vehicles.

f. Federal Employee Expenses and Subawards or Contracts Issued to Federal Employees or Agencies

1. Use of award funds (Federal or non-Federal) or the non-Federal entity's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy may prohibit the acceptance of gifts, including travel payments for federal employees, from non-Federal entities regardless of the source. Therefore, before award funds may be used by Federal employees, non-Federal entities must submit requests for approval of such action to the Federal Program Officer who must review and make a recommendation to the Grants Officer. The Grants Officer will notify the non-Federal entity in writing (generally through the recipient) of the final determination.
2. A non-Federal entity or its contractor may not issue a subaward, contract or subcontract of any part of a DOC award to any agency or employee of DOC or to other Federal employee, department, agency, or instrumentality, without the advance prior written approval of the DOC Grants Officer.

g. Minority Serving Institutions Initiative

Pursuant to E.O.s 13555 (White House Initiative on Educational Excellence for Hispanics) (75 FR 65417), 13592 (Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities) (76 FR 76603), and 13779 (White House Initiative to Promote Excellence and Innovation at Historically Black Colleges and Universities) (82 FR 12499), DOC is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance programs. DOC's goals include achieving full participation of MSIs to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC encourages all applicants and non-Federal entities to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

h. Research Misconduct

The DOC adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 FR 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Non-Federal entities that conduct extramural research funded by DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Non-Federal entities also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Non-Federal entities must notify the Grants Officer of any allegation that meets the

definition of research misconduct and detail the entity's inquiry to determine whether there is sufficient evidence to proceed with an investigation, as well as the results of any investigation. The DOC may take appropriate administrative or enforcement action at any time under the award, up to and including award termination and possible suspension or debarment, and referral to the Commerce OIG, the U.S. Department of Justice, or other appropriate investigative body.

i. Research Involving Human Subjects

1. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. Part 27 (Protection of Human Subjects). No research involving human subjects is permitted under this award unless expressly authorized by specific award condition, or otherwise in writing by the Grants Officer.

2. Federal policy defines a human subject as a living individual about whom an investigator (whether professional or student) conducting research (1) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or (2) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

3. DOC regulations at 15 C.F.R. Part 27 require that non-Federal entities maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the non-Federal entity (generally through the recipient) must submit appropriate documentation to the Federal Program Officer for approval by the appropriate DOC officials. As applicable, this documentation must include:

- i. Documentation establishing approval of an activity in the project by an Institutional Review Board (IRB) under a Federal wide Assurance issued by Department of Health and Human Services or other Federal agency guidelines (*see also* 15 C.F.R. § 27.103);
- ii. Documentation to support an exemption for an activity in the project under 15 C.F.R. § 27.104(d);
- iii. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form;
- iv. Documentation of an IRB approval of continuing review approved prior to the expiration date of the previous IRB determination; and
- v. Documentation of any reportable events, such as serious adverse events, unanticipated problems resulting in risk to subjects or others, and instances of noncompliance.

4. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved

in writing by the Grants Officer. In accordance with 15 C.F.R. § 27.118, if research involving human subjects is proposed after an award is made, the non-Federal entity must contact the Federal Program Officer and provide required documentation. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

j. Care and Use of Live Vertebrate Animals

Non-Federal entities must comply with the Laboratory Animal Welfare Act of 1966, as amended, (Pub. L. No. 89-544, 7 U.S.C. §§ 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects), and implementing regulations (9 C.F.R. Parts 1, 2, and 3); the Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*); Marine Mammal Protection Act (16 U.S.C. §§ 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. §§ 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC financial assistance award unless authorized by the Grants Officer.

k. Management and Access to Data and Publications

1. In General. The recipient acknowledges and understands that information and data contained in applications for financial assistance, as well as information and data contained in financial, performance and other reports submitted by recipients, may be used by the DOC in conducting reviews and evaluations of its financial assistance programs. For this purpose, recipient information and data may be accessed, reviewed and evaluated by DOC employees, other Federal employees, Federal agents and contractors, and/or by non-Federal personnel, all of who enter into appropriate or are otherwise subject to confidentiality and nondisclosure agreements covering the use of such information. Recipients are expected to support program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperating with DOC and external program evaluators. In accordance with 2 C.F.R. § 200.303(e), recipients are reminded that they must take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained relating to a DOC financial assistance award.

2. Scientific Data. Non-Federal entities must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Specific Award Conditions.

3. Publications, Videos, and Acknowledgment of Sponsorship.

i. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded

projects (e.g., scientific research). Non-Federal entities must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Specific Award Conditions.

- ii. Non-Federal entities may be required to submit a copy of any publication materials, including but not limited to print, recorded, or Internet materials, to the funding agency.
- iii. When releasing information related to a funded project, non-Federal entities must include a statement that the project or effort undertaken was or is sponsored by DOC and must also include the applicable financial assistance award number.
- iv. Non-Federal entities are responsible for assuring that every publication of material based on, developed under, or otherwise produced pursuant to a DOC financial assistance award contains the following disclaimer or other disclaimer approved by the Grants Officer:

This [report/video/etc.] was prepared by [recipient name] using Federal funds under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce.

I. Homeland Security Presidential Directive

If the performance of this DOC financial assistance award requires non-Federal entity personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term “routine access” is defined as more than 180 calendar days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services’ (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under a financial assistance award must comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12 (Policy for a Common Identification Standard for Federal Employees and Contractors), Federal Information Processing Standard (FIPS) PUB 201, and OMB Memorandum M-05-24. The recipient must ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The recipient must insert the following term in all subawards and contracts when the subaward recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

The subrecipient or contractor must comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security

Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.

The subrecipient or contractor must account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor must return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee's employment; (3) Upon subaward or contract completion or termination.

m. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations

1. This clause applies to the extent that this financial assistance award encompasses activities that involve export-controlled items.
2. In performing this financial assistance award, a non-Federal entity may participate in activities involving items subject to export control (export-controlled items) under the Export Administration Regulations (EAR). The non-Federal entity is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and re-exports provisions. The non-Federal entity must establish and maintain effective export compliance procedures at DOC and non-DOC facilities, including facilities located abroad, throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate restrictions on export-controlled items, to guard against any unauthorized exports, including in the form of releases or transfers to foreign nationals. Such releases or transfers may occur through visual inspection, including of technology transmitted electronically, and oral or written communications.
3. Definitions
 - i. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730-774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with a military and commercial application. The export (shipment, transmission, or release/transfer) of export-controlled items may require a license from DOC.
 - ii. Deemed Export/Re-export. The EAR defines a deemed export as a release or transfer of export-controlled items (specifically, technology or source code) to a foreign person (foreign national) in the U.S. Such release is "deemed" to be an export to the foreign person's most recent country of citizenship or permanent residency (*see* 15 C.F.R. § 734.13(a)(2) & (b)). A release may take the form of visual inspection or

oral or written exchange of information. See 15 C.F.R. § 734.15(a). If such a release or transfer is made abroad to a foreign person of a country other than the country where the release occurs, it is considered a deemed re-export to the foreign person's most recent country of citizenship or permanent residency. See 15 C.F.R. § 734.14(a)(2). Licenses from DOC may be required for deemed exports or re-exports. An act causing the release of export-controlled items to a foreign person (e.g., providing or using an access key or code) may require authorization from DOC to the same extent that an export or re-export of such items to the foreign person would. See 15 C.F.R. § 734.15(b).

4. The non-Federal entity must secure all export-controlled items that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that the export of such items, including in the form of release or transfer to foreign persons, is prevented, or licensed, as required by applicable Federal laws, E.O.s, and/or regulations, including the EAR.

5. As applicable, non-Federal entity personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items from unauthorized export.

6. To the extent the non-Federal entity wishes to release or transfer export-controlled items to foreign persons, the non-Federal entity will be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed re-exports. Failure to obtain any export licenses required under the EAR may subject the non-Federal entity to administrative or criminal enforcement. See 15 C.F.R. part 764.

7. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, E.O.s or regulations.

8. Compliance with this term will not satisfy any legal obligations the non-Federal entity may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports and re-exports of defense articles and services subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), including the release of defense articles to foreign persons in the United States and abroad.

9. The non-Federal entity must include the provisions contained in this term in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve research or other activities that implicate export-controlled items.

n. The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 C.F.R. Part 175

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if any non-Federal entity engages in certain activities related to trafficking in persons. The DOC hereby incorporates the following award term required by 2 C.F.R. § 175.15(b):

Trafficking in persons.

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;*
- ii. Procure a commercial sex act during the period of time that the award is in effect; or*
- iii. Use forced labor in the performance of the award or subawards under the award.*

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

- i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or*
- ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either— (A) Associated with performance under this award; or (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension – Nonprocurement), as implemented by DOC at 2 C.F.R. Part 1326 (Nonprocurement Debarment and Suspension).*

b. Provision applicable to a recipient other than a private entity. *We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—*

- 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or*
- 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—*

- i. *Associated with performance under this award; or*
 - ii. *Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension – Nonprocurement), as implemented by DOC at 2 C.F.R. Part 1326, (Nonprocurement Debarment and Suspension).*
- c. ***Provisions applicable to any recipient.***
 - 1. *You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.*
 - 2. *Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:*
 - i. *Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and*
 - ii. *Is in addition to all other remedies for noncompliance that are available to us under this award.*
 - 3. *You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.*
- d. ***Definitions. For purposes of this award term:***
 - 1. *“Employee” means either:*
 - i. *An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or*
 - ii. *Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.*
 - 2. *“Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.*

3. “Private entity”:

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25;

ii. Includes: (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b); and (B) A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).

o. The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)

1. **Reporting Subawards and Executive Compensation.** Under FFATA, recipients of financial assistance awards of \$25,000 or more are required to report periodically on executive compensation and subawards, as described in the following term from 2 C.F.R. Part 170, Appendix A, which is incorporated into this award:

Reporting Subawards and Executive Compensation

a. Reporting of first-tier subawards.

1. *Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5) for a subaward to an entity (see definitions in paragraph e. of this award term).*

2. *Where and when to report.*

i. *You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.*

ii. *For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)*

3. *What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.*

b. Reporting Total Compensation of Recipient Executives.

1. *Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—*

- i. *the total Federal funding authorized to date under this award is \$25,000 or more;*
 - ii. *in the preceding fiscal year, you received—*
 - (A) *80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and*
 - (B) *\$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and*
 - iii. *The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)*
2. *Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:*
- i. *As part of your registration profile found at the System for Award Management (SAM) website located at SAM.gov.*
 - ii. *By the end of the month following the month in which this award is made, and annually thereafter.*
- c. ***Reporting of Total Compensation of Subrecipient Executives.***
1. *Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you must report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—*
- i. *in the subrecipient's preceding fiscal year, the subrecipient received—*
 - (A) *80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and*
 - (B) *\$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and*

ii. *The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).*

See also 2 C.F.R. § 200.300(b).

2. *Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:*

i. *To the recipient.*

ii. *By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.*

d. **Exemptions.** *If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report: i. Subawards, and ii. The total compensation of the five most highly compensated executives of any subrecipient.*

e. **Definitions.** *For purposes of this award term:*

1. *Entity means all of the following, as defined in 2 C.F.R. Part 25:*

i. *A Governmental organization, which is a State, local government, or Indian tribe;*

ii. *A foreign public entity;*

iii. *A domestic or foreign nonprofit organization;*

iv. *A domestic or foreign for-profit organization; and*

v. *A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.*

2. *Executive means officers, managing partners, or any other employees in management positions.*

3. *Subaward:*

i. *This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.*

ii. *The term does not include your procurement of property and services needed to carry out the project or program. For further explanation, see Sec. __.210 of the attachment to OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations).*

iii. *A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.*

4. *Subrecipient means an entity that:*

i. *Receives a subaward from you (the recipient) under this award; and*

ii. *Is accountable to you for the use of the Federal funds provided by the subaward.*

5. *Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):*

i. *Salary and bonus.*

ii. *Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.*

iii. *Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.*

iv. *Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.*

v. *Above-market earnings on deferred compensation which is not tax-qualified.*

vi. *Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.*

2. **System for Award Management (SAM) and Unique Entity Identifier Requirements.**

Under FFATA, recipients must obtain a unique entity identifier, currently known as the Data Universal Numbering System (DUNS) number, maintain an active registration in the SAM database, and notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its DUNS number to the recipient, as described in 2 C.F.R. Part 25, Appendix A, which is incorporated into this award:

System for Award Management (SAM) and Unique Entity Identifier Requirements

a. Requirement for SAM Registration. *Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain the currency of your information in SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.*

b. Requirement for Unique Entity Identifier. *If you are authorized to make subawards under this award, you:*

- 1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its Unique Entity Identifier, currently known as the DUNS number, to you.*
- 2. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier, currently known as the DUNS number, to you.*

c. Definitions for purposes of this award term:

1. SAM is the comprehensive system into which the Central Contractor Registration (CCR) system was migrated and is part of the overall Integrated Award Environment (IAE). The information previously maintained in CCR is now contained within the Entity Management area in SAM.gov.

2. DUNS number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 C.F.R. part 25, subpart C:

- i. A Governmental organization, which is a State, local government, or Indian Tribe;*
- ii. A foreign public entity;*
- iii. A domestic or foreign nonprofit organization;*
- iv. A domestic or foreign for-profit organization; and*
- v. A Federal agency, but only as a subrecipient under an award or subaward to a recipient.*

4. *Subaward:*

- i. *This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.*
- ii. *The term does not include your procurement of property and services needed to carry out the project or program. For further explanation, see Sec. __.210 of the attachment to OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations).*
- iii. *A subaward may be provided through any legal agreement, including an agreement that you consider a contract.*

5. *Subrecipient means an entity that:*

- i. *Receives a subaward from you under this award; and*
- ii. *Is accountable to you for the use of the Federal funds provided by the subaward.*

See also 2 C.F.R. § 200.300(b).

p. Recipient Integrity and Performance Matters (Appendix XII to 2 C.F.R. Part 200)

Reporting of Matters Related to Recipient Integrity and Performance

1. **General Reporting Requirement.** If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.
2. **Proceedings About Which You Must Report** Submit the information required about each proceeding that:
 - i. **Is relating to the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;**
 - ii. **Reached its final disposition during the most recent five-year period; and**

iii. Is one of the following:

- (A) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
- (B) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
- (C) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
- (D) Any other criminal, civil, or administrative proceeding if:
 - I. It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
 - II. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - III. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures. Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency. During any period when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions. For purposes of this award term and condition:

- i. Administrative proceeding means a non-judicial process that is adjudicatory in nature to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

ii. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

iii. Total value of currently active grants, cooperative agreements, and procurement contracts includes:

(A) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(B) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

q. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown

This term sets forth initial guidance that will be implemented for Federal assistance awards in the event of a lapse in appropriations, or a government shutdown. The Grants Officer may issue further guidance prior to an anticipated shutdown.

1. Unless there is an actual rescission of funds for specific grant or cooperative agreement obligations, non-Federal entities under Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the award during a funding hiatus. Non-Federal entities are advised that ongoing activities by Federal employees involved in grant or cooperative agreement administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.

2. All award actions will be delayed during a government shutdown; if it appears that a non-Federal entity's performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible government shutdown, the Program Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise non-Federal entities that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, non-Federal entities whose ability to withdraw funds is subject to prior agency approval, which in general are non-Federal entities that have been designated high risk, non-Federal entities under construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able to draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Non-Federal entities should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Non-Federal entities whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.

3. The ASAP system should remain operational during a government shutdown. Non-Federal entities that do not require any Grants Officer or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will still apply notwithstanding a government shutdown (see section B.02.b.1 of these terms).