

FINANCIAL ASSISTANCE SUBAWARD AGREEMENT
between the
NAUGATUCK VALLEY COUNCIL OF GOVERNMENTS
and the
SAVE THE SOUND, INC.

This Agreement (this “**Agreement**”) is made and entered into, by and between the **Save the Sound, Inc.** (hereinafter referred to as the “**Subgrantee**”), and the **Naugatuck Valley Council of Governments** (“**NVCOG**”, hereinafter referred to as the “**Grantor**”), a recipient of a financial assistance award from the Department of Commerce (“**DOC**”) and the National Oceanic and Atmospheric Administration (“**NOAA**”, and collectively with DOC, the “**Agencies**”) and pursuant to the Inflation Reduction Act (“**IRA**”) and/or the Infrastructure Investment and Jobs Act (“**IJA**”, and collectively with the IRA, the “**Acts**”), under Award Number NA23NMF4630027 (the “**Award**”). This Agreement shall become effective on the date signed by the Grantor as set forth below (the “**Effective Date**”).

This Agreement consists of the provisions stated herein, the provisions following the signatures below and the attachments itemized below, all of which are incorporated herein, and together constitute the entire agreement between the Grantor and the Subgrantee and no representations, inducements, promises or agreements not embodied herein shall be of any force or effect, unless the same are in writing.

Attachment A-	Davis Bacon Act Requirements
Attachment B-	Contract Work Hours and Safety Standards Act Requirements
Attachment C-	Customary NVCOG Grant Provisions
Attachment D-	Executive Summary
Attachment E-	Subgrant Workplan
Attachment F-	Brooks Act Requirements
Attachment G-	Award Documents

The signatures of the undersigned indicate that each has read this Agreement in its entirety and agrees to be bound by its terms and provisions.

Dated by the Grantor this Fifth day of January , 2024.

FOR THE GRANTOR

FOR THE SUBGRANTEE

Naugatuck Valley Council of Governments

Save the Sound, Inc.

By: 
Richard Dunne, Executive Director

By: 
Leah Lopez Schmalz, President

**Financial Assistance Subaward Agreement
Between NVCOG and Save the Sound, Inc.**

WHEREAS, Grantor is a regional council of governments formed pursuant to Connecticut General Statutes Chapter 50, Sections 4-124c through 4-124u; and

WHEREAS, Kinneytown Hydro Company, Inc. (“**KHCI**”), is the owner of certain real property and improvements thereon located in the towns of Seymour and Ansonia, Connecticut, upon which the Kinneytown Hydro Project (FERC #6985) operates (the “**Kinneytown Dam**” or the “**Project**”); and

WHEREAS, the Connecticut Brownfield Land Bank, Inc. (“**CBLB**”), in cooperation with the Grantor, has entered a certain Asset Purchase Agreement dated as of April 17, 2023, with KHCI, to purchase the Project for the purposes described in that certain proposal by Grantor to DOC entitled “It’s About Dam Time: Removing Kinneytown Dam to Restore Fish Passage and Advance Environmental Justice” dated August 13, 2022, together with all revisions dated January 26, 2023, January 30, 2023, and February 14, 2023 (“**Application**”); and

WHEREAS, Grantor’s Application was selected for the purposes of the Award, and pursuant to such Award, the Agencies shall make a grant of financial assistance to Grantor (“**Grant Funds**”) pursuant to the following documents (collectively, the “**Award Documents**”):

- i. The Application;
- ii. Financial Assistance Award (Form CD-450), dated 3/30/2023, as amended;
- iii. Department of Commerce Financial Assistance Standard Terms and Conditions, dated November 12, 2020 (“DOC Conditions”);
- iv. Administrative Award Conditions for National Oceanic and Atmospheric Administration (NOAA) Financial Assistance Awards U.S. Department of Commerce, dated as of February 18, 2021 (“NOAA Conditions”);
- v. Line Item Budget – OB Number 4040-0006, Exp. Date: 02/28/2025;
- vi. Specific Award Conditions Award Number: NA23NMF4630027 Amendment: 0 (“**Award Conditions**”);
- vii. Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements (Ref: 79 FR 78390);
- viii. 2 CFR Part 200, Uniform Administrative Requirements Principles, and Audit Requirements, As Adopted Pursuant To 2 CFR § 1327.101; and
- ix. Funding Opportunity Number NOAA-NMFS-HCPO-2022-2007209 posted at Grants.gov on 06/14/2022.

B. At the beginning of each project year, or as soon as reasonably practicable thereafter, Grantor shall notify Subgrantee of the amount of Subgrant Funds that have been appropriated by Congress and made available by the DOC to Grantor (“**Available Funds**”) for the project year. Subgrantee, for each project year, shall limit its expenditures and contractual obligations to the Available Funds for that project year. Any third-party contracts entered into by Subgrantee in connection with the Work shall include provisions that limit Subgrantee’s payment obligations to an amount not to exceed the Available Funds less Subgrantee’s expected expenditures for the applicable project year. Subgrantee shall not be required to complete any portion of the Work for the upcoming project year, nor shall it commence any portion of the Work for such upcoming project year, for which there are no Available Funds. If, for any project year, the DOC withholds any Available Funds (“**Fund Withholding**”), Grantor will promptly notify Subgrantee regarding such Fund Withholding (the “**Withholding Notification**”). Upon receipt of the Withholding Notification, Subgrantee may immediately cease performance of the Work and is not required to resume the Work until the Fund Withholding has been resolved and Grantor has received the Available Funds. If the Fund Withholding is the result of the DOC’s need for additional information or documentation that Subgrantee is obligated to provide, Subgrantee will promptly provide all such information or documentation to Grantor and the DOC. If the Fund Withholding is the result of Subgrantee’s default in the performance its obligations hereunder, Subgrantee will cure such default within thirty (30) days of the Withholding Notification. If the Fund Withholding was due to the failure of the Subgrantee to provide required information or documentation and/or Subgrantee’s default of the Work, this Agreement or the Award Documents, Subgrantee will be entitled to payment of any Available Funds due Subgrantee within thirty (30) days after the following have occurred: (a) Subgrantee has either provided the necessary information to the DOC and Grantor or cured any default; and (b) the Subgrant Funds, which had been subject to the Fund Withholding, have been made available to Grantor. In the event that (a) Grantor does not disburse to Subgrantee Available Funds, or any part thereof, which Grantor has received, or Subgrant Funds are withheld by the DOC due to (i) Grantor’s failure to promptly provide any additional information or documentation to DOC when requested by DOC, or (ii) Grantor’s default of its obligations under the Award Documents, which is not cured within 30 days of its receipt of the Withholding Notification; and (b) Subgrantee is not in default in the performance of the Work, this Agreement or the Award Documents, Subgrantee, may its option, cease performance of the Subgrantee Obligations and submit a final request for reimbursement (the “**Final Request for Reimbursement**”) for all permitted costs incurred as of the date of the Final Request for Reimbursement. Grantor shall pay Subgrantee all amounts specified by the Final Request for Reimbursement within thirty (30) days of its submission to Grantor. Upon receipt of such payment, Subgrantee shall promptly pay all permitted expenditures to itself and third parties who assisted in the performance of the Work. Except for those obligations that explicitly survive the expiration or earlier termination of this Agreement, Subgrantee’s remaining duties and/or obligations under this Agreement, if any, will thereafter become null and void. Nothing herein shall limit Grantor’s remedies for Events of Default under Section 31 of this Agreement.

C. Subgrantee is accountable to Grantor for using Subgrant Funds only for eligible and allowable costs under 2 CFR Part 200 Subpart E and the terms and conditions of the

Award Documents. Subgrantee shall indemnify, defend and hold Grantor harmless from any and all claims resulting from Subgrantee's failure to comply with same.

3. Subject to the terms and conditions of Subsection B of Section 2 of this Agreement, Subgrantee is responsible for all costs incurred. Subgrantee shall not incur additional costs that exceed the Available Funds without a change order agreed to in writing by Grantor. If due to changed and/or unforeseen conditions, the cost of the Work will exceed the Available Funds, Grantor and Subgrantee will meet and attempt to reallocate funds from other budget line items. If additional funding cannot be reallocated, the Work shall be suspended until additional funds are available. Grantor and Subgrantee shall use commercially reasonable efforts to seek additional funding.
4. Subgrantee shall diligently carry out the Work in accordance with all applicable local, state and federal laws and regulations and pursuant to the applicable terms and conditions of the Award Documents. Subgrantee further agrees to indemnify, defend and hold Grantor harmless as a result of its failure to comply with same.
5. Subgrantee will comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, and all other applicable provisions of federal, state and/or local law .
6. Subgrantee will provide Grantor with all reports and other documents required under the Award Documents (in such format or manner as may be directed by NVCOG from time to time) or as may be otherwise required by the Agencies from time to time that are applicable to the Work.
7. To the extent applicable, Subgrantee will adhere to the OMB Cost Principles found at 2 CFR Part 200 *et seq.* for State, Local or Tribal Governments.
8. Subgrantee shall ensure that all Work is performed and completed in accordance with all applicable and/or relevant local, state, and Federal laws, regulations, and requirements. Subgrantee shall be solely responsible at all times for any violations of any local, state, and/or Federal law or requirements arising out of the Work. Subgrantee shall indemnify, defend and hold Grantor harmless from any and all claims resulting from Subgrantee's failure to comply with the foregoing. Under this Agreement, Subgrantee is hiring the "Engineer" for the Project and is not offering to provide engineering services or holding itself as an "Engineer" and is not serving as "engineer of record."
9. As a result of Grantor being awarded the Grant Funds, the following federal laws may be applicable to some or all of the Work, as provided below:
 - A. It is not contemplated that the Work, including the work performed by any contractor or subcontractor of Subgrantee, will be subject to CERCLA §104(g) (1), 40 U.S.C. 276a-276a-5 and 42 U.S.C. 3222, which requires that all laborers and mechanics employed by contractors or subcontractors in the performance of construction, repair or alteration work in connection with CERCLA compliance ("**Eligible Work**") be subject to the prevailing wage requirements of the Davis-Bacon Act which are set forth in **Attachment A**. Nonetheless, out of an abundance of caution, if it is subsequently

determined that any activity comprising the Work involves Eligible Work, Subgrantee shall comply with the Davis-Bacon Act with respect to such Eligible Work, including the following specific requirements: (1) Grantor will provide recent and applicable wage rates from the U.S. Department of Labor and Subgrantee shall incorporate them into the respective contract for the Work; (2) Subgrantee must also maintain accurate records verifying compliance with the Davis-Bacon Act; and (3) Subgrantee must include the provisions contained in **Attachment A** hereof in any Request for Proposals and in any contract in excess of Two Thousand and 00/100 Dollars (\$2,000.00), which is entered into for actual construction, alteration, and/or repair, including painting and decorating.

B. Subgrantee shall include the provisions set forth in **Attachment B** hereof in any contract in an amount in excess of One Hundred Thousand and 00/100 Dollars (\$100,000.00) and which is subject to the overtime provisions of the Contract Work Hours and Safety Standards Act.

C. Subgrantee shall indemnify, defend and hold Grantor harmless from any and all claims resulting from Subgrantee's failure to comply with the foregoing.

10. Subgrantee shall specify in any outreach programs it enters, that Grantor is the sole point of contact for any services coordinated with NOAA. According to the Award Documents, contact between NOAA and Grantor is maintained in the NOAA Grants online award management system.
11. Subgrantee shall conduct all Work at the Property in accordance with the Workplan, this Agreement, and the applicable Terms and Conditions of the Award Documents.
12. Subgrantee shall cooperate with NOAA or NVCOG in connection with any NEPA review that may be performed in connection with the Project.
13. Subgrantee understands and agrees that all of the Subgrant Funds provided by Grantor to Subgrantee shall be used by the Subgrantee towards the Work at the Property.
14. Subgrantee further understands and agrees that the receipt of any Subgrant Funds under this Agreement, is conditioned upon Subgrantee's compliance with the terms and provisions of this Agreement and the applicable Award Documents.
15. Subgrantee shall submit to Grantor all progress and financial reports required by the Award Documents on April 15th and October 15th of each year during the Project period, or as otherwise required. Subgrantee shall submit a comprehensive final report covering the Work during the award period to Grantor within sixty (60) days after the end date of the federal award and as otherwise required by the Award Documents. Nothing herein shall limit the Subgrantee's ability to prepare a final report in advance of such date to the extent completed prior.
16. The Subgrant Funds shall be payable to Subgrantee as reimbursement for eligible and allowable expenses incurred by Subgrantee based upon actual disbursements for costs incurred for Work at the Property.

17. Prior to the requisition of funds, Subgrantee shall submit to Grantor:
 - A. An Opinion of Subgrantee's Counsel that all documents executed by the Subgrantee are valid and enforceable in accordance with their respective terms.
 - B. Written authorization, in the form of a resolution, authorizing Subgrantee to accept the Subgrant Funds from Grantor.
 - C. Evidence of insurance coverage, for both the Subgrantee and its consultants and contractors, with limits of liability, as required by **Attachment C** and as otherwise contemplated under this Agreement and the applicable Award Documents. All required insurance coverage shall remain in full force and effect during the term of this Agreement. All insurance coverage shall name as an additional insured the Grantor and any fee owner of the subject property upon which any Work is performed, with endorsements as necessary or requested to effectuate same. All such insurance requirements shall apply to any third-party contractors which may be permitted hereunder through Subgrantee. To the extent such requisition relates to costs incurred by work performed by a third-party contractor, identification of the contractor and subcontractor as selected by Subgrantee to conduct the Work.
18. Subgrantee shall commence work (the "**Commencement Date**") on the **Effective Date** and shall work diligently to complete all of the Work within three (3) years of the Commencement Date (the "**Completion Date**") unless the Completion Date is extended as set forth herein. In the event Subgrantee is delayed, obstructed, hindered, or interfered with in the commencement, prosecution or completion of the Work by any cause beyond Subgrantee's control and not due to any fault, neglect, act or omission of Subgrantee or its officers, agents, employees, subcontractors, or suppliers, then Subgrantee shall be entitled to a corresponding extension of time to complete the Work. Such causes beyond Subgrantee's control include, but are not limited to, acts, omissions, neglect, negligence, or defaults of Grantor, DOC, or NOA, or of anyone employed by any of the foregoing, or by any other contractor or subcontractor engaged by any of the foregoing, as well as damage caused by fire or other casualty, or by an inability to obtain required permit(s), shortages or delays in obtaining materials, strikes, fires, war, terrorist acts, acts of God, unworkable weather conditions, labor shortages, pandemics, and endemics.
19. All Work performed pursuant to this Agreement and with Grant Funds shall be performed in a good and workmanlike manner.
20. All material changes or modifications to the Work funded by this Agreement shall be subject to approval in writing by Grantor and any and all federal and state regulators that have jurisdiction over the Project ("**Governmental Approval**") and shall be incorporated into this Agreement by amendment prior to such change or modification becoming effective. All additional costs incurred, as the result of any amendment shall be administered as provided in this Agreement.
21. To the extent expressly included in the Work Plan or this Agreement, and funded by Grantor in accordance with this Agreement, Subgrantee's obligation is to exercise

commercially reasonable efforts to obtain all applicable permits, licenses, approvals, certifications, and inspections required by Federal, state or local law that are associated with the design services required by the Work and to maintain such permits, licenses, approvals, certifications, and inspections in current status during the Project.

22. Subgrantee shall:
 - A. Ensure that all procurements conducted with Subgrant Funds comply with 2 CFR Part 200 Subpart D, 200.317-200.327, as applicable, and with those requirements for architect and engineer procurement promulgated under the Brooks Act (see **Attachment F**).
 - B. Notify Grantor when the Work is complete. Such notice shall contain certification or documentation that the Work is complete and has been performed in accordance with the terms of this Agreement and the Workplan and all requirements contained in the Award Documents that are applicable to the Subgrantee. The notice shall also summarize the actions taken at the Property, the resources committed, and the problems encountered in completion of the Work, if any, and shall be submitted to Grantor for its review and approval before it is finalized.
23. Subgrantee shall include, in any press release or public communication pertaining to the Project, a statement that the Work is funded by the Agencies, awarded by the Naugatuck Valley Council of Governments, and appropriate reference(s) to NOAA and DOC funding.
24. Subgrantee agrees to maintain financial and programmatic records pertaining to all matters relative to this Agreement in accordance with 2 CFR Part 200.302(b) and 2 CFR Part 200.334-337 and generally accepted accounting principles and procedures and to retain all of its records and supporting documentation applicable to this Agreement for a period of seven (7) years following the completion and close out of Award Number NA23NMF4630027, except as follows:
 - A. Records that are subject to audit findings shall be retained seven (7) years after such findings have been resolved.
 - B. All records and supporting documents associated with the Project shall be submitted by Subgrantee to Grantor and may be provided by Grantor to representatives of any authorized representatives of the State or Federal Government for inspection or audit.
25. Subgrantee agrees to submit to Grantor, or its designated representative, its records and books relative to this Agreement. If Grantor or its representative finds that the records delivered by Subgrantee are incomplete, after Grantor provides Subgrantee with reasonable notice and an opportunity to cure, Subgrantee agrees to pay for Grantor's or its representative's costs to travel to Subgrantee's office or other location where the relevant books or records are located to audit or retrieve the complete records.
26. Subgrantee shall comply with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, Subgrantee will undertake good faith efforts, in compliance with 2 CFR Part 200.321, to give opportunities for qualified

Small Business Enterprises (SBE), Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE).

27. Subgrantee shall cooperate with Grantor and the Agencies with respect to, and comply with, all other applicable laws and regulations including, but not limited to those indicated on **Attachment C**.
28. No failure of either party to exercise any power or right given it hereunder or to insist on strict compliance by the other party with its obligations hereunder, or custom of practice of the parties at variance with the terms hereof, shall constitute a waiver of the other party's right to demand, at any time, exact compliance with the terms hereof.
29. If Subgrantee ceases to perform any Work prior to completion, then, in that event, Subgrantee shall, within fifteen (15) days of the date it ceases to perform the Work, repay to Grantor the relevant amount of Subgrant Funds advanced to Subgrantee that has not been earned by Subgrantee and is for Work that has not been performed. Nothing in this section shall limit or preclude Grantor's remedies under Section 31 of this Agreement.
30. Subgrantee shall be deemed to be in default under this Agreement upon the occurrence of any or more of the following events (each an "**Event of Default**"):
 - A. Subgrantee assigns this Agreement or any Subgrant Funds advanced hereunder, without the prior written consent of Grantor.
 - B. Any representation or warranty made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement shall prove to be false or misleading in a material respect.
 - C. Subgrantee fails to complete all of the Work prior to the Completion Date, subject to such extensions of time afforded to Subgrantee in accordance with this Agreement.
 - D. Subgrantee defaults, or causes Grantor to be in default, in the performance of any term, covenant or condition to be performed hereunder or contained within the Award Documents and such default is not remedied within thirty (30) days from and after receipt of written notice from Grantor to Subgrantee, specifying said default, or if such default cannot be reasonably cured within that thirty (30) day period, and remedial effort is not commenced within such period and diligently and continuously pursued until such default is cured.
 - E. Any proceeding involving Subgrantee commenced under any bankruptcy or reorganization arrangement, probate, insolvency, readjustment of debt, dissolution or liquidation law of the United States, or any state, but if such proceedings are instituted, no Event of Default shall be deemed to have occurred hereunder unless Grantor either approves, consents to, or acquiesces in such proceedings, or such proceedings are not dismissed within sixty (60) days.
 - F. An order, judgment or decree is entered, without the application, approval or consent of Grantor, by any court of competent jurisdiction approving the appointment of a

receiver, trustee or liquidator of Subgrantee of all or a substantial part of its assets, and such order, judgment or decree shall continue in effect for a period of sixty (60) days.

31. Upon the occurrence of any one or more of the Events of Default enumerated in Section 30, Grantor shall have the right to proceed by appropriate judicial proceedings to enforce Subgrantee's performance or observation of the applicable provisions of this Agreement and/or terminate this Agreement and recover damages from Subgrantee to the extent allowed by law. If an Event of Default occurs as a result of the actions or omissions of the engineering firm (the "**Engineer**") retained by Subgrantee in connection with the Work, the plans, specifications and bid documents for the removal of the Kinneytown and Coe Pond Dams, and/or the construction management of such removal activities, Grantor shall exercise its remedies hereunder against the Engineer. If the claims are such that Grantor cannot exercise its remedies against the Engineer, Grantor may proceed to enforce its remedies against Subgrantee. Any applicable Statute of Limitations will be tolled for the period in which Grantor seeks to enforce its remedies against the Engineer. Grantor's obligation to proceed against the Engineer is conditioned upon Subgrantee including in any of its agreements with the Engineer (the "**Engineering Agreements**") a provision indicating that the Engineer acknowledges and agrees that the Grantor is a third-party beneficiary of the Engineering Agreements and that Grantor may proceed directly against the Engineer for any default by the Engineer of the Engineering Agreements or any action or omission by the Engineer which results in a default by Subgrantee of this Agreement.
32. All notices, requests, instructions or other documents to be given hereunder to either party by the other shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Agreement. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the date on which personally delivered or, if sent by certified or registered mail, on the day mailed to the parties as follows:

TO THE GRANTOR:

Naugatuck Valley Council of Governments
49 Leavenworth Street, 3rd Floor
Waterbury, CT 06702
Attn: Executive Director

TO THE SUBGRANTEE:

Save the Sound, Inc.
127 Church Street, 2nd Floor
New Haven, CT 06510

or to such other address as a party may subsequently specify in writing to the other party.

33. The provisions of this Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

34. Subgrantee shall not assign or attempt to assign directly or indirectly, any of its rights under this Agreement or under any instrument referred to herein without the prior written consent of Grantor. If any mechanics lien is filed against the Property by Subgrantees agents, contractors or subcontractors, Subgrantee shall promptly notify Grantor of such filing and make all reasonable and timely efforts to cause the same to be canceled and discharged.
35. This Agreement is not intended to create or vest any rights in any third party or to create any third-party beneficiaries.
36. If any provision or item of this Agreement is held invalid, such invalidity shall not affect other provisions or items of this Agreement that can be given effect without the invalid provisions or items, and to this end, the provisions of this Agreement are hereby declared severable.
37. Except for any exhibits, attachments, plans or other documents as may be affixed hereto, made a part hereof, and properly identified herewith, this Agreement constitutes the entire contract between the parties, and shall not be otherwise affected by any other purported undertaking, whether written or oral.
38. All amendments to this Agreement shall be in writing and signed by both parties hereto.
39. This Agreement may be executed in two or more counterparts, and transmitted by way of facsimile or e-mail, each of which shall be deemed an original, but all of which together shall constitute the same instrument.
40. Sections 2., 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 21, 22.A, 24, 25, 26, 27, and 29 of this Agreement, and the provisions of **Attachment C** shall survive the expiration or earlier termination of this Agreement for eight (8) years.

ATTACHMENT A
“DAVIS BACON REQUIREMENTS”

To the extent that these requirements are applicable to the Work, the Subgrantee shall include the following provisions in any Request for Proposals and in any resulting contract in excess of \$2,000 which is entered into for actual construction, alteration, and/or repair, including painting and decorating.

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

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

(ii)(A) All contracts and subcontracts entered into by the Subgrantee shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The relevant Award Official shall approve, upon the request of the Subgrantee, an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Grantor and Subgrantee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Grantor and Subgrantee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Grantor shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. The relevant Award Official will direct the Grantor take appropriate action to implement the Administrator's determination.

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

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

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

(2) *Withholding.* The Grantor shall upon written request of the relevant Award Official or an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers,

employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work all or part of the wages required by the contract, the relevant representative(s) of the Agencies may, after written notice to the Grantor, Subgrantee, or contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Subgrantee and Grantor who will maintain the records on behalf of the Agencies. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under §5.5(a)(3)(i) of Regulations 29 CFR part 5 except that full social security numbers and home addresses shall not be included on weekly transmissions. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instruc.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and Subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Grantor for transmission to the Agencies, if requested by the Agencies, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractors for its own records, without weekly submission to the Grantor.

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

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

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

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

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

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

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

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

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

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

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

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

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Agencies may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5. and to ensure that all required provisions of the Federal government relative grants and related regulations are incorporated in each contract or subcontract.

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

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

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

(10) *Certification of eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(11) *Compliance with Davis-Bacon and Related Act requirements.* Subgrantee acknowledges that it is Subgrantee's responsibility to comply with the provisions of the Davis - Bacon Act and related Acts. Subgrantee shall hold Grantor harmless as a result of any failure to comply with same.

[End of Attachment A]

ATTACHMENT B

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

To the extent that these requirements are applicable to the Work, the Subgrantee shall include the following provisions in any Request for Proposals and in any resulting contract and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. As used below, the terms laborers and mechanics include watchmen and guards.

Section A

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

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clauses set forth in paragraph (A)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clauses paragraph (A)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clauses set forth in paragraph (A)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* Save the Sound, Inc. shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clauses set forth in paragraph (A)(1) of this section.

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

Section B

In addition to the clauses contained paragraph A, in any contract subject only to the Contract Work Hours and Safety Standards Act, the Contractor or Subcontractor shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the

course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Contractor or Subcontractor shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Naugatuck Valley Council of Governments and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

[End of Attachment B]

ATTACHMENT C NVCOG CUSTOMARY PROVISIONS

The following NVCOG Customary Provisions are incorporated in the Financial Assistance Subaward Agreement between the Naugatuck Valley Council of Governments and Save The Sound, Inc. and made a part thereof:

- 1. Entire Agreement:** This Agreement 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/Venue:** This Agreement will be governed by the laws of the State of Connecticut. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the Grantor or Subgrantee in the Connecticut Superior Court for the Judicial District of Waterbury at Waterbury, Connecticut, and each of the Parties irrevocably consents to the sole and exclusive jurisdiction of such court (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.
- 3. Appropriations:** The Parties acknowledge that the Award extends into more than one project year. If Grant Funds are not appropriated by Congress or made available to Grantor by the DOC for an upcoming project year (the "Unfunded Project Year"), GRANTOR or Subgrantee, prior to the start of the Unfunded Project Year, suspend or cancel this Agreement, Notwithstanding the foregoing, Grantee shall pay Subgrantee all amounts due for the project year preceding the Unfunded Project Year in accordance with Section 2 of FINANCIAL ASSISTANCE SUBAWARD AGREEMENT.
- 4. No Employee Benefits For Subgrantee:** The Subgrantee understands that the GRANTOR will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation and sick leave, workers' compensation or other benefits or services available to GRANTOR employees, nor will the GRANTOR withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Grant Agreement. The Subgrantee understands that all tax returns required by the Internal Revenue Code and the State of Connecticut including, but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Subgrantee, and that information as to grant income will be provided by the GRANTOR to the Internal Revenue Service and the Connecticut Department of Revenue Services, where required.
- 5. Independence, Liability:** The Subgrantee will act in an independent capacity and not as officers or employees of the GRANTOR.

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

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

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

6. Insurance: Before commencing work on this grant, in addition to any other coverage required under the Award Documents, the Subgrantee must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Subgrantee to maintain current certificates of insurance on file with the GRANTOR through the term of the grant. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Subgrantee for the Subgrantee's operations. These are solely minimums that have been established to protect the interests of the GRANTOR.

- Workers Compensation: With respect to all operations performed, the Subgrantee shall carry workers' compensation insurance in accordance with the laws of the State of Connecticut.
- General Liability and Property Damage: With respect to all operations performed under the grant, the Subgrantee shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations
Products and Completed Operations
Personal Injury Liability
Contractual Liability

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

\$3,000,000 Per Occurrence
\$6,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$50,000 Fire/Legal/Liability

Subgrantee shall name the GRANTOR and its officers and employees as additional insureds for liability arising out of this grant.

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

Subgrantee shall name the GRANTOR and its officers and employees as additional insureds for liability arising out of this grant.

Any Consulting firm(s) hired by the Subgrantee shall, during the term of this Agreement, maintain insurance of the types and limits described above. Such Consulting firm(s) shall also maintain professional liability insurance which provides coverage for any and all services performed on behalf of the Subgrantee in connection with the Work. Professional liability insurance coverage shall be in a minimum amount of \$1 million per occurrence/ \$1 million aggregate.

7. Reliance by the GRANTOR on Representations: All payments by the GRANTOR under this Grant Agreement will be made in reliance upon the accuracy of all prior representations by the Subgrantee, including but not limited to bills, invoices, progress reports and other proofs of work.

8. Records Available for Audit: The Subgrantee will maintain all books, documents, payroll papers, accounting records, correspondence, and other evidence pertaining to costs incurred under this Grant Agreement and make them available at reasonable times during the period of the Grant and for seven years thereafter for inspection by any authorized representatives of the GRANTOR. 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. The GRANTOR, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Grant Agreement.

9. Fair Employment Practices and Americans with Disabilities Act: Subgrantee 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. Subgrantee 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 Subgrantee under this Grant Agreement. Subgrantee further agrees to include this provision in all sub-grants.

10. Set Off: The GRANTOR may set off any sums which the Subgrantee owes the GRANTOR against any sums due the Subgrantee under this Agreement.

11. Taxes Due to the State:

a. Subgrantee understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

b. Subgrantee certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Subgrantee is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Connecticut.

c. Subgrantee understands that any payment under this Agreement may be withheld if the Commissioner of Revenue Services determines that the Subgrantee is not in good

standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Connecticut.

d. Subgrantee also understands the GRANTOR may off-set taxes (and related penalties, interest, and fees) due to the State of Connecticut, but only if the Subgrantee has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Subgrantee has no further legal recourse to contest the amounts due.

12. Subgranting: Subgrantee shall not assign or sub-grant the performance of this Grant or any portion thereof to any other Sub-grantee without the prior written approval of GRANTOR. The Subgrantee must advise its sub-grantees of requirements imposed on them by state laws, regulations, and the provisions of grants or grant agreements as well as any supplemental requirements imposed by the GRANTOR. They must also set up a plan for monitoring their sub-grantees' use of the funds.

13. No Gifts or Gratuities: Subgrantee 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 GRANTOR during the term of this Grant Agreement.

14. Copies: All written reports prepared under this Grant Agreement will be printed using both sides of the paper.

15. Suspension and Debarment: Non-federal entities are prohibited by Federal Executive Orders 12549 and 12689 from granting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement grants for goods or services equal to or in excess of \$100,000 and non-procurement transaction (grants). By signing this Grant Agreement, current Subgrantee certifies as applicable, that the Subgrantee organization and its principals are not suspended or debarred by GSA from federal procurement and non-procurement programs.

[End of Attachment C]

ATTACHMENT D EXECUTIVE SUMMARY

I. PARTIES

This is a Subgrant Agreement (this “Agreement”) between the **Naugatuck Valley Council of Governments** (hereinafter called “**Grantor**”), and **Save the Sound, Inc.** (hereinafter, called “**Subgrantee**”). Subgrantee is required by law to have a Federal ID# and same is _____.

II. SUBJECT MATTER

The subject matter of this Agreement involves the decommissioning and removal of the Kinneytown Dam, obtaining the required regulatory permits and approval in connection therewith, and compliance with all environmental regulations, including all required remediation at **Kinneytown Dam**, City/Town-owned parcel, known as **(a) 677 South Main Street, Seymour, CT, (b) 769 Derby Avenue, Seymour, CT, and (c) 0 Hotchkiss Terrace, Ansonia, CT,**

III. MAXIMUM AMOUNT

In consideration of the services to be performed by Subgrantee, the Grantor agrees to pay Subgrantee, in accordance with the payment provisions set forth herein, a sum not to exceed _____.

IV. GRANT TERM

The period of Subgrantee’s performance shall begin upon of the Effective Date of this Agreement and end **three year from the Effective Date (“Completion Date”)**.

V. SOURCE OF FUNDS

Federal 100% Other 0%

VI. FEDERAL AWARD INFORMATION

CFDA Title: Restoring Fish Passage through Barrier Removal Grants under the Infrastructure Investment and Jobs Act

CFDA Number: 11.463

Project Name: It’s About Dam Time: Removing Kinneytown Dam to Restore Fish Passage and Advance Environmental Justice.

Program Year: 2023

Federal Granting Agency: The National Oceanic and Atmospheric Administration / United States Department of Commerce

Research and Development Grant: No

VII. AMENDMENT

No changes, modifications, or amendments in the terms and conditions of this Agreement shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the Grantor and Subgrantee.

VIII. CANCELLATION (intentionally omitted)

IX. CONTACT PERSONS

The Grantor's contact person for this award is:

Name: Aaron Budris

Telephone Number: 203-489-0362

The Subgrantee's contact person for this award is:

X. FISCAL YEAR

The Subgrantee's fiscal year starts July 1 and ends June 30. **[CONFIRM]**

XI. ATTACHMENTS

This Agreement includes the following attachments that are incorporated herein:

Attachment A-	Davis Bacon Act Requirements
Attachment B-	Contract Work Hours and Safety Standards Act Requirements
Attachment C-	Customary NVCOG Grant Provisions
Attachment D-	Executive Summary
Attachment E-	Subgrant Workplan
Attachment F	Brooks Act Requirements
Attachment G	Award Documents

**ATTACHMENT E
SUBGRANT WORKPLAN**

**SUBAWARD AGREEMENT
between the
NAUGATUCK VALLEY COUNCIL OF GOVERNMENTS
and the
SAVE THE SOUND, INC.**

**Save the Sound's Subgrant Workplan
for the Kinneytown Dam Removals/FERC Decommissioning**

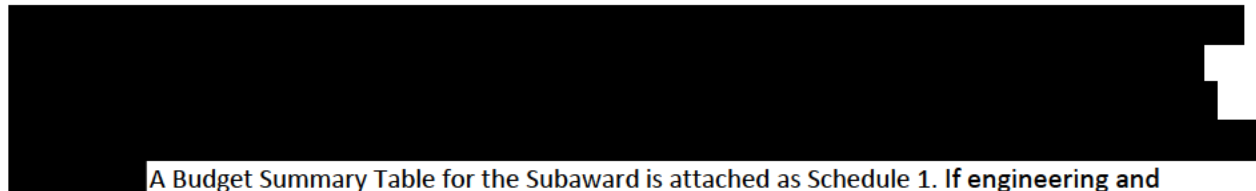
Save the Sound's workplan for the Kinneytown Dam Removals/FERC Decommissioning includes the retention and supervision of the selected professional engineering firm that will provide the design, permitting, and construction observation with field-based and office-based engineering support for the removal of the Kinneytown Dam on the Naugatuck River and the Coe Pond Dam on Coe Pond. Save the Sound ("STS") will be leading the outreach efforts for the project with assistance from the Naugatuck Valley Council of Governments (NVCOG). STS will retain and supervise a film production company that will produce a documentary film in collaboration with the Naugatuck River Revival Group (NRRG). The work described in this workplan will be conducted as a sub-awardee to the NOAA Fish Passage Grant awarded to the NVCOG. The order of items listed in this workplan does not reflect the order in which these items will be performed. Instead, the items listed in this workplan are grouped by task and delineate the work being performed by STS' staff. The work that will be performed by STS' consultants and/or subcontractors, i.e., engineers, filmmakers, community liaisons, and general counsel lawyers, is distinguished in italics.

SAVE THE SOUND TASKS

1. ADMINISTRATION OF ENGINEERING CONTRACT & ASSIST NVCOG WITH CONSTRUCTION CONTRACT (Year 1-3)

- 1.1. **NOAA Subaward Contracting and Contract Oversight:** STS will provide administrative management of STS' subaward contract with NVCOG for the NOAA Fish Passage Grant awarded to NVCOG. STS will provide NVCOG with all information and documentation as required for all semiannual and interim reporting to NOAA for the work outlined in this workplan, in a format prescribed by NVCOG.
- 1.2. **Procurement of Engineering & Permitting Services:** STS will retain a professional engineering firm licensed in the State of Connecticut via a request for qualifications ("RFQ") process. As a result of the RFQ process, STS shall select the professional engineering firm most qualified to perform the required work by taking into account the proposers' qualifications, personnel, time in existence as a corporate entity, history of professional discipline (if any), experience with similar projects, capacity to meet the required schedule, and proposed cost. In the RFQ process, the proposed cost will be an important factor in selecting the professional engineering firm but will not be determinative. The selected professional engineering firm shall gather

existing data, complete all necessary studies, prepare and submit permit applications, and produce stamped engineering designs, i.e. "Construction Documents," for the removal of the Kinneytown and Coe Pond Dams. In year one, it is anticipated that the engineering work will include data collection and fieldwork, engineering analysis and design, and preparation and submittal of the materials required to decommission the dams and satisfy permitting requirements. In year two, it is anticipated that the selected professional engineering firm will work with regulators, with assistance from Save the Sound and project partners, to respond to comments and make any necessary edits to final designs and prepare bid package documents for construction. In year three, it is anticipated that the selected professional engineering firm will assist NVCOG in the review of construction bids and selection of the contractor that will be responsible for the removal of the dams, and provide construction observation as required for the removal of the dams, including, but not limited to, the removal of the Kinneytown and Coe Pond Dams. *At all times pertinent hereto, the selected professional engineering firm shall take reasonable steps to monitor the contractor's compliance with the permitted design; respond to issues and questions raised by the contractor, Save the Sound, project partners, or regulators; and close out permits as required.*



A Budget Summary Table for the Subaward is attached as Schedule 1. If engineering and permitting bids, or later change orders from STS's subcontractors, exceed the amounts awarded to STS by NOAA for such budget items, STS will not select any bidder or agree to any change order until (a) it has notified NVCOG of such exceedance; and (b) the additional amounts required have been either reallocated from other budget line items or obtained from other funding sources, including NOAA. STS and NVCOG will cooperate in good faith to obtain the additional project funding required, if it cannot be reallocated from other budget line items. Year three funding has not yet been awarded by NOAA, therefore none of the year three tasks will be initiated unless additional NOAA funding is secured.

A detailed list of the tasks and deliverables that will be provided by the professional engineering firm retained by STS are as follows.

SUBCONTRACTED ENGINEERING & PERMITTING (YEAR 1-3)

The engineering and permitting scope of work included in the Request for Qualification/Proposals developed by Save the Sound for an engineering subcontractor will include:

A. Engineering Project Management/Coordination (Year 1-3)

- A.1. Project Management/Coordination (including with DOT and RR, and project partners)***
- A.2. Project Meetings (10)***
- A.3. Bi-weekly Update Meetings/Calls***

B. Data Collection/Field Work (Year 1)

- B.1. Collection & Review of Existing Data***

- B.2. *Wetland & Regulated Resource Delineation*
- B.3. *Utility Investigation*
- B.4. *Property Boundaries/Easement Mapping for access routes and right of ways. Remaining property boundaries will be based on existing NVCOG property boundary mapping and/or GIS tax assessor mapping overlays.*
- B.5. *Topographic Survey*
- B.6. *Bathymetric Survey and sediment depths to potentially identify underlying riverbed and/or bedrock*
- B.7. *Natural Diversity Database Submission for known Rare, Threatened, and Endangered Species*
- B.8. *Set Photo Points*
- B.9. *Set Monitoring Monuments*
- B.10. *Powerhouse Assessment for Contaminants*

Note: NVCOG will coordinate with EPA to conduct a Phase I ESA, Phase II Oversight / Doc Prep, Phase II Lab Analysis, Sediment Transport/Mobility Analysis, and develop a Sediment Management Plan. This work will include the following and is not part of the STS Workplan:

- *Sediment Sampling & Analysis QAPP*
- *Sediment Sampling Plan (& CT DEEP Signoff) (includes both impoundments)*
- *Mechanical Borings & Sediment Sample Collection (both impoundments)*
- *Upstream and Downstream Sediment Sample Collection*
- *Sediment Lab Analysis (physical and chemical on up to 25 samples) and Comparison to Criteria*
- *Hazardous Building Materials Assessment (HBMA) x 4 Building w/ Lab Analysis*
- *Sediment Management Plan (with LEP)*
- *Sediment Transport/Mobility Analysis*

C. Engineering Analysis (Year 1-2)

- C.1. *Alternatives Analysis of Dam Removal Options (10%)*
- C.2. *Geomorphic Channel Assessment (with substrate characterization)*
- C.3. *Streambank Stability Analysis (for Route 8 and RR embankments)*
- C.4. *Hydrologic Analysis*
- C.5. *Hydraulic Analysis with Flood Reduction & Fish Passage Assessments (Water surface profile modeling run with storm flows, median monthly flows, and 5th and 95th percentiles of the flow range associated with the fish passage migration period, and assessment of flood impacts/attenuation)*
- C.6. *Environmental Assessment of Potential Impacts*
- C.7. *Well Impact Assessment (identify areas not on public water – determine potential impacts)*
- C.8. *Broad Street Bridge Scour Assessment*

D. Engineering Design (Year 1-2)

- D.1. *Project Conceptual Design Renderings*
- D.2. *Invasive Species Management Plan*

- D.3. *Restoration & Planting Plan*
- D.4. *Preliminary Engineering Design Plans for Dam Removal (30%, 60%)*
- D.5. *Preliminary Basis of Design Report*
- D.6. *Preliminary Engineers Estimate of Probable Cost (with Contractor Input/Review)*
- D.7. *Preliminary Technical Specifications*
- D.8. *Final Design Plans for Dam Removal (90%)(includes E&S, construction sequencing, profile, x-sections, sediment depths, restoration plan, large wood/boulder placement, planting, invasive species management, details, notes, etc.)*
- D.9. *Final Basis of Design Report*
- D.10. *Final Engineer's Estimate of Probable Cost*
- D.11. *Final Bid Package (NVCOG front end and technical specifications) with Bid Form & Quantities*
- D.12. *Construction Monitoring Recommendations (ie turbidity, bank stability, shellfish impacts)*

Note: The engineering design services for Relocation of Sewer Siphons Phase II Oversight / Doc Preparation will be completed under a separate contract issued by NVCOG.

E. Permitting (Year 1-2)

National Environmental Policy Act (NEPA) documentation is to be prepared by NOAA utilizing NOAA's Programmatic Environmental Impact Statement (PIES) for Habitat Restoration Activities Implemented throughout the Coastal US and an Inclusion Analysis for the Implementation Phase. An Inclusion Analysis has already been prepared by NOAA for the Design & Permitting Phase.

- E.1. *Section 106 Consultation (to be initiated early on)*
 - E.1.1. *APE Determination & Mapping*
 - E.1.2. *Historic & Archeological Assessment - Update 1999 Report*
 - E.1.3. *Correspondence with SHPO, THPOs, NOAA as Lead Federal Agency*
 - E.1.4. *Coordination with Advisory Council on Historic Preservation (ACHP)*
 - E.1.5. *Preparation of Draft & Final MOA between NOAA, SHPO, THPOs, NVCOG, etc.*
- E.2. *Coordination with Resource Agencies*
- E.3. *Initial Regulatory Consultation (2)*
- E.4. *Pre-Application Meetings (2)(An initial meeting was conducted on April 6th, 2023)*
- E.5. *State Consultations (Dam Safety, Fisheries Review, Remediation Review, 401, Diversion, Flood Management, Stormwater) and preparation and submission of any state permits and certifications.*
- E.6. *FERC License Surrender (Decommissioning) Submission of design plans and report to FERC*
- E.7. *USACE Permit (Individual)*
- E.8. *Municipal Consultations*

- E.9. *Public Meetings (3)*
 - E.9.1. *Initial Public Meeting*
 - E.9.2. *30% Design Public Meeting*
 - E.9.3. *90% Design / Section 106 Meeting*

F. Bid Assistance (Year 2)

- F.1. *Respond to Regulatory Review & Revision of Bid Documents (100%)(plans, report, cost and bid package based on regulatory input and final permits)*
- F.2. *Respond to Contractors Questions Re: Design and Bid Package*
- F.3. *Review Bids & Make Recommendations*
- F.4. *Assist with Negotiations for Construction Costs*

G. Construction Observation (Year 3)

- G.1. *Office-based administrative services associated with construction observation*
- G.2. *Field-based services associated with construction observation (weekly construction observation – Adequate to ensure that construction is in general compliance with design plans and specifications)*
- G.3. *Design Services During Construction*
- G.4. *Review change orders and make recommendations to STS and NVCOG*
- G.5. *Valuation of requests for field changes and change orders*
- G.6. *Review and approve shop drawings and other submittals*
- G.7. *Notify STS and NVCOG in writing of any substantial deviation from the design plans and specifications*
- G.8. *Weekly Construction Meetings (Hybrid)*
- G.9. *Update HEC-RAS Model w/ As-Built Survey and Cross-Sections for future Letter of Map Revision*
- G.10. *Construction Close-Out*

H. Regulatory Close Out (Year 3)

- H.1. *Close out Permits as per Regulatory Requirements*

Deliverables of selected professional engineering firm:

- *Attendance at coordination meetings*
- *Attendance at Public Meetings*
- *Attendance at Bi-weekly Update Meetings/Calls*
- *Topographic Survey*
- *Bathymetric Survey*
- *Natural Diversity Database Submission for known Rare, Threatened, and Endangered Species*
- *Photo Points Mapping*
- *Monitoring Monuments*
- *Project Conceptual Design Renderings*

- *Preliminary (30%, 60%) and Final (90%, 100%) Engineering Design Plans for Dam Removal*
 - *Wetland & Regulated Resource Mapping*
 - *Utility Mapping*
 - *Restoration & Planting Plan*
- *Preliminary & Final Basis of Design Report*
 - *Summary of data collected*
 - *Alternatives Analysis of Dam Removal Options (10%)*
 - *Powerhouse Assessment for Contaminants*
 - *Geomorphic Channel Assessment (with substrate characterization)*
 - *Streambank Stability Analysis (for Route 8 and RR embankments)*
 - *Hydrologic and Hydraulic Analysis Memorandum*
 - *Environmental Assessment of Potential Impacts*
 - *Well Impact Assessment*
 - *Broad Street Bridge Scour Assessment*
 - *Invasive Species Management Plan*
 - *Preliminary and Final Engineer's Estimate of Probable Cost*
 - *Construction Monitoring Recommendations*
- *Preliminary Technical Specifications*
- *Final Bid Package with Bid Form & Quantities*
- *All necessary Permit Submittals including License Surrender (Decommissioning) Submission of design plans and report to FERC*
- *Section 106 Consultation*
 - *APE Determination & Mapping*
 - *Historic & Archeological Assessment - Update 1999 Report*
- *Attendance at regulatory meetings*
- *Recommendations regarding Contractor Bids*
- *Construction Observation – Office-based Review & Approve Submittals and Field-based Observation*
- *Attendance at Weekly Construction Meetings*
- *Construction Observation Logs*
- *Construction Close Out Memorandum*
- *Close our Permits as per Regulatory Requirements*

1.3. **Conferences:** STS will attend and present at regional and/or national ecological restoration and aquatic connectivity conferences to present on the Kinneytown project and keep updated on the latest best practices in dam removal and hydroelectric dam decommissioning.

Travel, Supplies and Materials for Task 1:

This task does not include travel or material costs, other than those included in the subcontract to NRRG.

Deliverables for Task 1:

- Subaward contract with NVCOG and contract reporting
- Contracts with subcontractors (Engineering firm, Community Liaisons, Film Production firm)
- Deliverables associated with engineering and permitting for the removal of Kinneytown and Coe Pond Dams as outlined above and within the limits of available NOAA funding
- Attendance at one Conference
- PowerPoint presentation of the project

2. PROJECT MANAGEMENT OF ENGINEERING SERVICES DURING DESIGN (Year 1-3)

2.1. STS will oversee the selected professional engineering firm and serve as the primary point of contact and liaison between the selected professional engineering firm and STS' Project Partners (NVCOG, NRRG, NOAA). *STS' legal counsel shall assist in drafting and reviewing all contracts to which STS is a party in relation to the project, including but not limited to review of new contracts, review of bid documents, and amendments to contracts as necessary.* STS will attend regulatory, project team, and public meetings. STS will communicate and coordinate regularly with NVCOG on project activities and progress at weekly or biweekly meetings as needed. With regard to the services to be provided by the selected professional engineering firm, STS will:

- a. Provide available data pertaining to the existing conditions;
- b. Coordinate fieldwork;
- c. Review the interim and final deliverables produced by the selected professional engineering firm;
- d. Coordinate reviews of draft deliverables by the Project Partners, summarize review comments, attempt to resolve internal conflicts, propose revisions, discuss potential revisions to the draft deliverables with the selected professional engineering firm, and evaluate corrective actions/responses;

Travel, Supplies, and Materials for Task 2:

This task includes an estimated 52 round-trip site visits or trips to attend in-person meetings, estimated at 80 miles per round trip over the three-year project period. Materials include one laptop computer.

Deliverables for Task 2:

- Attendance at weekly or biweekly coordination meetings with NVCOG
- Digital repository of available data
- Attendance at project meetings with the engineers
- Technical reviews of subcontracted deliverables
- Regularly updated sub-award workplan schedule

3. PROJECT MANAGEMENT OF ENGINEERING SERVICES DURING PERMITTING (Year 1-2)

- 3.1. STS will coordinate, schedule, and participate in regulatory meetings with relevant agencies, the selected professional engineering firm, and Project Partners regarding the selected professional engineering firm's data collection, engineering analyses, and preparation of regulatory documentation. STS will also review permit application materials prepared by the selected professional engineering firm as necessary. In addition, STS and the selected professional engineering firm will assist with Section 106 Coordination with the lead federal agency.

Travel, Supplies, and Materials for Task 3:

This task includes an estimated 40 round-trip site visits or trips to attend in-person regulatory meetings, estimated at 80 miles per round trip over the three-year project period. No materials are anticipated for this task.

Deliverables for Task 3:

- Coordinate, schedule, and attendance at project meetings with the regulators, the selected professional engineering firm, and Project Partners
- Reviews permit applications prepared by the professional engineering firm
- Assistance with Section 106 Coordination with lead federal agency

4. PROJECT PARTNER & AGENCY COORDINATION (Year 1-3)

- 4.1. STS will coordinate with Project Partners and Agencies, including NOAA, USFWS, CTDEEP, FERC, USACE, CTDOT, MNR, providing project updates, scheduling meetings as necessary, and facilitating inter-agency communication, as needed.

Travel, Supplies, and Materials for Task 4:

This task includes an estimated 30 round trip site visits or trips to attend in-person project partner and agency meetings, estimated at 80 miles per round trip over the three-year project period. No materials are anticipated for this task.

Deliverables for Task 4:

- Project Partner coordination, updates, and meetings

5. OUTREACH & EDUCATION (Year 1-3)

5.1. Development of Public Outreach & Education Plan: STS will communicate, engage, and educate the public as part of a plan that includes the following components:

- a. Assemble an Underserved Community Stakeholder Group: Save the Sound will hire and compensate three Community Liaisons from underserved communities that benefit from the project. *The Community Liaisons will provide outreach to the surrounding communities, invite broad participation in several aspects of the project (i.e. public meetings, volunteer cleanups, design charrettes), and provide leadership in coordinating meetings, events, and other opportunities for community engagement.*
- b. Measurement of Benefits to Underserved Communities: STS will quantify the benefits and potential impacts to the underserved communities to avoid undue impacts, enhance community benefits, and guide project outcomes.
- c. Envisioning Charettes & Public Meetings with Local Communities: STS will conduct charrettes with local communities to guide the design of project components including for example, river access, a greenway, and a park for the community around Coe Pond.
- d. Educational Workshops: STS will coordinate and facilitate educational workshops for other community organizations, student groups, community college groups, early career professionals, and regional policymakers.
- e. Web-Based Story Map: STS will support NVCOG in the updating of the web-based story map and the development of other online content for public information and education.
- f. River Clean-Ups: STS will coordinate with NRRG to schedule, advertise, and support two river clean-up events on the Naugatuck River.
- g. Press Engagement: STS will communicate with the press (print, television, and radio) and hold press visits, publish press releases at appropriate project milestones.
- h. Naugatuck River Community Celebration: STS will coordinate with Project Partners to organize and facilitate a community event celebrating the restoration of the Naugatuck River.

Travel, Supplies and Materials for Task 5:

This task includes an estimated 78 round trip site visits or trips to attend in-person project partner and agency meetings, estimated at 80 miles per round trip over the three-year project period. Materials include:

- Printing of displays and materials for public meetings, press conferences, and tabling at community events.
- Purchasing of lists of area contacts to reach area residents with direct mail outreach.
- Direct postcard mailing to introduce the project team and the project to area residents and invite engagement.
- Production of up to 10 temporary signs for the work site describing the project and the proposed work, to be used throughout design and construction.

- Creation, promotion, and distribution of two short videos for social media and email distribution to raise awareness of and engagement with, the project.
- Supplies for volunteer cleanups as community outreach events.
- Outreach participant support (i.e., translation services, childcare) for public meetings about the project.
- Production, shipment, and installation of 8 permanent on-site educational signage.
- Hosting a celebration event to publicize the completion of the project.

Deliverables for Task 5:

- Hiring and management of three Community Liaisons
- Development of an Underserved Community Stakeholder Group
- Benefits and potential impacts to the underserved communities memorandum
- Two envisioning charettes
- Two educational workshops
- Two river cleanups with NRRG
- Press visits
- Naugatuck River Community Celebration

6. DOCUMENTARY FILM (Year 1-3)

- 6.1. STS will procure the services of a film production company, supported by NRRG, for the development of a 45-60 minute documentary film about the Naugatuck River and Kinneymead Dam that highlights the history (pre-colonial, colonial, industrial), the struggling fishery, and the early advocacy that culminated through a collaborative process toward dam removal and river revival. STS support will include management of the subcontract, content review, on-camera interviews, public outreach, and on-site filming coordination.

The selected film production company will develop a 45-60 minute documentary film in 4k shoot with at least 2k finish production, in close coordination with STS and NRRG. This task will include the following subtasks/components:

- *Project Development*
- *Production Staff*
- *Rights, Music, Talent*
- *Production Expenses (camera, drone, sound, lighting, grip & other equipment)*
- *Travel Expenses*
- *Presentation Outreach Equipment*
- *Post-Production*
- *Proof of Insurance*
- *Office & Administration*
- *Trailer, 1-3 minute (Year 1)*
- *Outreach Presentation, 15 minute (Year2)*
- *Public Presentations (Years 1-3)*

- *Full-Length Video, (Year 3)*

Travel, Supplies and Materials for Task 6:

This task does not include travel or material costs, other than those included in the subcontract with the film production company.

Deliverables for Task 6:

- STS will ensure that a Trailer, 1-3 minute, is submitted (Year 1)
- Outreach Presentation, 15 minute (Year2)
- Public Presentations (Years 1-3)
- STS will ensure that a Full-Length Video, is submitted (Year 3)

7. MANAGE FISHWAY AT KINNEYTOWN (Year 1-2)

- 7.1. STS will conduct maintenance to the fishway to maintain upstream fish passage, as directed and informed by CT DEEP Diadromous Program, during the diadromous migration periods that coincide with the project once ownership of the facility has been transferred. Maintenance will include periodic inspections during the migration period to replace or repair fish baffles, clean, and remove debris, and other minor associated tasks. STS will coordinate activities with NVCOG's contractor overseeing dam facility management.

Travel, Supplies, and Materials for Task 7:

- This task includes an estimated 64 round-trip site visits to monitor the fishway. Materials include supplies (i.e., wooden boards, and tools) for maintenance of the fishway.

Deliverables for Task 7:

- Maintained fishway once dam ownership has been transferred and prior to the Kinneytown Dam removal.

8. **SITE MONITORING** (Year 1-3): STS will conduct Tier 1 Monitoring for the project, as per NOAA's guidelines as described below.

- 8.1. **Site Passability:** Channel width, channel gradient, and jump height will be analyzed for the existing and post-dam removal conditions within the dam and former impounded reach on the Naugatuck River utilizing the HEC-RAS water surface profile model run with the 5th and 95th percentiles of the flow range associated with the fish passage migration period, developed by the engineering consulting firm hired to do the design and permitting.

- 8.2. **Presence of Target Fish Species:** STS will monitor fish passage efficiency, in collaboration with CT DEEP Diadromous Division, utilizing continual video monitoring during the migratory season. It is anticipated that pre-dam removal video monitoring will be continued at the Kinneytown Dam fishway by CT DEEP. Video monitoring footage will then be reviewed and assessed by scientists from STS under the guidance of CT DEEP Diadromous Fisheries staff. Post-dam removal video monitoring and assessment will be conducted at the Tigue bypass channel upstream by CT DEEP.
- 8.3. **Annual Operating, Maintenance, and Liability Costs:** Changes in annual operations, maintenance and/or liability costs associated with the removal of the Kinneytown Dam will be documented.
- 8.4. **Safety Hazard:** Public safety improvements post-dam removal will be documented.
- 8.5. **Civic or Community Enhancement:** STS will document that local civic enhancement projects associated with the removal of the two dams were completed.

Travel, Supplies and Materials for Task 8:

- This task includes an estimated 37 round-trip site visits to monitor the fishway. No materials will be needed since CT DEEP is providing the monitoring videos and software for STS's use.

Deliverables for Task 8:

- Monitoring reporting and per NOAA's Tier 1 Monitoring guidelines.

9. PROJECT MANAGEMENT OF ENGINEERING SERVICES TO PROVIDE BID ASSISTANCE FOR CONSTRUCTION (Year 2)

- 9.1. STS with assistance from its legal counsel will review and provide technical input on the Bid Package developed by the selected professional engineering firm; assist NVCOG in identifying and inviting qualified contractors to bid on the construction project; coordinate and co-lead a pre-bid site visit for eligible contractors, with NVCOG and the selected professional engineering firm; ensure that the selected engineering firm responds to bidders' questions; ensure that the selected engineering firm reviews and evaluates bids for the project's construction and provides its recommendation as to the lowest responsible bidder to NVCOG. NVCOG will enter a construction contract with the lowest responsible bidder and manage the construction of the project by the selected contractor.

See 1.1.2 F & G in Section 1 of this workplan, for a listing of tasks included in the Bid Assistance and Engineering Oversight of Construction tasks to be provided by the professional engineering firm procured by STS.

Travel, Supplies, and Materials for Task 9:

This task includes an estimated 4 round-trip site visits.

Deliverable for Tasks 9:

- Review comments on the Bid Package
- List of suggested qualified contractors to send bids to
- Attendance at the pre-bid site visit
- Ensure the selected engineering firm responds to bidder questions and assist NVCOG as needed
- STS bid ranking

10. FERC LICENSE SURRENDER (DECOMMISSIONING) (Year 2)

- 10.1. STS will provide technical and legal support to the Project Partners in the FERC License Surrender or similar process to decommission and de-regulate the dam for its ultimate removal. STS will attend regular meetings with FERC and Project Partners, provide technical guidance on temporary and permanent actions proposed for license surrender, and provide assistance to NVCOG legal team in the review of proposed agreements and contracts.

Travel, Supplies, and Materials for Task 10:

This task includes no travel and assumes that meetings will be held virtually.

Deliverables for Task 10:

- Attendance at FERC meetings
- Assistance with NVCOG's legal review as needed (not to exceed 624 hours inclusive of meeting time)

11. PROJECT MANAGEMENT OF CONSTRUCTION OBSERVATION (Year 3)

- 11.1. STS will retain and supervise the selected professional engineering firm that will provide construction observation with field-based and office-based engineering support. Construction observation will include, but not be limited to, the periodic observation of project construction by the professional engineering firm to determine compliance with the design plans, specifications, reports, or other contract documents. NVCOG will retain and manage the contractor selected to complete the construction, providing contract administration. STS will participate in the pre-project Kick-off Meeting on-site; and ensure that the selected professional engineering firm provides design and construction-related services, including construction observation, but it is acknowledged that NVCOG's contractor shall be solely responsible for the construction sequence as well as the construction means and methods,

permit compliance, and site restoration. STS will be assisted by legal counsel when reviewing all contracts to which STS is a party and other issues related to its obligations under Subgrantee Agreement as it deems necessary.

Travel, Supplies and Materials for Task 11:

This task includes an estimated 200 round trip site visits for STS, estimated at 80 miles per round trip over the three-year project period. No materials are anticipated for this task.

Deliverables for Task 11:

- Attendance at Kick-off meeting
- Regular site visits
- Provide input to professional engineer's review of submittals, as needed

**ATTACHMENT F
BROOKS ACT REQUIREMENTS**

**SUBAWARD AGREEMENT
between the
NAUGATUCK VALLEY COUNCIL OF GOVERNMENTS
and the
SAVE THE SOUND, INC.**

40 USC Ch. 11: SELECTION OF ARCHITECTS AND ENGINEERS

**From Title 40—PUBLIC BUILDINGS, PROPERTY, AND WORKS
SUBTITLE I—FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES**

CHAPTER 11—SELECTION OF ARCHITECTS AND ENGINEERS

Sec.	
1101.	Policy.
1102.	Definitions.
1103.	Selection procedure.
1104.	Negotiation of contract.

§1101. Policy

The policy of the Federal Government is to publicly announce all requirements for architectural and engineering services and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

([Pub. L. 107-217, Aug. 21, 2002](#), [116 Stat. 1129](#).)

HISTORICAL AND REVISIONS NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1101	40:542.	June 30, 1949, ch. 288, title IX, §902, as added Pub. L. 92-582, Oct. 27, 1972, 86 Stat. 1279 .

The words "The Congress hereby declares" are omitted as unnecessary.

§1102. Definitions

In this chapter, the following definitions apply:

(1) AGENCY HEAD.—The term "agency head" means the head of a department, agency, or bureau of the Federal Government.

(2) ARCHITECTURAL AND ENGINEERING SERVICES.—The term "architectural and engineering services" means—

(A) professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;

(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(C) other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

(3) FIRM.—The term "firm" means an individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture or engineering.

[\(Pub. L. 107-217, Aug. 21, 2002, 116 Stat. 1129.\)](#)

HISTORICAL AND REVISIONS NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1102	40:541.	June 30, 1949, ch. 288, title IX, §901, as added Pub. L. 92-582, Oct. 27, 1972, 86 Stat. 1278 ; Pub. L. 100-656, title VII, §742, Nov. 15, 1988, 102 Stat. 3897 ; Pub. L. 100-679, §8, Nov. 17, 1988, 102 Stat. 4068 .

In clause (1), the words "Secretary, Administrator, or" are omitted as unnecessary.

§1103. Selection procedure

(a) IN GENERAL.—These procedures apply to the procurement of architectural and engineering services by an agency head.

(b) ANNUAL STATEMENTS.—The agency head shall encourage firms to submit annually a statement of qualifications and performance data.

(c) EVALUATION.—For each proposed project, the agency head shall evaluate current statements of qualifications and performance data on file with the agency, together with statements submitted by other firms regarding the proposed project. The agency head shall conduct discussions with at least 3 firms to consider anticipated concepts and compare alternative methods for furnishing services.

(d) SELECTION.—From the firms with which discussions have been conducted, the agency head shall select, in order of preference, at least 3 firms that the agency head considers most highly qualified to provide the services required. Selection shall be based on criteria established and published by the agency head.

[\(Pub. L. 107-217, Aug. 21, 2002, 116 Stat. 1130.\)](#)

HISTORICAL AND REVISIONS NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1103	40:543.	June 30, 1949, ch. 288, title IX, §903, as added Pub. L. 92-582, Oct. 27, 1972, 86 Stat. 1279 .

In subsection (b), the words "engaged in the lawful practice of their profession" are omitted as unnecessary because of the definition of "firm" in section 1102 of the revised title.

In subsection (c), the words "compare alternative methods for furnishing services" are substituted for "the relative utility of alternative methods of approach for furnishing the required services" to eliminate unnecessary words.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ARCHITECTURAL AND ENGINEERING SERVICES

[Pub. L. 108-136, div. A, title XIV, §1427\(b\), Nov. 24, 2003, 117 Stat. 1670](#), as amended by [Pub. L. 117-81, div. A, title XVII, §1702\(l\)\(8\), Dec. 27, 2021, 135 Stat. 2161](#), provided that: "Architectural and engineering services (as defined in section 1102 of title 40, United States Code) shall not be offered under multiple-award schedule contracts entered into by the Administrator of General Services or under Governmentwide task and delivery order contracts entered into under sections 3403 and 3405 of title 10, United States Code, or sections 303H and 303I of the Federal Property and Administrative Services Act of 1949 ([former] 41 U.S.C. 253h and 253i) [now 41 U.S.C. 4103, 4105(a) to (c)(1), (d) to (i)] unless such services-

"(1) are performed under the direct supervision of a professional architect or engineer licensed, registered, or certified in the State, territory (including the Commonwealth of Puerto Rico), possession, or Federal District in which the services are to be performed; and

"(2) are awarded in accordance with the selection procedures set forth in chapter 11 of title 40, United States Code."

§1104. Negotiation of contract

(a) IN GENERAL.-The agency head shall negotiate a contract for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Federal Government. In determining fair and reasonable compensation, the agency head shall consider the scope, complexity, professional nature, and estimated value of the services to be rendered.

(b) ORDER OF NEGOTIATION.-The agency head shall attempt to negotiate a contract, as provided in subsection (a), with the most highly qualified firm selected under section 1103 of this title. If the agency head is unable to negotiate a satisfactory contract with the firm, the agency head shall formally terminate negotiations and then undertake negotiations with the next most qualified of the selected firms, continuing the process until an agreement is reached. If the agency head is unable to negotiate a satisfactory contract with any of the selected firms, the agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

([Pub. L. 107-217, Aug. 21, 2002, 116 Stat. 1130](#).)

HISTORICAL AND REVISIONS NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1104	40:544.	June 30, 1949, ch. 288, title IX, §904, as added Pub. L. 92-582, Oct. 27, 1972, 86 Stat. 1279 .

[End of Attachment F]

**ATTACHMENT G
AWARD DOCUMENTS**

**SUBAWARD AGREEMENT
between the
NAUGATUCK VALLEY COUNCIL OF GOVERNMENTS
and the
SAVE THE SOUND, INC.**

The following documents are included herein as part of Attachment G:

FINANCIAL ASSISTANCE AWARD (FORM CD-450)

DEPARTMENT OF COMMERCIAL FINANCIAL ASSISTANCE STANDARD TERMS AND
CONDITIONS

ADMINISTRATIVE STANDARD AWARD CONDITIONS FOR NOAA

SPECIFIC AWARD CONDITIONS

LINE ITEM BUDGET

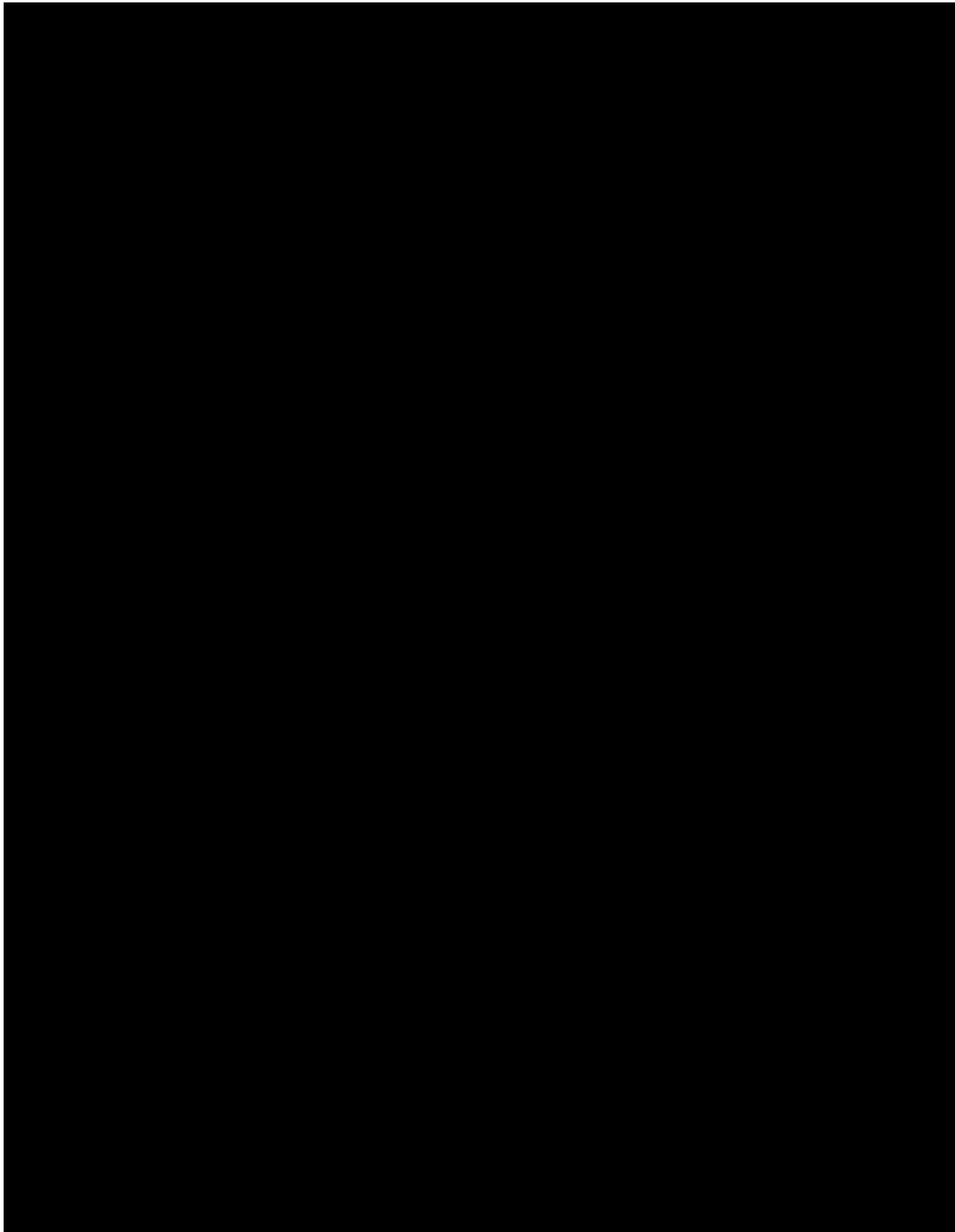
DEPARTMENT OF COMMERCE PRE-AWARD NOTIFICATION REQUIREMENTS FOR
GRANTS AND COOPERATIVE AGREEMENTS (REF: 79 FR78390)

The Following Items Are Incorporated By Reference as Part of Attachment G:

2 CFR PART 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES,
AND AUDIT REQUIREMENTS, AS ADOPTED PURSUANT TO 2 CFR § 1327.101

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[End of Attachment G]



DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS



12 November 2020

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS

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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. 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-424s) 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 of, or an amendment to, any such statute, regulation, E.O., OMB circular, certification, or assurance.

¹ 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. As defined at 2 C.F.R. § 200.1:

“Non-Federal entity” is “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 “an entity, usually but not limited to non-Federal entities, that receives a Federal award directly from a Federal awarding agency. The term recipient does not include subrecipients or individuals that are beneficiaries of the award.”

“Subrecipient” is “an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.”

“Pass-through entity” is “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. § 200.1 for the definitions of “foreign public entity” and “foreign organization.”

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 DOC ST&Cs and the RT&Cs as implemented by DOC apply to the award. The RT&Cs as well as the DOC implementation statement, agency specific requirements, prior approval matrix, subaward requirements, and national policy requirements are posted on the National Science Foundation's website – <https://www.nsf.gov/awards/managing/rtc.jsp>. The DOC ST&Cs and the RT&Cs are generally intended to harmonize with each other; however, where the DOC 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. § 200.329 (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, including the Research Program Performance Report [RPPR] as adopted by DOC for use in research awards), 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. § 200.211 (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.

3. Recipients (or pass-through entities as applicable) must submit a final performance report within 120 calendar days after the expiration of the period of performance. The subrecipient is required to submit its final performance report to the pass-through entity within 90 calendar days unless an extension has been granted.

c. Financial Reports. In accordance with 2 C.F.R. § 200.328 (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. Recipients (or pass-through entities as applicable) must submit a final Form SF-425 within 120 calendar days after the expiration of the period of performance. The subrecipient is required to submit its financial report to the pass-through entity within 90 calendar days unless an extension has been granted. 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 (Revision 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. § 200.208 (Specific conditions) or other appropriate enforcement action as specified in 2 C.F.R. § 200.339 (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. § 200.339 (Remedies for noncompliance), including but not limited to: the imposition of additional award conditions in accordance with 2 C.F.R. § 200.208 (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. §§ 200.340 (Termination) through 200.343 (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. §§ 200.334 (Retention requirements for records); 200.335 (Requests for transfer of records); 200.336 (Methods for collection, transmission and storage of information); 200.337 (Access to records); and 200.338 (Restrictions on public access to records).

.02 Award Payments

a. Consistent with 2 C.F.R. § 200.305(a) (Federal 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 or successor form is used to request payment, the recipient must submit the request no more 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)(11). 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 award 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(f), transfers of funds by the recipient among direct cost categories are permitted for awards in which the Federal share of the project is equal to or less than the simplified acquisition threshold. For awards in which the Federal share of the project exceeds the simplified acquisition threshold, 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 benefited, without effort disproportionate to the results achieved. Indirect 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, in accordance with 2 C.F.R. 200 Appendix III, C.7, 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 does not have a current negotiated (including provisional) 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. No documentation is required to justify the 10 percent de minimis indirect cost rate.

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

a. In accordance with 2 C.F.R. § 200.309 (Modifications to 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. § 200.1, the "period of performance" means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. Identification of the Period of Performance in the Federal award per § 200.211(b)(5) does not commit the awarding agency to fund the award beyond the currently approved budget period." 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. § 200.344).

b. Reasonable, necessary, allowable and allocable administrative award closeout costs are authorized for a period of up to 120 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 120-day closeout period, as provided in 2 C.F.R. § 200.344 (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 [Internal Control Guidance](#).

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 on 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. parts 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. § 200.337 (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 (Audit services), 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 [REDACTED] 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 [REDACTED] 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. § 200.332(d)(3), pass-through entities are responsible for issuing a management decision for applicable audit findings pertaining only 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. § 200.346 (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. § 200.346 (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 SUBAWARD AND PROCUREMENT 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

a. 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)(2) (Applicability to different types of Federal awards), which describes the applicability of 2 C.F.R. Part 200 to various types of Federal awards and §§ 200.331-333 (Subrecipient monitoring and management).

b. The recipient or pass through entity may have more restrictive policies for the RTC ***waived*** prior approvals (no-cost extensions, re-budgeting, etc.) for their subaward recipients. Such restrictive policies must be addressed in their subaward agreements and in accordance with §200.331.

.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. §§ 200.321 (Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms), 200.322 (Domestic preferences for procurements), and

200.323 (Procurement of recovered materials), and ensure that every purchase order or other contract includes any clauses required by 2 C.F.R. § 200.327 (Contract provisions).

b. Other Non-Federal Entities. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in 2 C.F.R. §§ 200.318 (General procurement standards) through 200.327 (Contract provisions) which include 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 area 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 may, 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),³ 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.
3. In accordance with E.O. 13798 and Office of Management and Budget, M-20-09 – Guidance Regarding Federal Grants, states or other public grantees may not condition sub-awards of Federal grant money in a manner that would disadvantage grant applicants based on their religious character.

³ 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).

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).

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 SF-LLL forms, 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 which threatens 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, and 2 C.F.R. §200.322 (Domestic preferences for procurements)) are hereby notified that they are encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or subaward that is chargeable under 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 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 (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](#). 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](#).

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 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 \$30,000 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 equals or exceeds \$30,000 in Federal funds for a subaward

to a non-Federal entity or Federal agency (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 for non-Federal entities.

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 Federal award equals or exceeds \$30,000 as defined in 2 C.F.R § 170.320;*

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 <https://www.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 non-Federal entity subrecipient under this award, you shall 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. **Federal Agency** means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).*

*2. **Non-Federal 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; and,

iv. A domestic or foreign for-profit organization.

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

*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 2 C.F.R § 200.331).

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

*5. **Subrecipient** means a non-Federal entity or Federal agency 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.

*6. **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 Universal Identifier Requirements** -- as described in 2 C.F.R. Part 25, Appendix A, which is incorporated into this award:

System for Award Management (SAM) and Universal Identifier Requirements

a. ***Requirement for System for Award Management.*** *Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this Federal 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 Federal award term.*

b. ***Requirement for Unique Entity Identifier.*** *If you are authorized to make subawards under this Federal 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 until the entity has provided its Unique Entity Identifier to you.*
- 2. *May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. Subrecipients are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.*

c. ***Definitions for purposes of this term:***

- 1. *SAM means the Federal repository into which a recipient must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <https://www.SAM.gov>).*

2. *Unique Entity Identifier means the identifier assigned by SAM to uniquely identify business entities.*
3. *Entity includes non-Federal entities as defined at 2 C.F.R. § 200.1 and also includes all of the following, for purposes of this part:*
 - i. *A foreign organization;*
 - ii. *A foreign public entity;*
 - iii. *A domestic for-profit organization; and*
 - iv. *A Federal agency.*
4. *Subaward has the meaning given in 2 C.F.R § 200.1.*
5. *Subrecipient has the meaning given in 2 C.F.R § 200.1.*

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. Never Contract with the Enemy (2 C.F.R Part 183; 2 C.F.R. § 200.215)

Under 2 C.F.R. § 200.215 (Never contract with the enemy) Federal awarding agencies and recipients are subject to the regulations implementing Never Contract with the Enemy in 2 C.F.R. Part 183. These regulations affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

1. **Applicability.** This term applies only to recipients of covered grants or cooperative agreements, as defined in 2 C.F.R. § 183.35 Definitions.

2. **Requirements.** As applicable, recipients must fulfill the requirements as described in the following terms from 2 C.F.R. Part 183, Appendix A, which is incorporated into this award:

a. Term 1. Prohibition on Providing Funds to the Enemy.

1. *The recipient must—*

- i. Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through 2 CFR Part 180.300 prior to issuing a subaward or contract and;*
- ii. Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.*

2. *The recipient may include the substance of this clause, including this paragraph (1), in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.*

3. *The Federal awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the recipient failed to exercise due diligence as required by paragraph (1) of this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities*

b. Term 2. Additional Access to Recipient Records.

1. *In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations*

2. *The substance of this clause, including this paragraph (2), is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.*

r. Prohibition on certain telecommunications and video surveillance services or equipment (Public Law 115-232, section 889; 2 C.F.R. § 200.216)

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain,
- (2) Extend or renew a contract to procure or obtain, or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (i). For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (ii). Telecommunications or video surveillance services provided by such entities or using such equipment.
- (iii). Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also §200.471.

s. 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).

Administrative Standard Award Conditions for National Oceanic and Atmospheric Administration (NOAA) Financial Assistance Awards U.S. Department of Commerce

This Federal assistance award will be implemented using “[Grants Online](#),” a Federal information technology system for grants management and processing. Grants Online allows the recipient to accept awards electronically, manage user roles for individuals within their organization, and submit post-award action requests, financial reports, performance progress reports, and tangible personal property and real property reports. You can contact the Grants Online Help Desk for assistance in obtaining your login credentials.

Contact the Grants Online Help Desk at GrantsOnline.HelpDesk@noaa.gov, (240) 533-9533, between the hours of 8:00 a.m. and 6:00 p.m. Eastern Time Monday through Friday excluding Federal holidays. Please refer to the NOAA website at <https://www.noaa.gov/organization/information-technology/grant-recipient-user-resources> for additional information.

I. Award Payments – ASAP Enrollment

Consistent with 2 C.F.R. §200.305 and Department of Commerce Financial Assistance Standard Terms and Conditions (Commerce Terms), recipient award payments will be made through electronic funds transfers using the U.S. Department of the Treasury’s Automated Standard Application for Payments (ASAP) system. Recipients must enroll in ASAP system by first submitting an Organization Profile Change Request via Grants Online, which will include the following requirements:

- EIN#
- DUNS#
- Name of Organization
- Type of Organization (i.e. Non-profit, For Profit, State etc.)
- Address
- Point of Contact
- Title
- Point of Contact's Email Address
- Phone Number

If your organization is not currently enrolled in ASAP, please submit an Organization Profile Change Request in Grants Online as soon as possible to begin the enrollment process. New ASAP enrollments can take up to a month to be completed.

II. Reporting

A. Financial Reports

The recipient will use NOAA’s Grants Online system to complete Federal Financial Reports (SF-425), required by 2 CFR §200.328 and Commerce Terms. Grants Online will notify the recipient organization

via email when SF-425s are available for reporting and submission through the Grants Online system. The status of all reports can be seen under “Financial Reports” under the Grants File.

To complete a report, login to NOAA Grants Online at <https://grantsonline.rdc.noaa.gov>, search for the award and navigate to the Grants File overview page. Find the report near the bottom of the page and click on the link to the report to complete the report. For multiple awards that require Federal Financial Reports (SF-425) covering the same period, the recipient may create and submit a multi-award SF-425 from the —Awards tab. For additional assistance with Grants Online, please review the Recipient Quick Reference Guide available at https://www.noaa.gov/sites/default/files/atoms/files/GrantRecipients_Quick_Ref_Guide.pdf. This site also has additional detailed recipient assistance material. If you are having problems with accessing Grants Online, please contact the Grants Online Help Desk at (240) 533-9533 or GrantsOnline.HelpDesk@noaa.gov.

1. Request for Advance or Reimbursement (SF-270)
 - a. The SF-270 shall NOT be submitted by the recipient using the Department of Treasury ASAP system unless specifically directed by a specific award condition.
 - b. Semi-annual Federal Financial Reports (SF-425) are not required if the SF-270 is used; however, a Final SF-425 will be required.
 - c. If your organization is registered in ASAP, reimbursements will be made through ASAP.
2. Federal Financial Report (SF-425) - Due semi-annually; reported under the —“Federal Cash” line of the report.
 - a. The SF-425 shall be submitted on a semi-annual basis. If the recipient is reporting on more than one NOAA grant and/or agreement, then the SF-425 attachment must be used.
 - b. Interim semi-annual Federal Financial Reports (SF-425) are due no later than 30 days after the semi-annual reporting periods ending March 31 and September 30 for the cumulative project period of the award.
 - c. The SF-425 is required for any recipient using ASAP for payment. If converting to ASAP during the course of the Award, the SF-425 forms will be due as described above starting with the ASAP conversion date.
3. Federal Financial Report (SF-425) - (final report only)
 - a. A final comprehensive Federal Financial Report must be submitted within 120 days after the period of performance end date. Subrecipients must submit final reports to the pass-through entity, no later than 90 days after the period of performance end date. The recipient’s report shall cover the entire period of performance from the start date through the end date of the original award, or approved extended end date (e.g., no-cost extension or extension to the closeout period) of the award, and must include the cumulative total of indirect costs charged to the award. This final report must not be submitted until cash on hand is \$0. If necessary, reach out to your grants specialist for information on how to return funds if your organization has cash on hand at the end of closeout.

B. Performance Reports

The recipient will use NOAA's Grants Online system to submit Performance Progress Reports, required by 2 CFR §200.329 and Commerce Terms. The Grants Online System will notify your organization through email when performance progress reports are available for reporting and submission through NOAA Grants Online. Recipients are responsible for ensuring all personnel listed on an award have a current email address. The status of reports can be seen under "Progress Reports" under the Grant File.

To complete your report, login to NOAA Grants Online at <https://grantsonline.rdc.noaa.gov/>, search for the award and navigate to the Grants File overview page. Then find the report near the bottom of the page and click on the link to the report to complete it. Your organization must attach the report document for submission. The Federal Program Officer is the authority on the acceptable form and content of Project Progress Reports. For additional assistance with Grants Online, please review the Recipient Quick Reference Guide available at https://www.noaa.gov/sites/default/files/atoms/files/GrantRecipients_Quick_Ref_Guide.pdf. This site also has additional detailed recipient assistance material. If you are having problems with your access to Grants Online, please contact the Grants Online Help Desk at (240) 533-9533 or GrantsOnline.HelpDesk@noaa.gov.

1. Frequency: Performance reports are due on a semi-annual basis unless otherwise specified in a specific award condition, no later than 30 days following the end of each six (6) month period from the start date of the original award. The last semi-annual performance report is required. The final report, which summarizes activities conducted during the entire award, must be submitted within 120 days following the period of performance end date. Subrecipients must submit final reports to the pass-through entity, no later than 90 days after the period of performance end date.
2. For awards governed by the Federal-wide Research Terms and Conditions, recipients must complete the Research Performance Progress Report (RPPR). The Department of Commerce implemented a RPPR for research awards in accordance with the requirement for recipient submission of performance reports using OMB-approved government-wide standard information collections per 2 C.F.R. §200.329. The recipient must complete the RPPR directly in Grants Online. Also, the RPPR format and instructions are available at <https://www.commerce.gov/oam/policy/financial-assistance-policy>.

C. Property Reports and Disposition

Property records, including any documentation relating to disposition of property, required by 2 CFR §200.310-316, are to be submitted in NOAA's Grants Online System. The Tangible Personal Property Report (SF-428) and the Real Property Status Report (SF-429) should be included in documentation, as applicable. At the end of the period of performance, but no later than the closeout period, the recipient must report on property using the property forms (SF-428/SF-429 forms) located at <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html#sortby=1>. Such property shall include real property (§200.311), Federally-owned and exempt property (§200.312), equipment acquired with grant funds (§200.313), and residual inventory of unused supplies exceeding \$5,000 in total aggregate value (§200.314). The recipient must request property disposition instructions from NOAA. In addition, recipients may be required to submit annual reports on real property, per §200.330.

Research awards should also refer to the Federal-wide Research Terms and Conditions at <http://www.nsf.gov/awards/managing/rtc.jsp>.

D. Reporting Subawards and Executive Compensation

The recipient is reminded that the Commerce Terms require specified reporting regarding subawards and executive compensation, per the Federal Funding Accountability and Transparency Act (FFATA). This information is not reported through Grants Online. Follow reporting instructions in the Commerce Terms.

III. Scientific Integrity

A. General Guidelines

1. *Maintaining Integrity.* The non-Federal entity shall maintain the scientific integrity of research performed pursuant to this grant or financial assistance award including the prevention, detection, and remediation of any allegations regarding the violation of scientific integrity or scientific and research misconduct, and the conduct of inquiries, investigations, and adjudications of allegations of violations of scientific integrity or scientific and research misconduct. All the requirements of this provision flow down to subrecipients.
2. *Peer Review.* The peer review of the results of scientific activities under a NOAA grant, financial assistance award, or cooperative agreement shall be accomplished to ensure consistency with NOAA standards on quality, relevance, scientific integrity, reproducibility, transparency, and performance. NOAA will ensure that peer review of "influential scientific information" or "highly influential scientific assessments" is conducted in accordance with the Office of Management and Budget (OMB) Final Information Quality Bulletin for Peer Review and NOAA policies on peer review, such as the Information Quality Guidelines.
3. In performing or presenting the results of scientific activities under the NOAA grant, financial assistance award, or cooperative agreement and in responding to allegations regarding the violation of scientific integrity or scientific and research misconduct, the non-Federal entity and all subrecipients shall comply with the provisions herein and NOAA Administrative Order (NAO) 202-735D, Scientific Integrity, and its Procedural Handbook, including any amendments thereto. That Order can be found at <http://nrc.noaa.gov/ScientificIntegrityCommons.aspx>.
4. *Primary Responsibility.* The non-Federal entity shall have the primary responsibility to prevent, detect, and investigate allegations of a violation of scientific integrity or scientific and research misconduct. Unless otherwise instructed by the grants officer, the non-Federal entity shall promptly conduct an initial inquiry into any allegation of such misconduct and may rely on its internal policies and procedures, as appropriate, to do so.
5. By executing this grant, financial assistance award, or cooperative agreement the non-Federal entity provides its assurance that it has established an administrative process for performing an inquiry, investigating, and reporting allegations of a violation of scientific

integrity or scientific and research misconduct; and that it will comply with its own administrative process for performing an inquiry, investigation, and reporting of such misconduct.

6. The non-Federal entity shall insert this provision in all subawards at all tiers under this grant, financial assistance award, or cooperative agreement.

B. Investigating Scientific Integrity or Scientific and Research Misconduct

1. *Initiating Investigation.* If the non-Federal entity or subrecipient determines that there is sufficient evidence to proceed to an investigation, it shall notify the grants officer and, unless otherwise instructed, the non-Federal entity or subrecipient shall:
 - a. Promptly conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding regarding the violation of scientific integrity or scientific and research misconduct and an identification of appropriate remedies or a determination that no further action is warranted.
 - b. If the investigation leads to a finding regarding the violation of scientific integrity or scientific and research misconduct, obtain adjudication by a neutral third party adjudicator. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.
2. *Finalizing Investigation.* When the investigation is complete, the non-Federal entity shall forward to the grants officer a copy of the evidentiary record, the investigative report, any recommendations made to the non-Federal entity adjudicating official, the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).

C. Findings and Corrective Actions

If the non-Federal entity finds that scientific integrity has been violated or scientific and research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process and shall:

- a. Take all necessary corrective actions, which includes, but are not limited to, correcting the research record, and, as appropriate, imposing restrictions, controls, or other parameters on research in process or to be conducted in the future, and
- b. Coordinate remedial action with the grants officer.

IV. Data Sharing Directive

The Data and Publication Sharing Directive for NOAA Grants, Cooperative Agreements, and Contracts ensures that environmental data funded extramurally by NOAA are made publicly accessible in a timely fashion (typically within two years of collection), and that final manuscripts of peer-reviewed research papers are deposited with the NOAA Central Library (upon acceptance by the journal, or no later than at

time of publication). Therefore, non-Federal entities, or recipients, must make data produced under financial assistance publicly accessible in accordance with the Data Management Plan included with the Proposal, unless the grant program grants a modification or an exemption. The text of the Directive is available at <https://nosc.noaa.gov/EDMC/PD.DSP.php>.

1. **Data Sharing:** Environmental data collected or created under this Grant, Cooperative Agreement, or Contract must be made publicly visible and accessible in a timely manner, free of charge or at minimal cost that is no more than the cost of distribution to the user, except where limited by law, regulation, policy, or national security requirements. Data are to be made available in a form that would permit further analysis or reuse: data must be encoded in a machine-readable format, preferably using existing open format standards; data must be sufficiently documented, preferably using open metadata standards, to enable users to independently read and understand the data. The location (internet address) of the data should be included in the final report. Pursuant to NOAA Information Quality Guidelines,¹ data should undergo quality control (QC) and a description of the QC process and results should be referenced in the metadata.^{2,3}
2. **Timeliness:** Data accessibility must occur no later than publication of a peer-reviewed article based on the data, or two years after the data are collected and verified, or two years after the original end date of the grant (not including any extensions or follow-on funding), whichever is soonest, unless a delay has been authorized by the NOAA funding program.
3. **Disclaimer:** Data produced under this award and made available to the public must be accompanied by the following statement: "These data and related items of information have not been formally disseminated by NOAA, and do not represent any agency determination, view, or policy."
4. **Failure to Share Data:** Failing or delaying to make environmental data accessible in accordance with the submitted Data Management Plan, unless authorized by the NOAA Program, may lead to enforcement actions, and will be considered by NOAA when making future award decisions. Funding recipients are responsible for ensuring these conditions are also met by sub-recipients and subcontractors.
5. **Funding acknowledgement:** Federal funding sources shall be identified in all scholarly publications. An Acknowledgements section shall be included in the body of the publication stating the relevant Grant Programs and Award Numbers. In addition, funding sources shall be reported during the publication submission process using the FundRef mechanism (<http://www.crossref.org/fundref/>) if supported by the Publisher.
6. **Manuscript submission:** The final pre-publication manuscripts of scholarly publications produced with NOAA funding shall be submitted to the NOAA Institutional Repository at <https://repository.library.noaa.gov> after acceptance, and no later than upon publication, of the paper by a journal. NOAA will produce a publicly-visible catalog entry directing users to the published version of the article. After an embargo period of one year after publication, NOAA shall make the manuscript itself publicly visible, free of charge, while continuing to direct users to the published version of record.

7. **Data Citation:** Publications based on data, and new products derived from source data, must cite the data used according to the conventions of the Publisher, using unambiguous labels such as Digital Object Identifiers (DOIs). All data and derived products that are used to support the conclusions of a peer-reviewed publication must be made available in a form that permits verification and reproducibility of the results.

1 http://www.cio.noaa.gov/services_programs/IQ_Guidelines_103014.html

2 Failure to perform quality control does not constitute an excuse not to share data.

3 Data without QC are considered "experimental products" and their dissemination must be accompanied by explicit limitations on their quality or by an indicated degree of uncertainty.

V. Post Award Actions Requests

Grants Online provides the ability for recipients to submit post award action requests. The Department of Commerce requires that post award action requests be approved by an Authorized Representative. Grants Online enforces this business rule by routing all post award action requests through the recipient organizations Authorized Representative(s). Recipients must follow the guidance provided in Grants Online at https://www.noaa.gov/sites/default/files/atoms/files/Recipient_AAR_Help_0.pdf.

Per 2 CFR §200.332, recipients/pass through entities (PTEs) are given the authority to impose additional restrictions on subrecipients in order for the recipient/PTE to meet its own responsibility to the Federal awarding agency. Recipients/PTEs may, at their discretion, opt to restrict the waived prior approvals identified in the Research Terms, if applicable, to their subrecipients. Recipients/PTEs should identify the applicable prior approval terms in their own subaward agreements.

VI. Negotiated Indirect Cost Rate Agreements

This term supplements the Commerce Terms. Recipients must submit new or updated Negotiated Indirect Cost Rate Agreements (NICRA) to the NOAA Grants Office, when applicable. NICRAs can be submitted to the NOAA Grants Office through an email to the assigned Grants Specialist and Grants Officer for recordkeeping.

If NOAA is your organization's cognizant agency the applicant may contact the NOAA Grants Office if they wish to establish an agreement, if an applicant has not previously established an indirect cost rate agreement with a Federal agency. The negotiation and approval of a rate is subject to the procedures required by NOAA and the Commerce Terms. Per the 2 CFR 200 revisions effective as of November 12, 2020, any recipient that does not have a current negotiated (including provisional) rate, except for those recipients described in 2 CFR 200, Appendix VII, paragraph D.1.b., may opt to use the de minimis indirect cost rate of 10% of Modified Total Direct Cost (as allowable under 2 CFR §200.414). Also, NOAA may permit the recipient to use its last expired approved rate along with acknowledgment from their cognizant agency that their new indirect cost proposal has been received.

VII. Research Terms and Conditions

For awards designated on the CD-450 as Research, the Commerce Terms, and the Federal-wide Research Terms and Conditions (Research Terms) as implemented by the Department of Commerce, currently at <https://www.nsf.gov/awards/managing/rtc.jsp>, both apply to the award. The Commerce Terms and the Research Terms are generally intended to harmonize with each other; however, where the Commerce Terms and the Research Terms differ in a Research award, the Research Terms prevail, unless otherwise indicated in a specific award condition.

VIII. Audit Findings Follow-up and Corrective Action

In accordance with 2 C.F.R. §200.511 and the Commerce Terms, an auditee is responsible for follow-up and corrective action on all audit findings. For information on the summary of prior year audit findings and the corrective action plan, please also refer to §200.511(b) (1) (2), and (3) (i) (ii) (iii), and refer to §200.516 Audit findings, paragraph (c).

Paragraph (c) Corrective action plan of 2 C.F.R. §200.511 Audit Findings Follow-up, further states that at the completion of the audit, the auditee must prepare a corrective action plan to address each audit finding included in the current year auditor's reports. As defined in 2 CFR Part 200, a corrective action means action taken by the auditee that: (a) Corrects identified deficiencies; (b) Produces recommended improvements; or (c) Demonstrates that audit findings are either invalid or do not warrant auditee action. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

NOAA as the cognizant, oversight, or Federal awarding agency of the auditee is responsible for follow-up on audit findings to ensure that the auditee takes appropriate and timely corrective action. As part of audit follow-up, NOAA must: (i) issue a management decision as prescribed in §200.521 Management decision; and (ii) monitor the recipient taking appropriate and timely corrective action. For additional information on applicable Federal agency responsibilities of NOAA for follow-up with corrective actions, see §200.513 Responsibilities.

IX. Audit Resolution

Recipients that expend \$750,000 or more in Federal funds during the recipient's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with §200.501. As provided in §200.513, a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to recipients.

As further prescribed in DOC's Departmental Administrative Order (DAO) 213-5 and 2 C.F.R. Part 200 Subpart F, Department and operating unit personnel shall act promptly to resolve both the financial and nonfinancial issues identified in an audit report. Comments, arguments, and evidence (if any) submitted by the auditee and the operating unit shall be considered in resolving the findings. A DOC decision on the resolution of audit findings and recommendations will be made in accordance with the procedures and within the specified time frames identified in DAO 213-5.

The audit action official shall issue the Management Decision and Audit Resolution Determination. The Management Decision and Audit Resolution Determination will be maintained in the official grant file and a copy will be forwarded to the Program Officer.

Recipients are afforded the opportunity to appeal the Audit Resolution Determination. The appeal process is the last opportunity for auditees to provide evidence to support their disputes. NOAA will not accept any submission from a recipient regarding an appeal after the established deadline, unless requested by the Grants Officer, the Office of Inspector General, or the Office of the General Counsel. After the Department renders a decision on an appeal, there are no other administrative appeals available.

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.

Recipients are responsible for the repayment of audit-related debts and for the collection of audit-related debts from their sub recipients where an audit has determined funds are owed. This does not relieve the recipient of liability for the debt.

X. NOAA Sexual Assault and Sexual Harassment Prevention and Response Policy

1. NOAA requires organizations receiving federal assistance to report findings of sexual harassment, or any other kind of harassment, regarding a Principal Investigator (PI), co-PI, or any other key personnel in the award. The recipient must report to the NOAA Grants Officer and Program Officer if the PI, co-PI, or other key personnel are placed on administrative leave relating to a harassment finding or investigation. NOAA may take unilateral action as necessary to protect the safety of all personnel on a project supported by financial assistance, to include suspending or terminating an award or requiring a recipient to replace or remove personnel.

If the award involves the use of NOAA-operated facilities and/or vessels, the recipient must adhere to the following specific requirements:

- Financial assistance awards involving the use of NOAA operated-facilities: [NOAA Sexual Assault and Sexual Harassment Prevention and Response Policy Applicable to Financial Assistance Awards Involving NOAA-Operated Facilities \(May 2018\)](#)
- Financial assistance awards involving the use of vessels: [NOAA Sexual Assault and Sexual Harassment Prevention and Response Policy Applicable to Financial Assistance Awards Involving the Use of a Vessel\(s\) under NOAA Contract, Order, Grant, or Cooperative Agreement \(May 2018\)](#)

Direct links to the requirements for awards involving the use of NOAA operated-facilities and/or vessels may be found at <https://www.noaa.gov/organization/acquisition-grants/noaa-workplace-harassment-training-for-contractors-and-financial>. Note that these policies include required training.

2. NOAA expects all financial assistance recipients to establish and maintain clear and unambiguous standards of behavior to ensure harassment free workplaces wherever NOAA grant or cooperative agreement work is conducted, including notification pathways for all personnel, including students, on the awards. This expectation includes activities at all on- and offsite facilities and during conferences and workshops. All such settings should have accessible and evident means for reporting violations and recipients should exercise due diligence with timely investigations of allegations and corrective actions.
3. The NOAA Workplace Violence Prevention and Response Program (WVPR) works to establish a culture of professionalism and respect through violence prevention and response; education and training; victim support; reporting procedures and appropriate accountability that enhances the safety and well-being of all NOAA employees, affiliates, and visitors. Please visit <https://www.noaa.gov/workplace-violence-prevention-response-program> for more information.

Specific Award Conditions

Award Number: NA23NMF4630027
Amendment Number: 0

1) New Award SAC

This award number NA23NMF4630027, to NAUGATUCK VALLEY COUNCIL OF GOVERNMENTS, supports the work described in the Recipient's proposal entitled "It's About Dam Time: Removing Kinneytown Dam to Restore Fish Passage and Advance Environmental Justice" dated 8/13/2022, and revisions dated 1/26/2023, 1/30/2023, and 2/14/2023, which are incorporated into the award by reference. Where the terms of the award and proposal differ, the terms of the award shall prevail.

2) Multi-Year Special Award Condition

The award period and budget(s) incorporated into this award cover a 3-year period [REDACTED]. Receipt of any prospective funding is contingent upon the availability of funds from Congress, satisfactory performance, continued relevance to program objectives, and will be at the sole discretion of the Department of Commerce. The Department of Commerce is not liable for any obligations, expenditures, or commitments which involve any amount in excess of the Federal amount presently available. The Recipient will be responsible for any and all termination costs it may incur should prospective funding not become available. No legal liability will exist or result on the part of the Federal Government for payment of any portion of the remaining funds which have not been made available under the award. Notifications affecting funding or notice of non-availability of additional funding for prospective years will be made only by the Grants Officer. The amendment to obligate prospective funding available shall be made on Form CD-451, Amendment to Financial Assistance Award, if at all possible prior to the expiration of each year's activities.

The funding period for this award is 04/01/2023 through 06/30/2024 and may be extended through 06/30/2026.

3) signs

The recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign(s) satisfactory to NOAA that identifies the project and indicates that the project is Federally funded by the Bi-Partisan Infrastructure Law, and/or the Inflation Reduction Act (IRA). NOAA may require that the recipient maintain a permanent plaque or sign at the project site with the same or similar information. The temporary and permanent proposed signage implementation plans must be submitted to and approved by NOAA prior to installation.

4) Post Award NEPA Review Process

By accepting this award, the Recipient agrees to assist and cooperate with NOAA Fisheries in the preparation of any outstanding National Environmental Policy Act (NEPA) compliance documentation. For purposes of NEPA compliance, Phase 1 of the project include stakeholder engagement, sediment management plan preparation and CT DEEP-approval, field assessments and surveys, public involvement, including underserved community engagement, preliminary design

through 100% design plans, NOAA Tier 1 monitoring planning, and federal and state permitting. The activities for which work can proceed (as described above) will have no significant individual or cumulative adverse effects on the environment. The Recipient will not expend any funds for dam removal construction until impacts have been assessed, and NEPA compliance documentation has been completed by NOAA.

5) Cooperative Agreement

This award is a cooperative agreement as described in 2 C.F.R. Sec. 200.1, meaning that NOAA is “substantially involved” in the project. NOAA Fisheries’ participation will be crucial to ensuring the timely implementation of the most beneficial habitat restoration project. NOAA may participate in one or more of the following ways:

- collaboration on the scope of work through participation in meetings and review of documents;
- providing assistance with technical aspects of the habitat restoration project such as assistance with permitting or development of detailed work plans and monitoring plans;
- review and comment on design plans at the beginning of the award, at various stages throughout any portion of the design process that occurs during the award (e.g. conceptual, 30%, 60%, and 90% completion), and at the final completion stage;
- review of procurement materials to the extent authorized by 2 C.F.R. Sec. 200.325;
- tracking the progression of the restoration from planning through implementation and post-construction monitoring, with particular emphasis on tracking Recipient achievement of targets for major milestones and performance metrics and sharing results;
- other involvement consistent with Office of Management and Budget Guidance on Substantial Involvement. See 43 Federal Register 36860 (Aug. 18, 1978).

6) Performance Progress Reports

Reporting requirements are described in 2 C.F.R. Sec. 200.328-.330, and 200.300(b); Department of Commerce Financial Assistance Standard Terms and Conditions Sec. A.01, C.03, and G.05; and Bureau-Specific NOAA Administrative Standard Award Conditions, with the following supplement.

Progress reports must be submitted using the NOAA Community-based Restoration Program's Performance Progress Report (PPR) reporting form approved by OMB under control number 0648-0718, or a successor form. The NOAA Federal Program Officer will provide this form to the Recipient. Interim semi-annual progress reports are due no later than 30 days after the semiannual reporting periods ending March 31 and September 30 for the entire duration of the award. These follow the same frequency and have the same due dates (April 30 and October 30, respectively) as the SF-425 Federal Financial Reports, which also must be submitted as a condition of this award.

A comprehensive final report covering all activities during the award period is required and must be received by the NOAA Program Officer within 120 days after the end date of this award, but a final semi-annual report is not required.

7) Contact Information

Contact information for NOAA and the Recipient is maintained in the NOAA Grants Online award management system. In addition:

The Federal Program Officer for this award is: Melanie Gange; (301) 427-8664; melanie.gange@noaa.gov

The Technical Monitor for this award is: Jim Turek; (401) 782-3338; james.g.turek@noaa.gov

8) Project Milestones

To ensure adequate and timely progress towards project completion, NOAA and the Recipient have cooperatively identified several milestones as outlined in the timeline and milestones application attachment. Project progress will be evaluated throughout the award with particular emphasis on meeting these milestones. NOAA reserves the right to pursue enforcement action for the award under 2 C.F.R. 200.339-.343 at any time throughout the award period should NOAA determine that a Recipient is not meeting project milestones as outlined in the application submitted to the NOAA Grants Management Division for funding.

9) Pre-award Costs

The Recipient has notified NOAA of their intention to expend between [REDACTED] to the award start date for costs and legal fees related project site acquisition, regulation, and Federal Energy Regulatory Commission Decommissioning. The NOAA Grants Officer hereby approves this pre-award expenditure.

10) Monitoring

To evaluate project implementation quality and effectiveness, and learn from your restoration project(s), recipients will execute appropriate project monitoring with guidance from NOAA. As your project proceeds, NOAA's substantial involvement will include further coordination to execute implementation and basic effectiveness monitoring, and potentially more detailed effectiveness monitoring, if applicable. The grantee will collaborate with NOAA to identify monitoring elements such as parameters, methods, sampling duration and frequency, and post-implementation targets. NOAA's involvement will also include ongoing coordination on data management, analyses, and dissemination of results (see below). The grantee will develop a data/information sharing plan, and submit appropriate monitoring information with progress reports, as well as at other appropriate times. Templates for the data/information sharing plan and other monitoring related guidance are provided at <https://www.fisheries.noaa.gov/national/habitat-conservation/monitoring-and-evaluation-restoration-projects>.

11) Outreach and Communications

Department of Commerce Financial Assistance Standard Term and Condition G.05.k.3. is supplemented as follows consistent with NOAA's collaboration on this project. The Recipient will coordinate with NOAA on outreach plans, events, products, and media coverage associated with the project. Please coordinate with the Federal Program Officer listed under the Contact Information award condition. Grantees will provide copies of final outreach products, website mentions, press materials, photos, etc. via the standard progress reports to NOAA, or when available throughout the award period. Grantees will provide NOAA with high-resolution before, during, and post-implementation photos of the project. Photos of the site prior to construction and during project implementation should be submitted with progress reports or as requested by NOAA.

12) Public Access to Research Results

1. Data Sharing: Environmental data collected or created under this Grant, Cooperative Agreement, or Contract must be made publicly visible and accessible in a timely manner, free of charge or at minimal cost that is no more than the cost of distribution to the user, except where limited by law, regulation, policy, or national security requirements. Data are to be made available in a form that would permit further analysis or reuse: data must be encoded in a machine-readable format, preferably using existing open format standards; data must be sufficiently documented, preferably using open metadata standards, to enable users to independently read and understand the data. The location (internet address) of the data should be included in the final report. Pursuant to NOAA Information Quality Guidelines, data should undergo quality control (QC) and a description of the QC process and results should be referenced in the metadata.
2. Timeliness: Data accessibility must occur no later than publication of a peer-reviewed article based on the data, or two years after the data are collected and verified, or two years after the original end date of the grant (not including any extensions or follow-on funding), whichever is soonest, unless a delay has been authorized by the NOAA funding program.
3. Disclaimer: Data produced under this award and made available to the public must be accompanied by the following statement: "These data and related items of information have not been formally disseminated by NOAA, and do not represent any agency determination, view, or policy."
4. Failure to Share Data: Failing or delaying to make environmental data accessible in accordance with the submitted Data Management Plan, unless authorized by the NOAA Program, may lead to enforcement actions, and will be considered by NOAA when making future award decisions. Funding recipients are responsible for ensuring these conditions are also met by sub-recipients and subcontractors.
5. Funding acknowledgement: Federal funding sources shall be identified in all scholarly publications. An Acknowledgements section shall be included in the body of the publication stating the relevant Grant Programs and Award Numbers. In addition, funding sources shall be reported during the publication submission process using the FundRef mechanism (<http://www.crossref.org/fundref/>) if supported by the Publisher.
6. Manuscript submission: The final pre-publication manuscripts of scholarly publications produced with NOAA funding shall be submitted to the NOAA Institutional Repository at <http://library.noaa.gov/repository> after acceptance, and no later than upon publication, of the paper by a journal. NOAA will produce a publicly-visible catalog entry directing users to the published version of the article. After an embargo period of one year after publication, NOAA shall make the manuscript itself publicly visible, free of charge, while continuing to direct users to the published version of record.
7. Data Citation: Publications based on data, and new products derived from source data, must cite the data used according to the conventions of the Publisher, using unambiguous labels such as Digital Object Identifiers (DOIs). All data and derived products that are used to support the conclusions of a peer-reviewed publication must be made available in a form that permits verification and reproducibility of the results.

13) Acknowledgement of Project Contributors

The Recipient must display, where appropriate and practical, publicly visible signs indicating that the project has received funding from the NOAA Restoration Center. These signs should also identify other contributing partners. These contributions should also be acknowledged in all communications with the media and the public and in all outreach related to the projects, consistent with Department of Commerce Financial Assistance Standard Term and Condition G.05.k.3.

14) Project Safety

The Recipient must have a written safety plan for management of the project, which should specifically address safety of project personnel, associates, visitors, and volunteers. The Recipient must conduct a safety briefing for volunteers immediately prior to their participation in hands-on restoration activities under this award.

In addition, for any Self-Contained Underwater Breathing Apparatus (SCUBA) diving activities in a project, it is the responsibility of the Recipient to ensure that SCUBA divers are certified to a level commensurate with the type and conditions of the diving activity being undertaken. Furthermore, it is the responsibility of the Recipient to ensure that any SCUBA diving activities under this award meet, at a minimum, all applicable Federal, State, and local laws and regulations pertaining to the type of SCUBA diving being undertaken.

15) Compliance with Applicable Laws, Obtaining Permits, and Consultation Requirements

The Recipient is required to comply with national policy requirements consistent with 2 C.F.R. Sec. 200.300 and Department of Commerce Financial Assistance Standard Terms and Conditions, Section G. The Recipient will ensure that implementation of the project will meet all Federal laws and regulations by obtaining all Federal, state, and local permits and consultations applicable to the project prior to expenditure of award funds for those activities requiring permits and consultations. This includes, but is not restricted to, consultations required under the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat), National Historic Preservation Act, and Coastal Zone Management Act. The Recipient will be cognizant of all conditions and restrictions required by their permits and consultations, and will immediately halt activities and contact their NOAA Technical Monitor if events occur that threaten to violate the conditions or restrictions required by their permits and consultations.

16) Verification of Permits and Consultations

Verification of permits and regulatory compliance related to this project must be presented to the NOAA Technical Monitor prior to project implementation. The Recipient should provide a list of Federal, tribal, state, and local permits acquired for this project by email or letter to the NOAA Technical Monitor.

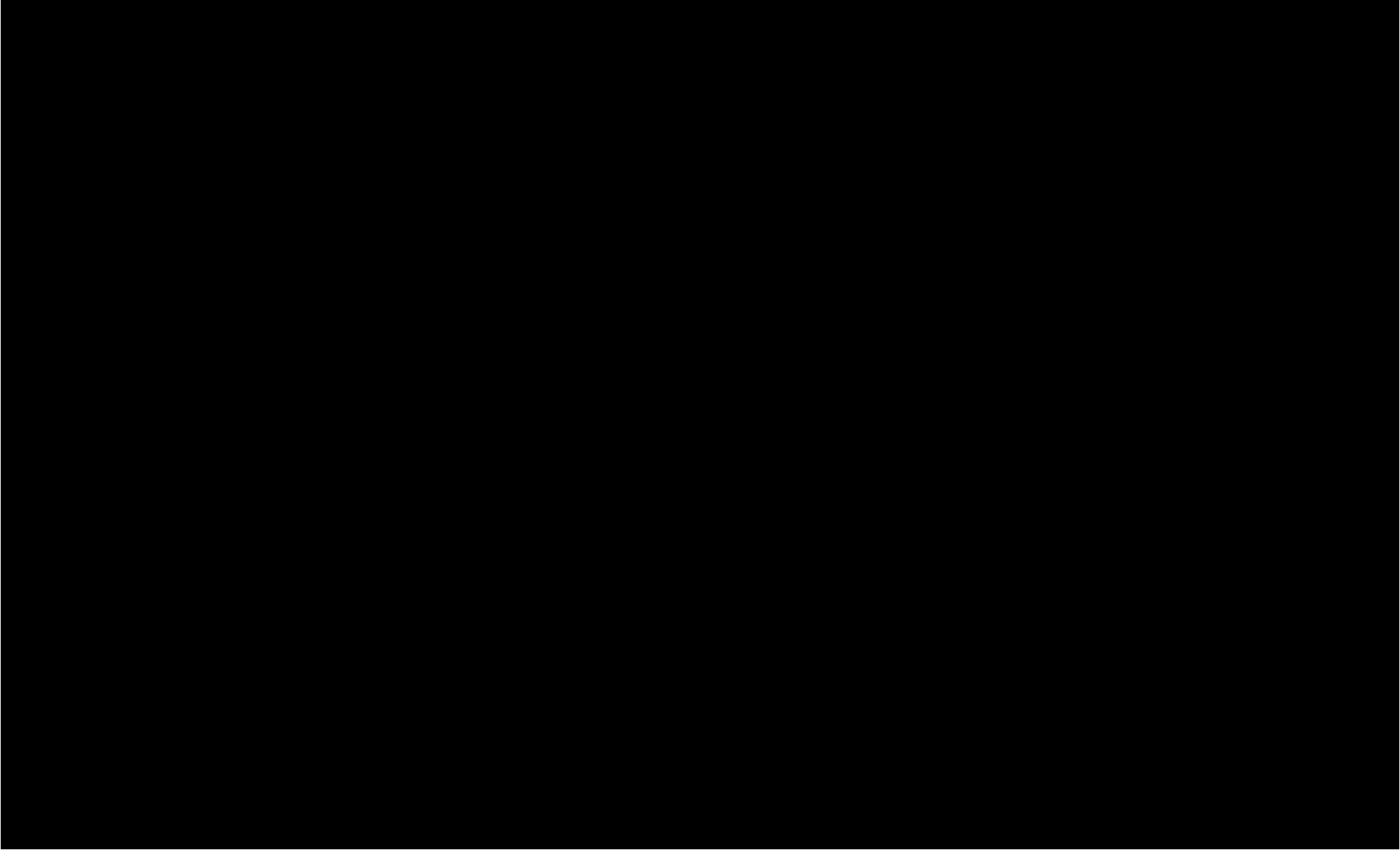
17) Project Files

The Recipient must maintain project files for all restoration activities taking place under this agreement consistent with 2 C.F.R. Sec. 200.334. These files must contain, at a minimum, project work plans and copies of all federal and state permits/consultations associated with project implementation.

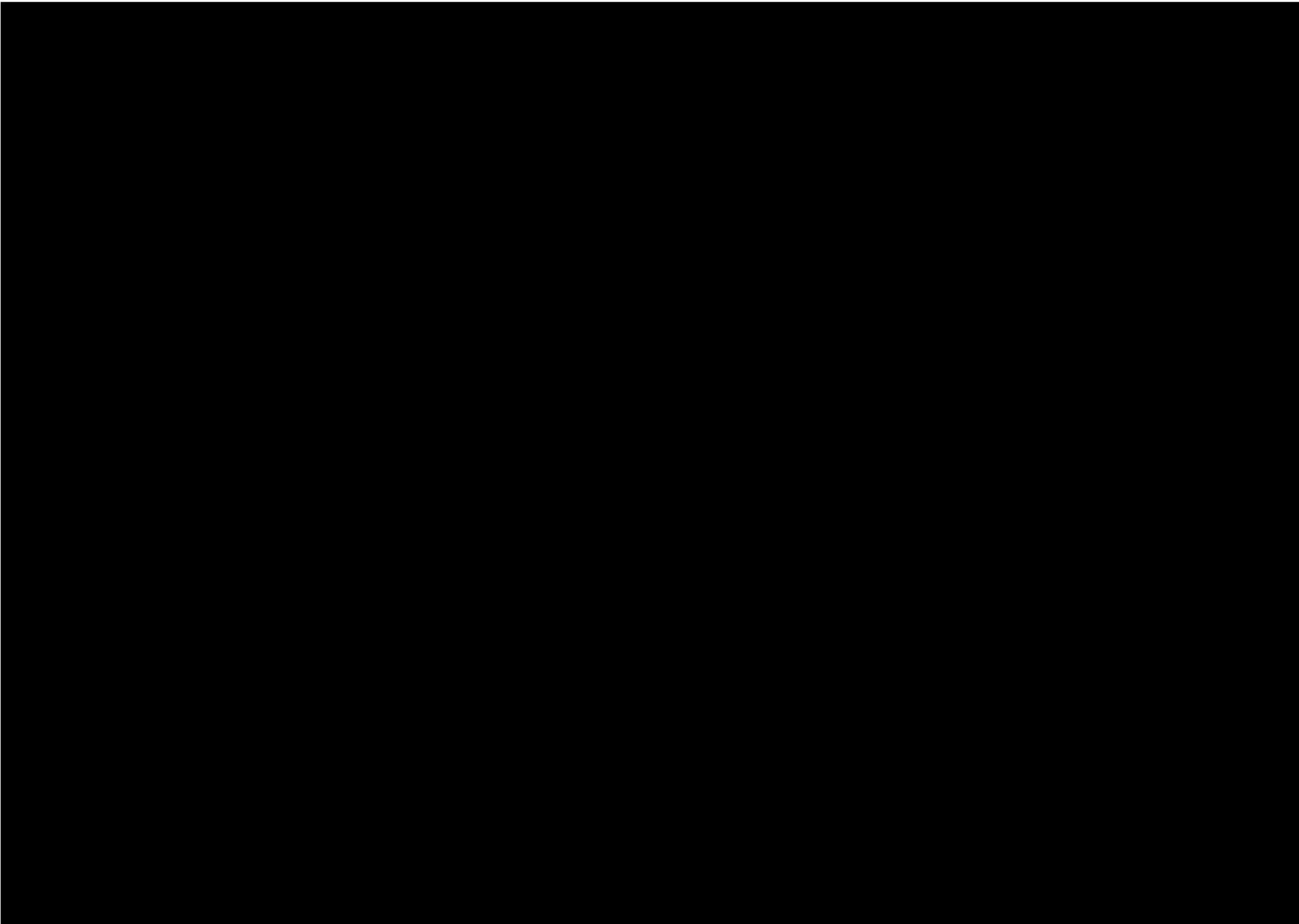
BUDGET INFORMATION - Non-Construction Programs

OMB Number: 4040-0006
Expiration Date: 02/28/2025

SECTION A - BUDGET SUMMARY



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Forest Service

Title: The Role of Local Communities in the Development of Agreement or Contract Plans through Stewardship Contracting.

OMB Control Number: 0596-0201.

Summary of Collection: Section 323 of Public Law 108-7 (16 U.S.C. 2104 Note) requires the Forest Service (FS) and Bureau of Land Management (BLM) to report to Congress annually on the role of local communities in the development of agreement or contract plans through stewardship contracting. To meet that requirement FS conducts an annual telephone survey to gather the necessary information for use by both the FS and BLM in developing their separate annual reports to Congress.

Need and Use of the Information: The survey will collect information on the role of local communities in the development of agreement or contract plans through stewardship contracting. The survey will provide information regarding the nature of the local community involved in developing agreement or contract plans, the nature of roles played by the entities involved in developing agreement or contract plans, the benefits to the community and agency by being involved in planning and development of contract plans, and the usefulness of stewardship contracting in helping meet the needs of local communities. FS posts the report on its Web page for viewing by the public. Congress also makes the agency reports available for use by organizations both inside and outside the government.

Description of Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 507.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 380.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012-30258 Filed 12-14-12; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE**Forest Service**

Okanogan-Wenatchee National Forest, Okanogan County, WA Bannan, Aeneas, Revis, and Tunk Grazing Allotments Environmental Impact Statement; Correction

AGENCY: Forest Service, USDA.

ACTION: Notice; Correction.

SUMMARY: The USDA Forest Service published a document in the **Federal Register** of November 27, 2012, concerning requests for comments on the proposed grazing allotments and dates of document availability. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Christina Bauman, 509-486-5112.

Correction

In the **Federal Register** of November 27, 2012, in FR Doc. 2012-28420, on page 70137, in the second column, correct the

DATES caption to read:

DATES: Comments concerning the scope of the analysis should be received by January 18, 2013. The draft environmental impact statement is expected to be filed with the Environmental Protection Agency and made available for public review in February 2013. The final environmental impact statement is expected to be available for review in April 2013.

Dated: December 11, 2012.

Clinton Kyhl,

Deputy Forest Supervisor.

[FR Doc. 2012-30311 Filed 12-14-12; 8:45 am]

BILLING CODE 3410-75-P

DEPARTMENT OF COMMERCE

[Docket No.: 121115633-2633-01]

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

AGENCY: Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: This notice revises and updates the *Department of Commerce (DOC) Pre-Award Notification Requirements for Grants and Cooperative Agreements*, as published in the **Federal Register** (66 FR 49917) on October 1, 2001, and as amended on October 30, 2002 (67 FR 66109), on December 30, 2004 (69 FR 78389), and February 11, 2008 (73 FR 7696). This announcement constitutes a recompilation of the Department of Commerce pre-award requirements for grants and cooperative agreements, including all amendments and revisions to date.

DATES: These provisions are effective December 17, 2012.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Department of Commerce Office of Acquisition Management, Telephone Number: 202-482-1679.

SUPPLEMENTARY INFORMATION: The DOC is authorized to award grants and

cooperative agreements under a wide range of programs that support economic development; international trade; minority businesses; standards and technology; oceanic/atmospheric services; and telecommunications and information.

It is the policy of the DOC to seek full and open competition for awards of discretionary financial assistance funds whenever possible. Moreover, DOC financial assistance must be awarded through a merit-based review and selection process. Notices announcing the availability of Federal funds for new awards for each DOC competitive financial assistance program will be posted on www.grants.gov by the sponsoring operating unit in the uniform format for an announcement of Federal Funding Opportunity (FFO) published by the Office of Management and Budget (OMB). In limited circumstances (e.g., when required by statute), DOC will also publish notices in the **Federal Register** announcing the availability of Federal funds for new awards. These announcements will reference or include the DOC Pre-Award Notification Requirements identified in Sections A and B of this notice, and the program-specific information identified in Section C of this notice, and will follow the uniform format for announcements of funding opportunities as identified in Section D.

This announcement provides notice of the DOC Pre-Award Notification Requirements that apply to all DOC-sponsored grant and cooperative agreement programs, and that may supplement those program announcements that reference this notice. Some of the DOC general provisions published herein contain, by reference or substance, a summary of the pertinent statutes or regulations published in the U.S. Code (U.S.C.), **Federal Register**, or Code of Federal Regulations (CFR), or requirements provided in Executive Orders, OMB Circulars (circulars), or Assurances (Forms SF-424B and SF-424D). This notice does not intend to be a derogation of, or amend, any statute, regulation, Executive Order, circular, or Standard Form.

Each individual award notice will complete and include the relevant analyses pursuant to the requirements in Executive Order 12866, Executive Order 13132, the Administrative Procedure Act, the Regulatory Flexibility Act, and the Paperwork Reduction Act, as applicable.

A. The following pre-award notice provisions apply to all applicants for and recipients of DOC grants and cooperative agreements:

1. Federal Policies and Procedures. Applicants, recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance.

2. Debarment, Suspension, Drug-Free Workplace, and Lobbying Provisions. All applicants must comply with the requirements of subpart C of 2 CFR part 1326, "Nonprocurement Debarment and Suspension," 15 CFR part 29, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)" and 15 CFR part 28, "New Restrictions on Lobbying," including the submission of required forms and obtaining certification from lower tier applicants and bidders.

3. Pre-Award Screening of Applicant's and Recipient's Management Capabilities, Financial Condition, and Present Responsibility. It is the policy of the DOC to make awards to applicants and recipients that are competently managed, responsible, financially capable and committed to achieving the objectives of the award(s) they receive. Therefore, pre-award screening may include, but is not limited to, the following reviews:

(a) *Past Performance*. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(b) *Credit Checks*. A credit check will be performed on individuals, for-profit, and non-profit organizations.

(c) *Delinquent Federal Debts*. No award of Federal funds shall be made to an applicant that has an outstanding delinquent Federal debt until:

(1) The delinquent account is paid in full;

(2) A negotiated repayment schedule is established and at least one payment is received; or

(3) Other arrangements satisfactory to the DOC are made.

Pursuant to 31 U.S.C. 720B and 31 CFR 901.6, unless waived, 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.

Pursuant to 28 U.S.C. 3201(e), a debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan which 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. The DOC sponsoring operating units may promulgate regulations to allow for waiver of this restriction on eligibility for such grants and cooperative agreements.

(d) *List of Parties Excluded from Procurement and Nonprocurement Programs*. The System for Award Management (SAM) (previously this information was located within the Excluded Parties Listing System), maintained by the General Services Administration (GSA), is available at <https://www.sam.gov>. SAM encompasses the capabilities of the Central Contractor Registration (CCR)/ Federal Agency Registration (FedReg), Online Representations and Certifications Application (ORCA), and the Excluded Parties List System (EPLS), among other federal databases, and will be checked by DOC to ensure that an applicant is properly registered and eligible to receive a DOC financial assistance award.

(e) *Pre-Award Accounting System Surveys*. The Grants Office may require a pre-award survey of the applicant's financial management system in cases where the recommended applicant has had no prior Federal support, the operating unit has reason to question whether the financial management system meets Federal financial management standards, or the applicant is being considered for a high-risk designation.

(f) *Other*. DOC may conduct additional pre-award screenings in accordance with new public laws or administrative directives.

4. *No Obligation for Future Funding*. If the DOC obligates funding for an applicant's project, the DOC has no obligation to provide any additional future funding in connection with that award. Any amendment of an award to increase funding or to extend the period of performance is at the total discretion of the DOC.

5. *Pre-Award Activities*. If an applicant incurs any costs prior to receiving an award, it does so solely at its own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made, or as authorized for awards that support research by 15 CFR 14.25(e)(4).

6. *Freedom of Information Act (FOIA) Disclosure*. The FOIA (5 U.S.C. 552 and DOC regulations at 15 CFR part 4) sets forth the process and procedure the DOC follows to make requested

material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications, proposals, and other information submitted by applicants may be released in response to FOIA requests. In accordance with 15 CFR 4.9, applicants and recipients should designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submissions that it considers protected from disclosure under 5 U.S.C. 552(b)(4). In addition, Federal contractors may assist with program implementation and have access to materials applicants and recipients submit.

7. *False Statements*. A false statement on an application is grounds for denial or termination of an award, and/or possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

8. *Application Forms*. Unless the individual programs specify differently in notices announcing the availability of funding, the following forms, family of forms, and/or certifications are required, as applicable, for DOC grants and cooperative agreements: OMB Standard Forms (SF) SF-424, *Application for Federal Assistance*; SF-424A, *Budget Information—Non-Construction Programs*; SF-424B, *Assurances—Non-Construction Programs*; SF-424C, *Budget Information—Construction Programs*; SF-424D, *Assurances—Construction Programs*; SF-424 Family of Forms for Research and Related Programs; SF-424 Short Organizational Family; SF-424 Individual Form Family; and SF-424 Mandatory Family. In addition, Commerce Department (CD) Forms CD-511, *Certification Regarding Lobbying*; CD-512, *Certification Regarding Lobbying—Lower-Tier Covered Transactions*; and SF-LLL, *Disclosure of Lobbying Activities*, will be used as appropriate.

9. *Environmental Requirements*. Environmental impacts must be considered by Federal decision makers in their decisions whether to (1) approve a proposal for Federal assistance; (2) approve the proposal with mitigation; or (3) approve a different proposal/grant 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. Applicants, recipients and subrecipients must comply with all environmental standards, to include those prescribed under the following

statutes and Executive Orders, and shall identify to the awarding agency any impact the award may have on the environment. The failure to do so is a basis for not selecting an application. In some cases, if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient 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.)*. Applicants for and recipients of Federal financial assistance awards are required to identify to the awarding agency any impact an award will have on the quality of the human environment, and assist the agency to comply with the National Environmental Policy Act, when the award activities remain subject to Federal authority and control. Applicants for and recipients of assistance may be requested to assist DOC in drafting an environmental impact assessment or environmental impact statement as part of a proposal if DOC determines such documentation is required.

(b) *National Historic Preservation Act (16 U.S.C. 470 et seq.)*. Applicants for and recipients of Federal financial assistance awards 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. Applicants and recipients may also be requested to assist DOC in consulting with State or Tribal Historic Preservation Officers or other applicable interested parties necessary to identify, assess and resolve adverse effects to historic properties.

(c) *Executive Order 11988 ("Floodplain Management") and Executive Order 11990 ("Protection of Wetlands")*. Applicants and recipients must identify proposed actions located in Federally defined floodplains and wetlands to enable DOC to make a determination 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")*. Applicants and recipients 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 Executive Order 11738. Recipients shall not use a facility that EPA has placed on the Environmental Protection Agency's (EPA) List of Violating Facilities (this list is incorporated into the Excluded Parties List System which is incorporated into the SAM located at <https://www.sam.gov/portal/public/SAM>) in performing any award that is nonexempt under subpart J of 2 CFR part 1532.

(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.

(f) *The Endangered Species Act (16 U.S.C. 1531 et seq.)*. Applicants and recipients must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility for ensuring that a protected species or habitat does not incur adverse effects from actions under Federal assistance awards, and for conducting the required reviews 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 (42 U.S.C. 300 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 also provides that recipients of Federal funds 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 (Superfund) (42 U.S.C. 9601) and the Community Environmental Response Facilitation Act (42 U.S.C. 9601 et seq.)*. These requirements address responsibilities related to actual or threatened hazardous substance 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 ("Environmental Justice in Minority Populations and Low Income Populations")*. This Order identifies and addresses adverse human health or environmental effects of programs, policies and activities on low income and minority populations.

10. *Limitation of Liability*. In no event will the Department of Commerce be responsible for proposal preparation costs if a program fails to receive funding or is cancelled because of other agency priorities. The publication of an announcement of funding availability does not oblige the agency to award any specific project or to obligate any available funds.

B. The following general provisions will apply to all DOC grant and cooperative agreement awards:

1. *Administrative Requirements and Cost Principles*. The uniform administrative requirements for all DOC grants and cooperative agreements are codified at 15 CFR part 14, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations," and at 15 CFR part 24, "Uniform Administrative Requirements for Grants and Agreements to State and Local Governments." The following list of cost principles, which are incorporated by reference in 15 CFR parts 14 and 24, are included in the DOC's grants and cooperative agreements: 2 CFR part 220 (OMB Circular A-21), "Cost Principles for Educational Institutions;" 2 CFR part 225 (OMB Circular A-87), "Cost Principles for State, Local and Indian Tribal Governments;" 2 CFR part 230 (OMB Circular A-122), "Cost Principles for Nonprofit Organizations;" Federal Acquisition Regulation subpart 31.2, "Contracts with Commercial Organizations," codified at 48 CFR 31.2; and 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." Applicable administrative requirements and cost principles are identified in each award and are incorporated by reference into the award. Expenditures for any financial assistance award must be necessary to carry out the authorized project and be consistent with the applicable cost principles.

2. *Award Payments*. Advances will be limited to the minimum amounts necessary to meet immediate disbursement needs, but in no case

should advances exceed the amount of cash required for a 30-day period. Any advanced funds that are not disbursed in a timely manner and any applicable interest must be returned promptly to the DOC. Certain bureaus within the DOC use the Department of Treasury's Automated Standard Application for Payment (ASAP) system. In order to receive payments under ASAP, recipients will be required to enroll electronically in the ASAP system by providing their Federal Awarding Agency with pertinent information to begin the enrollment process, which allows them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. It is the recipient's responsibility to ensure that its contact information is correct. The funding agency must be provided a Point of Contact name, mailing address, email address, telephone number, Data Universal Number System (DUNS) identifier issued by the commercial company Dun & Bradstreet (D&B), and taxpayer identification number (TIN) to commence the enrollment process. In order to be able to complete the enrollment process, the recipient will need to identify a Head of Organization, an Authorizing Official, and a Financial Officer. It is very important that the recipient's banking data be linked to the funding agency's Agency Location Code in order to ensure proper payment under an award. For additional information on this requirement, prospective applicants should contact their Federal Awarding Agency.

3. Federal and Non-Federal Cost Sharing.

(a) Awards that include Federal and non-Federal cost sharing will 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 shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs are greater than the total approved budget, the Federal share will not exceed the total Federal dollar amount authorized by the award.

(b) The non-Federal share, whether in cash or in-kind, 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 in-kind contributions. In any case, recipients must meet the cost share commitment over the life of the award.

4. *Budget Changes and Transfers Among Cost Categories.* When the terms of an award allow the recipient to transfer funds among approved direct cost categories, the transfer authority does not authorize the recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior approval. In addition, the recipient will not be authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.

5. *Indirect Costs and Facilities and Administrative Costs.*

(a) Indirect costs, or facilities and administrative (F&A) costs for educational institutions, 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) Excess indirect costs may not be used to offset unallowable direct costs.

(c) OMB established the cognizant agency concept, under which a single agency represents all others in dealing with grantees in common areas. The cognizant agency reviews and approves grantees' indirect cost rates. Approved rates must be accepted by other agencies, unless specific program regulations restrict the recovery of indirect costs. If indirect costs are permitted and the recipient would like to include indirect costs in its budget, but the recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate will be subject to the procedures in the applicable cost principles and the following subparagraphs:

(1)(i) State, local, and Indian Tribal Governments; Educational Institutions; Hospitals and Non-Profit Organizations (Non-Commercial Organizations).

For those organizations for which the DOC is cognizant or has oversight, the DOC or its designee will either negotiate a fixed rate with carry-forward provisions or, in some instances, limit its review to evaluating the procedures described in the recipient's cost allocation plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs.

(ii) Commercial Organizations

For commercial 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 CFR part 42. If the only federal funds received by a commercial organization are DOC award funds, then

the DOC becomes the cognizant federal agency for the purpose of indirect cost negotiations. For those organizations for which the DOC is cognizant, DOC or its designee will negotiate a fixed rate with carry-forward provisions for the recipient. "Fixed rate" means an indirect cost rate which has the same characteristics as a pre-determined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of the subsequent period. DOC or its designee will negotiate indirect cost rates using the cost principles found in 48 CFR part 31, "Contract Cost Principles and Procedures." For guidance on how to put an indirect cost plan together go to: <http://www.dol.gov/oasam/programs/boc/costdeterminationguide/main.htm>.

(2) Within 90 days of the award date, the recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The recipient shall provide the Grants Officer with a copy of the transmittal letter.

Office of Acquisition Management,
U.S. Department of Commerce, 14th
Street and Constitution Avenue NW.,
Room 6412, Washington, DC 20230.

(3) The recipient can use the fixed rate proposed in the indirect cost plan until such time as the DOC provides a response to the submitted plan. Actual indirect costs must be calculated annually and adjustments made through the carry-forward provision used in calculating next year's rate. This calculation of actual indirect costs and the carry-forward provision is subject to audit. Indirect cost rate proposals must be submitted annually. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each recipient's fiscal year.

(d) When the DOC is not the oversight or cognizant Federal agency, the recipient shall 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.

(e) If the recipient fails to submit the required documentation to the DOC within 90 days of the award date, the recipient may be precluded from recovering any indirect costs under the award. If the DOC, oversight, or cognizant Federal agency determines there is good 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.

(f) The maximum dollar amount of allocable indirect costs for which the DOC will reimburse the recipient shall be the lesser of the line item amount for the Federal share of indirect costs contained in the approved budget of the award, or the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by an oversight or cognizant Federal agency and applicable to the period in which the cost was occurred, provided the rate is approved on or before the award end date.

6. *Tax Refunds.* Refunds of Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) taxes received by a recipient during or after the project period must be refunded or credited to the DOC where the benefits were financed with Federal funds under the award. Recipients are required to contact the Grants Officer immediately upon receipt of these refunds. Recipients are required to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the project period ends.

7. *Other Federal Awards with Similar Programmatic Activities.* Recipients will be required to provide written notification to the Federal Program Officer and the Grants Officer in the event that, 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. The DOC will not pay for costs that are funded by other sources.

8. *Non-Compliance with Award Provisions.* Failure to comply with any or all of the provisions of an award, or the requirements of this notice, may have a negative impact on future funding by the DOC and may be considered grounds for any or all of the following enforcement actions: establishment of an account receivable, withholding payments under any DOC awards to the recipient, changing the method of payment from advance to reimbursement only, or the imposition of other special award conditions, suspension of any DOC active awards, or termination of any DOC active awards.

9. *Prohibition Against Assignment by the Recipient.* Notwithstanding any other provision of an award, recipients may not transfer, pledge, mortgage, or otherwise assign an award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions

without the express written approval of the Grants Officer.

10. *Non-Discrimination Requirements.* There are several Federal statutes, regulations, Executive Orders, and policies relating to nondiscrimination. No person in the United States shall, on the grounds of race, color, national origin, handicap, religion, age, 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. These requirements include but are not limited to:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and the DOC's implementing regulations published at 15 CFR part 8 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;

(b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) and the DOC's implementing regulations at 15 CFR part 8a prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and the DOC's implementing regulations published at 15 CFR part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance. The U.S. Department of Justice issued regulations implementing Title II of the Americans with Disabilities Act (ADA) (28 CFR part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 CFR part 36; 75 FR 56164, as amended by 76 FR 13286). These regulations adopt enforceable accessibility standards called the "2010 ADA Standards for Accessible Design" (2010 Standards). For purposes of complying with DOC's regulations, the 2010 Standards are an acceptable alternative to the Uniform Federal Accessibility Standards (UFAS). DOC deems compliance with the 2010 Standards to be an acceptable means of complying with the Section 504 accessibility requirements for new construction and alteration projects under 15 CFR 8b.18(c), as follows:

(1) Public Recipients subject to Title II of the ADA may use either the 2010 Standards or UFAS where the physical construction or alternations commence on or after September 15, 2010 and before March 15, 2012 (see 28 CFR 35.151(c)(2));

(2) Private Recipients subject to Title III of the ADA may use either the 2010

Standards or UFAS if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after September 15, 2010 and before March 15, 2012, or if no permit is required, if the start of physical construction or alterations occurs on or after September 15, 2010 and before March 15, 2012 (see 28 CFR 36.406(a)(2)); and

(3) In all cases, once a recipient selects an applicable ADA accessibility standard (*i.e.*, the 2010 Standards or UFAS), that standard must be applied to the entire facility. As of March 15, 2012, all new construction and alteration projects must comply with the 2010 Standards.

(d) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) and the DOC's implementing regulations published at 15 CFR part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;

(e) 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;

(f) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), relating to nondiscrimination in the sale, rental or financing of housing;

(g) Parts II and III of Executive Order 11246, as amended by Executive Orders 11375 and 12086 requiring Federally assisted construction contracts to include the nondiscrimination provisions of sections 202 and 203 of that Executive Order and the Department of Labor's regulations at 41 CFR 60-1.4(b) implementing Executive Order 11246;

(h) Executive Order 13166 (August 11, 2000), "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, and DOC policy guidance issued on March 24, 2003 (68 FR 14180) to Federal financial assistance recipients on the Title VI prohibition against national

origin discrimination affecting LEP persons; and

(i) In recognition of the constitutionally-protected interest of religious organizations in making religiously-motivated employment decisions, Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, which expressly exempts religious organizations from the prohibition against discrimination on the basis of religion. See 42 U.S.C. 2000e-1(a).

11. Audits of Organizations Covered by OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and the related Compliance Supplement. Recipients that are subject to OMB Circular A-133, and that expend \$500,000 or more in Federal awards in a fiscal year shall have an audit conducted for that year in accordance with the requirements of OMB Circular A-133, issued pursuant to the Single Audit Act of 1984 (Pub. L. 98-502), as amended by the Single Audit Act Amendments of 1996 (Pub. L. 104-156).

12. Unless otherwise specified in the terms and conditions of the award, in accordance with 15 CFR § 14.26(c) and (d), for-profit hospitals, commercial entities, and other organizations not required to follow the audit provisions of OMB Circular A-133 shall have a program-specific audit performed by an independent auditor when the federal share amount awarded is \$500,000 or more over the duration of the project period. An audit is required at least once every two years using the following schedule for audit report submission.

(a) For awards where the project period is less than two years, an audit is required within 90 days of the end of the project period to cover the entire project (the award close-out period is included in the 90 days);

(b) For awards with a two- or three-year project period, an audit is required within 90 days after the end of the first year to cover Year 1, which is the period of time when Federal funding is available for obligation by the recipient, and within 90 days of the end of the project period to cover Year 2 and Year 3 (if applicable) (the award close-out period is included in the 90 days); or

(c) For awards with a four- to five-year project period, an audit is required within 90 days after the end of the first year to cover Year 1, within 90 days after the end of the third year to cover Year 2 and Year 3, and within 90 days of the end of the project period to cover Year 4 for and Year 5 (if applicable) (the award close-out period is included in the 90 days).

Some DOC programs have specific audit guidelines that will be incorporated into the award. When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in OMB Circular A-133, subpart B, § _____.235. The Recipient may include a line item in the budget for the cost of the audit for approval by the Grants Officer.

13. Policies and Procedures for Resolution of Audit-Related Debts. The DOC has established policies and procedures for handling the resolution and reconsideration of financial assistance audits which have resulted in, or may result in, the establishment of a debt (account receivable) for financial assistance awards. These policies and procedures are contained in the **Federal Register** notice dated January 27, 1989. See 54 FR 4053. The policies and procedures also are provided in more detail in the *Department of Commerce Financial Assistance Standard Terms and Conditions*.

14. *Debts*. Any debts determined to be owed the Federal Government shall be paid promptly by the recipient. The DOC's debt collection procedures are set out in 15 CFR part 19. In accordance with 15 CFR § 19.1, delinquent debt is a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. In accordance with 15 CFR § 19.5 and 31 U.S.C. 3717, failure to pay a debt by the due date, or if there is no due date, within 30 days of the billing date, shall result in assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. 3717 and 31 CFR § 901.9. DOC entities will transfer any DOC debt that is more than 180 days delinquent to the Financial Management Service for debt collection services, a process known as "cross-servicing," pursuant 31 U.S.C. 3711(g), 31 CFR § 285.12 and 15 CFR § 19.9, and may result in the DOC taking further action as specified in the terms of the award. Funds for payment of a debt must not come from other federally sponsored programs. Verification that other Federal funds have not been used will be made, *e.g.*, during on-site visits and audits.

15. *Post-Award Discovery of Adverse Information*. After an award is made, if adverse information on a recipient or any key individual associated with a recipient is discovered which reflects

significantly and adversely on the recipient's responsibility, the Grants Officer may take the following actions:

(a) Require the recipient to correct the conditions.

(b) Consider the recipient to be "high risk" and unilaterally impose special award conditions to protect the Federal Government's interest.

(c) Suspend or terminate an active award. The recipient will be afforded due process while effecting such actions.

(d) Require the removal of personnel from association with the management of and/or implementation of the project and require Grants Officer approval of personnel replacements.

16. *Competition and Codes of Conduct*.

(a) Pursuant to the certification in Form SF-424B, paragraph 3, recipients must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of a personal or organizational conflict of interest, or personal gain in the administration of this award and any subawards.

(b) Recipients must maintain written standards of conduct governing the performance of their employees engaged in the award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if such participation would cause a real or apparent conflict of interest. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the recipient may not solicit or accept anything of monetary value from subrecipients. However, the recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of a recipient.

(c) All subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition. Recipients must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to

ensure objective subrecipient performance and eliminate unfair competitive advantage, subrecipients that develop or draft work requirements, statements of work, or requests for proposals will be excluded from competing for such subawards.

(d) For purposes of the award, a financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with an applicant. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to act in an impartial manner. It also could result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

17. *Small Businesses, Minority Business Enterprises and Women's Business Enterprises.* The DOC encourages recipients to utilize small businesses, minority business enterprises and women's business enterprises in contracts under financial assistance awards. The DOC's Minority Business Development Agency can assist recipients in matching qualified minority business enterprises with contract opportunities.

18. *Subaward and/or Contract to a Federal Agency.* Recipients, subrecipients, contractors, and/or subcontractors may not sub-grant or sub-contract any part of an approved project to any Federal department, agency, instrumentality, or employee thereof, without the prior written approval of the Grants Officer.

19. *Foreign Travel.* Recipients must comply with the provisions of the Fly America Act (49 U.S.C. 40118) and the implementing Federal Travel Regulations (41 CFR §§ 301–10.131 through 301–10.143). The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag 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 carrier service will not accomplish the agency's mission. If a foreign air carrier is anticipated to be used for any portion of travel under a DOC financial assistance award, the recipient must receive prior approval from the Grants Officer.

20. *Purchase of American-Made Equipment and Products.* Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made

equipment and products with funding provided under DOC financial assistance awards.

21. *Intellectual Property Rights.*

(a) *Inventions.* The rights to any invention made by a recipient under a DOC financial assistance award are determined by the Bayh-Dole Act, as amended (Pub. L. 96–517), as amended, and codified at 35 U.S.C. 200 *et seq.*, except as otherwise required by law. The specific rights and responsibilities are described in more detail in 37 CFR part 401 and in particular, in the standard patent rights clause in 37 CFR § 401.14, which is incorporated by reference into awards. Recipients of DOC financial assistance awards are required to submit their disclosures and elections electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Recipients may obtain a waiver of this electronic submission requirement by providing to the DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.

(b) *Patent Notification Procedures.* Pursuant to Executive Order 12889, the DOC is required to notify the owner of any valid patent covering technology whenever the DOC or its financial assistance recipients, 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 recipient uses or has used patented technology under this award without a license or permission from the owner, the recipient will be required to notify the Grants Officer. This notice does not necessarily mean that the government authorizes and consents to any copyright or patent infringement occurring under the financial assistance award.

(c) *Data, Databases, and Software.* The rights to any work produced or purchased under a DOC financial assistance award are determined by 15 CFR §§ 14.36, for State and Local Governments, or 24.34, for Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations, as applicable. Such works may include data, databases or software. The recipient owns any work produced or purchased under a DOC financial assistance award subject to DOC's right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for Federal Government purposes.

(d) *Copyright.* The recipient may copyright any work produced under a DOC financial assistance award subject to the DOC's royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use the work, or authorize others to do so for Federal Government purposes. Works jointly authored by the DOC and recipient employees may be copyrighted but only the part authored by the recipient is protected because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. On occasion, the DOC may require the recipient to transfer to DOC its copyright in a particular work for government purposes or when the DOC is undertaking the primary dissemination of the work. Ownership of copyright by the Federal Government through assignment is permitted by 17 U.S.C. 105.

22. *Seat Belt Use.* Pursuant to Executive Order 13043, recipients shall seek to encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating recipient/company-owned, rented or personally owned vehicles.

23. *Research Involving Human Subjects.* All proposed research involving human subjects must be conducted in accordance with 15 CFR part 27, "Protection of Human Subject." No research involving human subjects is permitted under any DOC financial assistance award unless expressly authorized by the Grants Officer.

24. *Federal Employee Expenses.* Federal agencies are generally barred from accepting funds from a recipient to pay transportation, travel, or other expenses for any Federal employee. Use of award funds (Federal or non-Federal) or the recipient'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 prohibits the acceptance of gifts, including travel payments for Federal employees, from recipients or applicants regardless of the source.

25. *Minority Serving Institutions (MSIs) Initiative.* Pursuant to Executive Orders 13555 ("White House Initiative on Educational Excellence for Hispanics"), 13270 ("Tribal Colleges and Universities"), and 13532 ("Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities"), the DOC is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance award programs. The DOC's goals include achieving full

participation of MSIs in order 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. The DOC encourages all applicants and recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education's Web site.

26. *Access to Records.* The DOC, the Inspector General of the DOC, the Comptroller General of the United States, or any of their duly authorized representatives, and, if appropriate, the State, shall have access to any pertinent books, documents, papers and records of the parties to a grant or cooperative agreement, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. An audit of an award may be conducted at any time.

27. *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 (2000)). 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. Recipient organizations 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. Recipient organizations 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. Federal award funds expended on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the award, up to and including award termination and possible suspension or debarment. The DOC requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to the Grants Officer, who will also notify the OIG of such allegation. Once the

recipient organization has investigated the allegation, it will submit its findings to the Grants Officer. The DOC may accept the recipient's findings or proceed with its own investigation. The Grants Officer shall inform the recipient of the DOC's final determination.

28. *Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763).* Recipients must comply with this Act relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of the Office of Personnel Management Standards for a Merit System of Personnel Administration (5 CFR part 900, subpart F).

29. *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.)* and the DOC's implementing regulations issued at 15 CFR part 11. These provide for fair and equitable treatment of persons displaced or 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.

30. *Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.).* This Act prohibits the use of lead-based paint in construction or rehabilitation of residential structures.

31. *Hatch Act (5 U.S.C. 1501–1508 and 7324–7328).* This Act 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.

32. *Labor standards for Federally-assisted construction subagreements (wage guarantees).* Recipients must comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a-7); the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874); and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333).

33. *Care and Use of Live Vertebrate Animals.* Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544), as amended (7 U.S.C. 2131 et seq.) (animal acquisition, transport, care, handling, and use in projects) and implementing regulations, 9 CFR 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.

34. *Publications, Videos, and Acknowledgment of Sponsorship.* Publication of the results or findings in appropriate professional journals and production of videos 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). The recipient 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. When releasing information related to a funded project the recipient must include a statement that the project or effort undertaken was or is sponsored by DOC. The recipient is also responsible for assuring that every publication of material based on, developed under or otherwise produced under a DOC award, except scientific articles or papers appearing in scientific, technical or professional journals, 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."

35. *Homeland Security Presidential Directive—12.* If the performance of a grant award requires recipient organization 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 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 shall comply

with the DOC personal identity verification procedures that implement Homeland Security Presidential Directive—12, “Policy for a Common Identification Standard for Federal Employees and Contractors,” FIPS PUB 201, and OMB Memorandum M–05–24. The recipient shall 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 shall insert the following terms 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:

(a) The subrecipient or contractor shall 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.

(b) The subrecipient or contractor shall 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 shall 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 completion of the subaward or contract.

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

(a) This clause applies to the extent that a financial assistance award involves access to export-controlled items.

(b) In performing a financial assistance award, the recipient may gain access to items subject to export controls (export-controlled items) under the Export Administration Regulations (EAR). The recipient is responsible for

compliance with all applicable laws and regulations regarding export-controlled items, including the EAR’s deemed exports and reexport provisions. The recipient shall establish and maintain effective export compliance procedures at DOC and non-DOC facilities throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate controls relating to physical, verbal, visual and electronic access to export-controlled items, including by foreign nationals.

(c) Definitions:

(1) Export-controlled items. Items (commodities, software or technology) that are subject to the EAR (15 CFR §§ 730–774), implemented by the DOC’s Bureau of Industry and Security. These are generally known as “dual-use” items, items with military and commercial application.

(2) *Deemed Export/Reexport*. The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is “deemed” to be an export to the home country of the foreign national. 15 CFR § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national’s home country. Licenses from DOC may be required for deemed exports or reexports.

(d) The recipient shall control access to all export-controlled items that it possesses or that comes into its possession in performance of a financial assistance award, to ensure that access to, or release of, such items are restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations, including the EAR.

(e) As applicable, recipient personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items.

(f) To the extent the recipient wishes to provide foreign nationals with access to export-controlled items, the recipient shall be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed reexports.

(g) Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, Executive Orders or regulations.

(h) Compliance with this term will not satisfy any legal obligations the

recipient 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 of munitions items subject to the International Traffic in Arms Regulations (ITAR) (22 CFR §§ 120–130), including releases of such items to foreign nationals.

(i) The recipient shall include this term, including this paragraph, in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve access to export-controlled items.

37. The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)), as amended, and the implementing regulations at 2 CFR 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 the recipient or subrecipient engages in certain activities related to trafficking in persons. The DOC incorporates the award term required by 2 CFR § 175.15(b) into all financial assistance awards. See <http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf> for the full award term.

38. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282; codified at 31 U.S.C. 6101 note) (FFATA).

(a) The FFATA requires information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable Web site. This information is available at USASpending.gov. Recipients and subrecipients must include the following required data elements in their application:

(1) Name of entity receiving award;

(2) Award amount;

(3) Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;

(4) Location of: entity, primary location of performance (City/State/Congressional District/Country; and

(5) Unique identifier of entity.

(b) Reporting Subawards and Executive Compensation. Prime grant recipients awarded a new Federal grant greater than or equal to \$25,000 on or after October 1, 2010, other than those funded by the Recovery Act, are subject to FFATA subaward reporting requirements as outlined in 2 CFR part 170. The prime recipient is required to file a FFATA subaward report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to \$25,000. See Public Law 109–282, as

amended by section 6202(a) of Public Law 110–252 (*see* 31 U.S.C. 6101 note). The DOC incorporates the award term required by Appendix A of 2 CFR part 170 into all financial assistance awards. *See* <http://www.gpo.gov/fdsys/pkg/CFR-2011-title2-vol1/pdf/CFR-2011-title2-vol1-part170-appA.pdf> for the full award term.

(c) *Central Contractor Registration (CCR) and Universal Identifier Requirements.* Unless an exemption applies under 2 CFR § 25.110, applicants for federal financial assistance awards must be registered in the Central Contractor Registration (CCR) prior to submitting an application for financial assistance, maintain an active CCR registration with current information at all times during which it has an active Federal award or an application under consideration by an agency, and provide its DUNS number in each application it submits to the agency. For this purpose, the DOC incorporates the award term required by Appendix A of 2 CFR part 25 into all financial assistance awards. *See* <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=d1bbde1c530112e7133a03bb635bf2fe&rgn=div9&view=text&node=2:1.1.1.3.3.1.14.1&idno=2> for the full award term.

C. In limited circumstances (*e.g.*, when required by statute), the DOC will issue a **Federal Register** notice, in addition to a notice on www.grants.gov, announcing the availability of Federal funds for each DOC competitive financial assistance program. Unless statute or regulation requires otherwise, such **Federal Register** notices will contain only the following program-specific information: Summary description of program; deadline date for receipt of applications; addresses for submission of applications; information contacts (including electronic access); the amount of funding available; statutory authority; the applicable Catalog of Federal Domestic Assistance (CFDA) number(s); eligibility requirements; cost-sharing or matching requirements; Intergovernmental Review requirements; evaluation criteria used by the merit reviewers; selection procedures, including funding priorities/selection factors/policy factors to be applied by the selecting official; and administrative and national policy requirements; and information about how to access the full program notice at www.grants.gov.

D. The DOC follows the uniform format for an announcement of Federal Funding Opportunity (FFO) for discretionary grants and cooperative agreements established by OMB in a guidance published in the **Federal**

Register (*see* 68 FR 37370 (June 23, 2003) and 68 FR 58146 (October 8, 2003)). FFOs published by DOC are available at www.grants.gov. Applicants are strongly encouraged and in some cases required to apply through www.grants.gov. It can take up to two weeks to register with www.grants.gov if problems are encountered. Registration is required only once. Applicants should consider the time needed to register with www.grants.gov, and should begin the registration process well in advance of the application due date if they have never registered. Applicants should allow themselves adequate time to submit the proposal through www.grants.gov, as the deadline for submission generally cannot be extended and there is significant potential for human or computer error during the electronic submission process. After registering, it may take several days or longer from the initial log-on before a new Grants.gov system user can submit an application. Only authorized individual(s) will be able to submit the application, and the system may need time to process a submitted proposal. Applicants should save and print the proof of submission they receive from Grants.gov, which may take up to two days to receive.

Executive Order 12866

This notice has been determined to be “not significant” for purposes of Executive Order 12866, “Regulatory Planning and Review.”

Administrative Procedure Act and Regulatory Flexibility Act

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for this notice relating to public property, loans, grants benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Paperwork Reduction Act

This notice does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information, subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid

OMB control number. The use of the following family of forms has been approved by OMB under the following control numbers: (1) SF–424 Family: 0348–0041, 0348–0044, 4040–0003, and 4040–0004; (2) SF–424 Research and Related Family: 4040–0001; SF–424 Individual Family: 4040–0005; (3) SF–424 Mandatory Family: 4040–0002; and (4) SF–424 Short Organizational Family: 4040–0003. The use of Form SF–LLL is approved by OMB under the control numbers 0348–0046.

Catalog of Federal Domestic Assistance

This notice affects all of the grant and cooperative agreement programs funded by the DOC. The Catalog of Federal Domestic Assistance can be accessed on the Internet at: <http://www.cfda.gov>.

List of Subjects

Accounting, Administrative practice and procedures, Grants administration, Grant programs—economic development, Grant programs—oceans, atmosphere and fisheries management, Grant programs—minority businesses, Grant programs—technology, Grant programs—telecommunications, Grant programs—international, Reporting and recordkeeping requirements.

Dated: December 4, 2012.

Barry E. Berkowitz,

Senior Procurement Executive and Director of Acquisition Management.

[FR Doc. 2012–30228 Filed 12–14–12; 8:45 am]

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DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a