WORK SESSION AGENDA

BOARD OF CLALLAM COUNTY COMMISSIONERS

223 East 4th Street Room 160

Port Angeles, Washington

Tuesday, February 20, 2024 – 9:00 a.m.

Board of Clallam County Commissioner meetings will also be available virtually at:

If you would like to participate in the meeting via Zoom audio only, call 253-215-8782 and use meeting ID: 875 561 7844 and passcode: 12345

If you would like to participate in the meeting via Zoom video conference, visit https://zoom.us/j/8755617844 and use meeting ID: 875 561 7844 and passcode: 12345

This meeting can be viewed on a live stream at this link: https://www.clallamcountywa.gov/669/Live-Archived-Meetings-Online

Public comment can be directed to the Clerk of the Board at 360-417-2256 or Loni.Gores@clallamcountywa.gov

Administration 9 a.m.

1. Calendar/Correspondence

2. Resolution reappointing Lindsey Schromen-Wawrin to the Homelessness Task Force

   Resolution

3. Resolution appointing/reappointing Kathleen Sirguy, Teresa Beckstrom, Melanie Greer, LaDona Wilson, and Carol Johnson to the Fair Advisory Board

   Resolution

Budget

4. Agreement with Department of Commerce - Economic Development Administration EDA for Recompete (2h)*

   Agreement

5. Agreement with Clallam County Economic Development EDC for Recompete (2i)*

   Agreement

6. Agreement with Jefferson County for Recompete (2j)*

   Agreement

7. Agreement with Peninsula College for Recompete (2k)

Agreement

8. Agreement with Washington State University WSU (2l)*

Agreement

Community Development

9. Review and next steps for request for proposals for Comprehensive Plan Update

Review and next steps

General Discussion/Items for Future Agendas

A. U.S. Coast Guard introduction - Captain McDonnell (February 26)

B. Forest Hydrology Presentation - Oliver Grah (February 26)

C. Olympic National Forest Update (March 11 at 9 a.m.)

D. Department of Transportation Highway 101 Project Discussion (March 18 at 9 a.m.)

E. Department of Natural Resources Meeting (March 18 at 1 p.m.)

F. Joint Meeting with Port of Port Angeles (April 22 at 11 a.m. ? hosted at Port)

G. CASA Update (May 13)

H. Department of Transportation Highway 101 Project Discussion (June 10 at 9 a.m.)

I. Department of Natural Resources Meeting (June 17 at 1 p.m.)

J. Department of Natural Resources Meeting (August 19 at 1 p.m.)

K. Department of Transportation Highway 101 Project Discussion (September 9 at 9 a.m.)

L. Joint Meeting with Port of Port Angeles (October 28 at 11 a.m. ? hosted at BOCC)

M. Department of Natural Resources Meeting (November 18 at 1 p.m.)

N. Department of Transportation Highway 101 Project Discussion (December 9 at 9 a.m.)

EXECUTIVE SESSION
The Board may recess into Executive Session to consider employment or dismissal of personnel, to review the performance of a public employee, to consult with legal counsel, to consider the position to be taken in collective bargaining, to consider acquisition or sale of real estate, or other matters per RCW 42.30.110

- Other items may be added at the discretion of the Board and additional Work Sessions may be scheduled if more time is needed to allow for adequate discussion.
- Written testimony presented by members of the public during the Board meeting is considered a public document and must be submitted to the Clerk of the Board.

- Copies of public documents from Board meetings are available by contacting the Public Records Department.

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FEB 20 2024

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda) FEB 20 2024

Department: BOCC

WORK SESSION ☒ **Meeting Date: 2-20-24**

REGULAR AGENDA ☒ **Meeting Date: 2-27-24**

Item summary:

☐ Call for Hearing
☐ Contract/Agreement/MOU - Contract #
☒ Resolution
☐ Proclamation
☐ Budget Item
☐ Draft Ordinance
☐ Final Ordinance
☐ Other

Executive summary:

A vacancy exists on the Homelessness Task Force due to the expiration of a term.

A press release was issued during the month of November 2023 soliciting applications from interested citizens. No new applications were received.

The City of Port Angeles recommends the reappointment of Lindsey Schromen-Wawrin.

Health and Human Services Deputy Director endorses the reappointment of Lindsey Schromen-Wawrin to the Homelessness Task Force.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
None

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Approve and sign resolution reappointing.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners, Health & Human Services Department

Relevant Departments: Board of Commissioners, Health & Human Services Department

RESOLUTION _____, 2024

REAPPOINTING A MEMBER TO THE HOMELESSNESS TASK FORCE

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. A vacancy exists on the Homelessness Task Force due to the expiration of a term.
2. A press release was issued during the month of November 2023 soliciting applications from interested citizens. No new applications were received.
3. The City of Port Angeles recommends the reappointment of Lindsey Schromen-Wawrin.
4. Health and Human Services Deputy Director endorses the reappointment of Lindsey Schromen-Wawrin to the Homelessness Task Force.

NOW, THEREFORE, BE IT RESOLVED by the Board of Clallam County Commissioners, in consideration of the above findings of fact:

1. **Lindsey Schromen-Wawrin** is appointed as the representative for City Government – Port Angeles - Alternate for a term expiring December 31, 2026.

PASSED AND ADOPTED this 27th day of February 2024

BOARD OF CLALLAM COUNTY COMMISSIONERS

_____
Mike French, Chair

_____
Randy Johnson

_____
Mark Ozias

ATTEST:

_____
Loni Gores, Clerk of the Board

c: A22.50
Appointee(s)
HHS

DRAFT

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AGENDA ITEM SUMMARY

FEB 20 2024

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: BOCC

WORK SESSION ☒ **Meeting Date: 2/20/24**

REGULAR AGENDA ☒ **Meeting Date: 2/27/24**

Item summary:

☐ Call for Hearing ☐ Contract/Agreement/MOU - Contract #

☒ Resolution ☐ Proclamation ☐ Budget Item

☐ Draft Ordinance ☐ Final Ordinance ☐ Other

Documents exempt from public disclosure attached: ☐

Executive summary:

Vacancies exist on the Clallam County Fair Advisory Board due to the expiration of terms.

A press release was issued during the months of January and February 2024 soliciting applications from interested citizens. The members with expiring terms were notified. Six new applications were received.

The current members advised the Commissioner's Office they are interested in continuing their service and asked to be considered for another term.

The Director of Parks, Fair and Facilities supports the appointment of Kathleen Sirguy and the reappointment of Teresa Beckstrom, Melanie Greer, LaDona Wilson, and Carol Johnson to the Fair Advisory Board.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
None

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Approve and sign a resolution to appoint and reappoint.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners, Parks, Fair & Facilities

Relevant Departments: Board of Commissioners, Parks, Fair & Facilities

RESOLUTION _____, 2024

APPOINTING & REAPPOINTING MEMBERS TO THE FAIR ADVISORY BOARD

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. Vacancies exist on the Clallam County Fair Advisory Board due to the expiration of terms.

2. A press release was issued during the months of January and February 2024 soliciting applications from interested citizens. The members with expiring terms were notified. Six new applications were received.

3. The current members advised the Commissioner's Office they are interested in continuing their service and asked to be considered for another term.

4. The Director of Parks, Fair and Facilities supports the appointment of Kathleen Sirguy and the reappointment of Teresa Beckstrom, Melanie Greer, LaDona Wilson, and Carol Johnson to the Fair Advisory Board.

NOW, THEREFORE, BE IT RESOLVED by the Board of Clallam County Commissioners, in consideration of the above findings of fact:

1. **Kathleen Sirguy** is appointed as the At-large representative for the current term expiring on January 1, 2025 and an additional term expiring on January 1, 2029.

2. **Teresa Beckstrom** is reappointed as the Agriculture At-large representative for a term expiring January 1, 2028.

3. **Melanie Greer** is reappointed as the Arts/Photography representative for a term expiring January 1, 2028.

4. **LaDona Wilson** is reappointed as the 4-H Homemakers representative for a term expiring January 1, 2028.

5. **Carol Johnson** is reappointed as the Port Angeles Chamber of Commerce representative for a term expiring January 1, 2028.

PASSED AND ADOPTED this 27th day of February 2024

BOARD OF CLALLAM COUNTY COMMISSIONERS

_____
Mike French, Chair

ATTEST:

_____
Randy Johnson

_____
Loni Gores, Clerk of the Board

_____
Mark Ozias

c: A22.159
Parks, Fair, and Facilities
Appointee(s)

DRAFT

4

AGENDA ITEM SUMMARY

FEB 20 2024

(Must be submitted NLT 3PM Wednesday for next week agenda)

24

Department: BOCC

WORK SESSION ☒ **Meeting Date: February 20, 2024**

REGULAR AGENDA ☒ **Meeting Date: February 20, 2024**

Required originals approved and attached? ☐
Will be provided on:

Item summary:

☐ Call for Hearing ☒ Contract/Agreement/MOU - Contract # ED24OIE0G0085

☐ Resolution ☐ Proclamation ☐ Budget Item

☐ Draft Ordinance ☐ Final Ordinance ☐ Other

Documents exempt from public disclosure attached: ☐

Executive summary:

Request Approval of Strategy Development Grant award contract by US Department of Commerce/Economic Development Administration (EDA)

Clallam County, as the Lead Applicant for North Olympic Peninsula Recomplete Coalition (NOPRC) applied for the Distressed Area Recompete Pilot Program (Recompete) Phase 1 approval and the Strategy Development Grant in October 2023.

December 2023, NOPRC and Clallam County were announced as a Finalist for the Recompete Program and invited to compete in Phase 2 of the grant. Our Phase 1 plan was 1 of 22 selected from 235 nationwide applications, the largest applicant response to an EDA grant ever.

We were also awarded 1 or 24 Strategy Development Grants (SDG), from 339 applicants, to help our coalition with the further development of our Phase 2 projects. The SDG grant is for $498,729. These funds are to cover the following activities:

(1) PAEG Research - Hiring consultant Washinton State University (WSU) to perform needed research on the PAEG population using data from Employment Security Dept (ESD) and Dept of Social & Health Services (DSHS);
(2) Barrier Assessment & Development – Convene and coordinate multiple social services agencies to inventory resources available and barriers they deem need to be addressed. Develop guidance for how to effectively create navigator services to reduce barriers. Develop an PAEG outreach program;
(3) Development of Workforce Training Program – Convene Tribal and Non-Tribal representatives from education and industry to prioritize training opportunities that meet business demand. Conduct a study of proposed programs focused on analyzing type of jobs

that projects create and whether these Good Jobs are appropriately acce3ssible to people in the PAEG;

(4) Economic Impact & Feasibility Analyst – Conduct economic analysis and feasibility studies including the direct, indirect and induced job growth associated with project in NOPRC's Recompete Plan;

(5) Zoning Efforts – Update the Glen Cove Special Study from 1999 including Environmental Impact Statement. Planning work will include public outreach; and

(6) Hiring Recompete Plan Coordinator ("RPC") and staffing – Recruit RPC to facilitate the coordination of Phase 2 grant application process for NOPRC. Funding will cover salary for RPC and support staff.

Subaward agreements to start specific projects follow. It has taken a long time to receive our contract from EDA and many of these projects are research needed to further develop our strategy and need to get moving right away and therefore we are bringing them all forward in this back-to-back meeting.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Budget supplemental will be brought to the BOCC for approval at prior date.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Staff recommendation is to approve the EDA Contract for the Strategy Development Grant.

County Official signature & print name: Todd Mielke Todd Mielke

Names of Relevant Departments/Employees/Stakeholders attending meeting:

Angi Klahn, Dee Boughton, NOPRC Task Force

Date submitted: February 14, 2024

Department of Commerce
Economic Development Administration

Notice of Award (NoA)
ED24OIE0G0085

RECIPIENT INFORMATION

1. **Recipient Name(s)**
   Clallam County
   223 E 4th St, Suite 4 Port Angeles, WA 98362-3000 US
2. **Congressional District of Recipient**
   WA-06
3. **Employer Identification Number (EIN)**
   916001298
4. **UEI**
   JV6JJNELRBS5
5. **Recipient POC**
   Angi Klahn
   angi.klahn@clallamcountywa.gov
6. **Authorized Official**
   Todd Mielke
   todd.mielke@clallamcountywa.gov

FEDERAL AGENCY CONTACT INFORMATION

7. **Grant Specialist**
   Michael Jones
   mjones3@eda.gov
8. **Program Officer**
   Asia King
   aking2@eda.gov
9. **Grant Officer**
   Scott Andes
   sandes@eda.gov

FEDERAL AWARD INFORMATION

10. **Award Number / FAIN**
    ED24OIE0G0085
11. **Award Type**
    Grant
12. **Period of performance Start Date & End Date**
    02/01/2024 - 01/31/2027
13. **Federal Share of Cost**
    $498,729
14. **Recipient Share of Cost**
    $0
15. **Total Federal and Recipient Cost**
    $498,729

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16. **Statutory Authority**
    Distressed Area Recompete Pilot Program (Recompete Pilot Program), as authorized by section 29 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. § 3722b)
17. **NOFO/RFA #**
    EDA-RECOMPETEPHASE1-2023
18. **Project Title**
    North Olympic Peninsula Recompete Plan
19. **Assistance Listing Number and Name**
    11.040 - Distressed Area Recompete Pilot Program
20. **Award Action Type**
    New Competing
21. **Multiyear Award?**
    No
22. **R&D Award?**
    No
23. **Construction Award?**
    No
24. **Grants Officer – Signature and Date**
    – Scott Andes 2/12/24
25. **Recipient – Signature and Date**
    –

Approved as to form only by:
Bert Dee Boughton
Civil Deputy Prosecuting Attorney
Clallam County

BY ACCEPTING THIS AWARD, THE RECIPIENT IS AFFIRMING THAT IT WILL COMPLY WITH ALL THE TERMS AND CONDITIONS OF THE AWARD. THE AWARD MUST BE ACCEPTED BY THE APPLICANT'S AUTHORIZED OFFICIAL.

RECIPIENT NAME: Clallam County
PROJECT TITLE: North Olympic Peninsula Recompete Plan
AWARD NUMBER: ED24OIE0G0085

This Notice of Award includes the following sections and incorporates all regulations, documents and authorities referenced therein.

I. BUDGET INFORMATION
II. STANDARD TERMS AND CONDITIONS
III. SPECIFIC AWARD CONDITIONS
IV. OTHER

Should there be a discrepancy among these documents, the Specific Award Conditions, including any references, shall control.

SECTION I – BUDGET INFORMATION

The following is the Authorized Budget for this award. Reference Section III – Specific Award Conditions for conditions related to the Authorized Budget.

Authorized Budget

Estimated Funding ($)	**Proposed**	**Approved**
Federal Share (EDA Amount)	$ 498,729.00	$ 498,729.00
Non-Federal Matching Share	$ 0.00	$ 0.00
Total Project Costs	**$ 498,729.00**	**$ 498,729.00**

Non-Construction

Cost Classification	**Proposed**	**Approved**
Personnel	$ 98,537.93	$ 98,537.93
Fringe Benefit	$ 34,488.28	$ 34,488.28
Travel	$ 2,620.00	$ 2,620.00
Equipment	$ 0.00	$ 0.00
Supplies	$ 2,800.00	$ 2,800.00
Contractual	$ 360,282.79	$ 360,282.79
Construction	$ 0.00	$ 0.00
Other	$ 0.00	$ 0.00
Indirect Charges	$ 0.00	$ 0.00
Total Project Costs	**$ 498,729.00**	**$ 498,729.00**

SECTION II – STANDARD TERMS AND CONDITIONS

The following regulations and standard terms and conditions apply to this award:

□ 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements, as Adopted Pursuant to 2 CFR § 1327.101 for Federal Awards
□ Department of Commerce Financial Assistance Standard Terms and Conditions
□ Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements
□ 13 CFR Chapter III Economic Development Administration, Department of Commerce Regulations
□ Other:

SECTION III – SPECIFIC AWARD CONDITIONS

The following Specific Award Conditions apply to this award:
See attached.

SECTION IV – OTHER

ATTACHMENT 1

Authorized Scope of Work

Recipient: **Clallam County**
Award Number: **ED24OIE0G0085**
Recompete Pilot Program – Strategy Development Grant

Executive Summary:

North Olympic Peninsula Recompete Coalition (NOPRC) will use the Strategy Development Funding to research the Prime Age Employment Gap (PAEG) in our two underserved and distressed counties to determine the barriers they face preventing their participation in the workforce and how they may be alleviated. The research will guide the design of an innovative and effective navigator and outreach program to bring people in the PAEG back into the workforce. This PAEG study will also tie into research being done through Peninsula College to design programs that meet both the low barrier needs of the PAEG and the current and future workforce training needs of industry employers. NOPRC will use funds to convene Tribal, industry, and workforce training representatives to guide the development of these programs. Funding will also be used to perform economic analysis and feasibility studies for the job creation projects in our Recompete Plan. These studies will seek to determine their direct, indirect, and induced job growth capabilities, their impact on the PAEG populations we are trying to reach with this program, and that jobs created will meet the criteria of "Good Jobs."

Funding will also support the salary for the Recompete Plan Coordinator (RPC) position and support staff. The RPC will be an integral leadership position to manage, develop, and coordinate the multiple projects within our Recompete Plan.

Summary of Activities:

Activity Title	Short Description of Activity	Output(s) / Deliverable(s)	Responsible Organization(s) / Individual(s)	Approximate Start / End Date
PAEG research	Hiring consultant Washinton State University (WSU) to perform needed research on the PAEG population using data from Employment Security Dept (ESD) and Dept of Social & Health Services (DSHS).	Preliminary Findings Report to be used to design navigator and outreach program for Phase 2 application. Plan for continued monitoring to	Clallam County	2/1/2024 to 6/30/2024

		measure plan progress.		
Barrier Assessment, Development Navigator Program & Outreach	Convene and coordinate multiple social services agencies to inventory resources available and barriers they deem need to be addressed. Develop guidance for how to effectively create navigator services to reduce barriers. Develop an PAEG outreach program.	Comprehensive inventory of programs and resources available to use. Development of navigator program.	Clallam County, EDC Team Jefferson, Jefferson County	2/1/2024 to 6/30/2024
Development of Workforce Training Program	Convene Tribal and Non-Tribal representatives from education and industry to prioritize training opportunities that meet business demand. Conduct a study of proposed programs focused on analyzing types of jobs these projects create and whether these Good Jobs are appropriately accessible to people in the PAEG.	An actionable report to guide higher education institutions (Peninsula College and NW School of Wooden Boatbuilding) to customize their job training programs to support local economic development.	Peninsula College	2/1/2024 to 6/30/2024
Economic Impact & Feasibility Analyst.	Conduct economic analysis and feasibility studies including the direct, indirect, and induced job growth associated with projects in NOPRC's Recompete Plan.	Preliminary Economic Analysis Reports to guide programs to be included in Recompete Plan moving forward. Finalized report to follow on project moving forward.	Clallam County Economic Development Council	2/1/2024 to 5/31/2024
Zoning Efforts	Update the Glen Cove Special Study from 1999 including Environmental	Preliminary Updated Special Study Report for	Jefferson County	2/1/2024 to 6/30/2025

	Impact Statement. Planning work will include public outreach.	Glen Cove UGA boundary adjustment. Documentation of engagement results. Finalized report to follow to inform the Comprehensive Plan Periodic Update.		
Hiring Recompete Plan Coordinator and staffing	Recruit Recompete Plan Coordinator.	Successfully retaining qualified candidate.	Clallam County	2/1/2024 to 12/31/2024
Recompete Plan Development, Coordination and Management	Development overall Recompete Plan and projects, coordinate projects and manage the overall process for NOPRC. Funding will cover salary for RPC and support staff for grant/subaward management.	Strategically developed and coordinated Recompete Plan.	Clallam County	2/1/2024 to 12/31/2024

Lead Applicant Name:	Clallam County
Application ID ("EDA-APP# ..." from EDGE):	EDA-APP#00002863

Authorized Staffing Plan

Staffing Plan - Budget									
Name	Annual Salary/Rate	% of Annual Hours for project	Annual $ from Award	Number of Years	Total Cost by Employee	Year 1	Year 2	Year 3	Checkpoint: Does breakdown match your total? (Column G)
Recompete Plan Coordinator - TBD	$110,688	100%	$110,688	0.75	$83,016	$83,016		$0	$ 83,016.00
BOCC Lead Analyst	$84,358	20%	$16,872	0.92	$15,522	$15,522		$0	$ 15,521.93
Employee 3	$0	0%	$0	0.00	$0	$0	$0	$0	$ -
Employee 4	$0	0%	$0	0.00	$0	$0	$0	$0	$ -
Employee 5	$0	0%	$0	0.00	$0	$0	$0	$0	$ -
Employee 6	$0	0%	$0	0.00	$0	$0	$0	$0	$ -
Total Personnel Costs					**$98,538**	**$ 98,537.93**	**$ -**	**$ -**	$ 98,537.93
Total Fringe Costs (Please Provide the Basis for Fringe Calculations)				35.00%	**$34,488**	**$ 34,488.28**	**$ -**	**$ -**	$ 34,488.28

See Attached Schedule A

Staffing Plan - Narrative		
Name	Title	Project Responsibilities
Employee 1 - TBD	Recomplete Plan Coordinator	The Recompete Plan Coordinator will hold a pivotal role in our organization, tasked with facilitating an inclusive community process, strategically managing government contracts and coordination for the multiple projects being developed under the Recomplete Plan.
Employee 2 - Angi Klahn	BOCC Lead Analyst	Angi has 25+ years of accounting experience. She also has grant management, SEFA preparation, and subaward monitoring experience. She will handle the grant management, monitoring and fiscal responsibilities for the Strategy Development Grant.
Employee 3		
Employee 4		
Employee 5		
Employee 6		

SPECIFIC AWARD CONDITIONS
U.S. DEPARTMENT OF COMMERCE
Economic Development Administration (EDA)

NON-CONSTRUCTION PROJECTS: Distressed Area Recompete Pilot Program under Section 29 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended, 15 U.S.C. § 3722b.

Recipient: Clallam County
Award Number: ED24OIE0G0085
Project Name: North Olympic Peninsula Recompete Plan
Distressed Area Recompete Pilot Program (Recompete): Phase 1 Strategy Development Grants

1. **SCOPE OF WORK:** This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award as the *Authorized Scope of Work* (Attachment 1). All work on this project must be consistent with the *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work memorialized in writing through execution of an amendment to the Notice of Award.

2. **UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS:** Along with other controlling law, this Award is governed by the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) as set forth in 2 C.F.R. part 200.

3. **PROJECT CONTACT INFORMATION:** The Recipient agrees to notify EDA promptly of any changes to the Recipient's contact information as specified in the Notice of Award.

4. **ADDITIONAL INCLUDED DOCUMENTS (Non-construction):** In addition to the regulations, documents, or authorities incorporated by reference on the Notice of Award, the following additional documents are hereby incorporated by reference into this Award:

    i. The Recipient's application, including any attachments, Project descriptions, schedules, and subsequently submitted supplemental documentation

    ii. *Authorized Scope of Work* (Attachment 1)

    iii. *Authorized Staffing Plan* (Attachment 2)

    Should there be a discrepancy among these documents, these Specific Award Conditions shall control.

5. **PROJECT DEVELOPMENT TIME SCHEDULE (B2S/STEM):** The Recipient agrees to the following Project development time schedule:

   i. Return of executed Notice of Award (NoA) or Amendment due no later than (NLT) 30 calendar days after receipt of NoA/Amemdment

   ii. ii. Scheduling of Kick-Off Meeting must occur NLT 30 calendar days after receipt of NoA/Amendment

   iii. iii. Finalization of Work Schedule must occur NLT than the date of the Kick-Off Meeting

   iv. iv. Submission of Final Project Progress Report due NLT 120 calendar days from the Award End Date, i.e., the latest date set forth in the "period of performance" field on the NoA or as later memorialized through an Amendment

   v. v. Submission of Final Financial Documents (Form SF-425) due NLT 120 calendar days from the Award End Date.

   The Recipient shall diligently pursue the development and implementation of the Project upon receipt of the Award so as to ensure completion within this time schedule. Moreover, the Recipient shall promptly notify EDA in writing of any event that could substantially delay meeting any of the milestones or deadlines for the Project as set forth above. The Recipient further acknowledges that failure to meet the development time schedule may result in EDA imposing remedies for noncompliance, including termination of the Award, in accordance with the regulations set forth at 2 C.F.R. §§ 200.339 through 200.343.

6. **FINANCIAL DISBURSEMENT INSTRUCTIONS (B2S/STEM)**: EDA will make Award payments using the Department of the Treasury's Automated Standard Application for Payments (ASAP) system. The Recipient is required to furnish documentation as required by ASAP including but not limited to Recipient and Requestor Identification Numbers. Complete information concerning the ASAP system may be obtained by visiting www.fms.treas.gov/asap.

   In order to receive payments, the Recipient must submit Form SF-270 (Request for Advance or Reimbursement) for the applicable period electronically. The Project Officer will review and process the request.

   Prior to the initial disbursement, the Recipient must complete Form SF-3881 (ACH Vendor/Miscellaneous Payment Enrollment Form). The form must be completed by the respective parties (EDA, Recipient's Bank, and Recipient) at the start of the Award. EDA will provide instructions for submitting the form during the project kick-off meeting.

7. **REPORT SCHEDULE:** The Recipient agrees to report to EDA on the Project's performance and impacts as summarized as follows:

    i. During the Period of Performance:

        a. Progress Reports and Financial Status Reports – Semiannually, for the periods ending March 31 and September 30.

        b. Outputs Questionnaire (Form ED-916) – Semiannually, six months after the date the period of performance begins and every six months thereafter, or as otherwise directed by EDA.

        c. Outcomes Questionnaire (Form ED-918) -- Annually, one year after the date the period of performance begins and annually thereafter for a total of five years, or as otherwise directed by EDA (note that this obligation may extend beyond award closeout).

    ii. At the Expiration of the Period of Performance but Before Award Closeout: Progress Reports and Financial Status Reports – One time, within 120 calendar days after the Award End Date.

    iii. After Award Closeout: Report on the Outcomes Questionnaire annually, until the end of the fifth year after the date the period of performance begins, or as otherwise directed by EDA.

    Timely submission of all above-described reports is a condition of this award. Per 2 CFR § 200.344, the Recipient must submit, no later than 120 calendar days after the end of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the award. If the Recipient fails to submit all required reports to EDA within one year of the period of performance end date, EDA will report the material failure to comply with the OMB-designated integrity and performance system (formerly FAPIIS) and/or pursue other enforcement actions per 2 CFR § 200.339.

8. **PROJECT PROGRESS REPORTS:** The Recipient agrees to provide the Project

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

    Progress Reports must be submitted to EDA via EDA's Grants Management Portal in a concise, clear format that outlines the following information in three to six pages:

    1. A clear, concise overview of the activities undertaken during the reporting period. For each activity, provide the name of the activity, the dates of the activity, a summary of the activity, and an explanation of outcomes the activity advances (e.g., preparing a competitive Phase 2 application, identifying other funding mechanisms to implement

Recompete strategy, building out a clear plan that increases prime age employment and per capita wages).

2. A description of anticipated activities for the next reporting period.
3. An outline of challenges that currently impact or could impact progress on the Project over the next reporting period and means of mitigating this risk. Please highlight any areas where EDA assistance is needed to support the project (e.g., connections to subject matter experts or other resources, amplifications of activities or impacts).
4. A description of at least one success story from the reporting period.
5. Any other key information that would be helpful to your EDA Project Officer.

9. **FINAL PROJECT PROGRESS REPORT (B2S/STEM):** The final Progress Report must be submitted to EDA no more than 120 calendar days after the Award End Date and these reports or any part of the information contained therein may be posted on EDA's website, used for promotional materials or policy reviews, or may be otherwise shared. Recipient must clearly identify any information that may constitute a trade secret or may be commercial or financial information that is confidential or privileged in these reports. There is no minimum or maximum page requirement for the **final Progress Report**; however, the final Progress Report should concisely yet completely communicate key Project information as follows:

    a. the specific regional need that the Project was designed to address and progress made during the period of performance and beyond that has mitigated or will mitigate that need and advance economic development;

    b. a high-level overview of the activities undertaken;

    c. details of lessons learned during the period of performance that may be of assistance to EDA or other communities undertaking similar efforts;

    d. the expected and actual economic benefits of the Project at the time that the Report is written; and

    e. any other key information from the period of performance.

10. **FINANCIAL REPORTS:** Financial Status Reports (SF-425) must be submitted to EDA on a semi-annual basis via EDA's Grants Management Portal for the reporting periods ending March 31 and September 30, or any portion thereof if applicable, for the period of performance set forth in the Notice of Award or as later memorialized through a mutually agreed-upon Amendment to the Award. Form SF-425 (and instructions for completing this form) is available at: https://www.grants.gov/forms/post-award-reporting-forms.html. Reports are due no later than 30 calendar days following the end of the reporting period.

11. **FINAL FINANCIAL REPORT (Non-construction):** A **final** Form SF-425 must be submitted to EDA no more than 120 calendar days after the Authorized Award End Date specified on the Notice of Award (or any subsequently executed Amendment to the Notice of

Award). Final Financial Reports should follow the instructions for submitting mid-term Financial Status Reports, but should also ensure that all fields accurately reflect the total outlays for the entire project period and that all matching funds and program income (if applicable) are fully reported. Determination of the **final grant rate and final balances owed to the government will be determined based on the information on the final Form SF-425, so it is imperative that it be submitted in a timely and accurate manner.**

12. **PERFORMANCE MEASURES:** The Recipient agrees to provide EDA with:

(1) Form ED-916 (Outputs Questionnaire) on a semiannual basis, and

(2) Form ED-918 (Outcomes Questionnaire) on an annual basis.

All Outputs Questionnaires and Outcomes Questionnaires should be submitted via a web-based information collection system to be provided by EDA

Outputs Questionnaires (Form ED-916) must be submitted to EDA on a semi-annual basis during the period of performance or as otherwise directed by EDA. The first Outputs Questionnaire must be submitted to EDA six months after the date the period of performance starts, as set forth in the Notice of Award or as later memorialized through an Amendment. The Outputs Questionnaire must be submitted to EDA every six months thereafter through the end of the Period Performance, or any portion thereof if applicable, or as otherwise directed by EDA.

Outcomes Questionnaires (Form ED-918) must be submitted to EDA on an annual basis for a total of five years after the date the period of performance starts, including after Award closeout. The first Outcomes Questionnaire must be submitted to EDA one year after the date the period of performance starts, as set forth in the Notice of Award or as later memorialized through an Amendment. The Outcomes Questionnaire must be submitted to EDA at the end of every year thereafter for a total of five years, or as otherwise directed by EDA.

Note that EDA may revise or replace the Outputs Questionnaire and/or the Outcomes Questionnaire at any time during or following the period of performance. The Recipient agrees to report on program performance measures and program outcomes in such form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993 and the Government Performance and Results Modernization Act of 2010 (collectively, GPRA Reports). Recipient must collect sufficient data and retain sufficient documentation to enable Recipient to submit these required GPRA Reports. **Failure to submit the required GPRA Reports can adversely impact the ability of the Recipient to secure future funding from EDA.** Recipient must retain sufficient data and records to comply with the above reporting requirements at least through the end of the fifth year after the date the period of performance starts, or longer if necessary to comply with the above reporting requirements.

13. **ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined after the final financial documents are submitted in accordance with the applicable authorities specified on the Notice of Award, including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. part 200, and the Authorized Budget. Except as otherwise expressly provided for within these Specific Award Conditions, the federal share of the allowable costs will be based on the Investment Rate for the Award, as established on the Notice of Award or any subsequent Amendment. In the event of an underrun in total allowable costs for this project, the federal share of allowable costs will be determined by the Investment Rate. The federal share of total allowable costs may not exceed the dollar amount specified on the original Award or any subsequent amendments.

14. **FEDERAL SHARE:** The EDA participation in total eligible project costs will be limited to the lesser of the EDA grant amount or the EDA share of total allowable project costs (as stated on the Notice of Award or the most recent Amendment).

15. **REFUNDS, INTEREST, OR UNUSED FUNDS:** If the Recipient needs to return money to EDA, it may use one of the following two methods:

    i. The first is the pay.gov website, which allows the Recipient to pay EDA online. The Recipient will have the option to make a one-time payment or to set up an account to make regular payments.

    ii. The second is paper check conversion. All checks must be made payable to "Department of Commerce, Economic Development Administration" and include the award number and a description of no more than two words identifying the reason for the payment. A copy of the check should be provided to the EDA Project Officer. The check should be mailed to NOAA's Accounting Office, which processes EDA's accounting functions, at the following address:

    NOAA OCFO

    Attn: Finance Office, Travel Dept.

    1315 East West Highway, SSMC3

    Silver Spring, MD 20910

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

16. **ADDITIONAL DOCUMENTATION REQUIRED FOR AWARD COMPLIANCE (Tech Hubs):** Recipient agrees to provide any additional documentation or information required by EDA to confirm compliance of this Award with applicable laws, regulations, and policies and to do so within reasonable deadlines set by EDA. In the event Recipient fails to provide the required documentation in a timely manner, EDA may exercise the remedies provided at 2 C.F.R. §§ 200.339–200.343, up to and including termination.

17. **PROJECT AND PROGRAM EVALUATION:** As part of the process of validating and monitoring the Award and the performance information provided by the Recipient, and as a general method of evaluating the Award and the Recompete Program, EDA reserves the right to conduct project and program evaluations through site visits and/or survey(s) during or after the period of performance. Such evaluations may be conducted by outside parties associated with EDA or by EDA staff. Recipient agrees to participate in the evaluation by answering the evaluator's questions and furnishing information as requested. Evaluators will maintain the confidentiality of business information as required and appropriate. Recipient agrees to provide data and client management system information to facilitate evaluations. For site visits, EDA will provide the Recipient at least two weeks of notice prior to a visit, unless exigent circumstances warrant otherwise. The site visit may include interviews with Recipient's staff or visits with Project clients.

18. **USE OF INFORMATION:** EDA reserves the right to use information contained in the Recipient's Application as well as all reports and performance data submitted by the Recipient to undertake an evaluation of the Program. The Recipient agrees to cooperate with such evaluations, including by sharing performance information that they have collected or will collect as part of their grant activities, including performance information for Project clients.

19. **PROCUREMENT:** The Recipient agrees that all procurement transactions shall be in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. §§ 200.317–200.327. Any noncompetitive procurement requires prior approval from EDA.

20. **SUBAWARDS (B2S/STEM/RLF):** Certain award activities funded under this Award may be accomplished through a subaward by the Recipient to a Subrecipient. Prior EDA permission is needed to include, add, or change a subrecipient. Prior to the award of any subaward or subrecipient performing any work funded through this Award, the Recipient must provide documentation satisfactory to EDA that the proposed subrecipient(s) and any additional or successor subrecipient(s)are eligible to receive EDA assistance. EDA will provide written notice regarding whether the documentation is satisfactory to EDA. No change may be made to the identity of the subrecipient or the scope of the proposed

subaward without prior EDA approval. Subaward are not permitted without EDA prior approval.

Before a subrecipient undertakes any work to be funded through this Award, the Recipient shall enter into a written subaward agreement with the Subrecipient that meets the requirements of 2 C.F.R. § 200.332(a) and includes a requirement that the subrecipient comply with all of the terms and conditions of this Award, including but not limited to the Standard and Specific Award conditions and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. part 200). EDA may disallow any costs incurred by the subrecipient prior to executing the subaward agreement. The Recipient shall be responsible for monitoring the Subrecipient's performance under the subaward in accordance with the requirements of 2 C.F.R. § 200.332. The Recipient is also responsible for ensuring that any subrecipient of a subaward exceeding $100,000 executes form CD-511, Certification Regarding Lobbying, and for retaining a copy of the executed certification. As required by form CD-511, subrecipients must report lobbying activities, if any, to the Recipient on Form SF-LLL. The Recipient is responsible for promptly providing EDA with a copy of any Form SF-LLL submitted by a subrecipient.

The Recipient is responsible for reporting the Federal Subaward Reporting System (FSRS) available at www.FSRS.gov on all subawards over $30,000. Please see the OMB guidance published at 2 C.F.R. part 170, which can be accessed at https://www.govinfo.gov/content/pkg/CFR-2022-title2-vol1/pdf/CFR-2022-title2-vol1-part170.pdf. Appendix A of 2 C.F.R. part 170 is incorporated by reference into these Specific Award Condition.

21. **NONRELOCATION (Non-Construction):** In signing this Award, the Recipient attests that EDA funding is not intended by the Recipient to assist efforts to induce the relocation of existing jobs within the U.S. that are located outside of its jurisdiction to within its jurisdiction in competition with other U.S. jurisdictions for those same jobs. In the event that EDA determines that its assistance was used for such purposes, EDA reserves the right to pursue appropriate enforcement actions in accord with 2 C.F.R. §§ 200.339 through 200.343 and the DOC STCs, including suspension of disbursements and termination of the Award which may include the establishment of a debt requiring the Recipient to reimburse EDA.

22. **REAFFIRMATION OF APPLICATION:** Recipient acknowledges that Recipient's application for this Award may have been submitted to EDA and signed by Recipient, or by an authorized representative of Recipient, electronically without providing an original "wet" signature. In addition, the Recipient or an authorized representative of Recipient may have accepted the Award electronically, which includes drawing down any funds under this Award. Regardless of who submitted the Application to EDA or the means by which Recipient submitted the Application or accepted the Award, Recipient hereby reaffirms and states that:

A. All data in the Application were true and correct when the Application was submitted and remain true and correct as of the date of this Award;

B. The Application was, as of the date of submission and the date of this Award, duly authorized as required by local law by the governing body of the Recipient; and

C. Recipient has read, understood, and will comply with all terms of this Award, including the Assurances and Certifications submitted with, or attached to, the Application and through the System for Award Management (SAM.gov).

The Recipient agrees to immediately notify the EDA of any material changes to the Application within 30 calendar days of the date the Recipient becomes aware of such changes. For purposes of this provisions, the term "Application" includes all documentation and any information provided to EDA as part of, and in furtherance to, the request for funding, including submissions made in response to information requested by EDA after submission of the initial Application.

23. **FREEDOM OF INFORMATION ACT (FOIA)**: EDA is responsible for meeting its Freedom of Information Act (FOIA) (5 U.S.C. § 552) responsibilities for its records. DOC regulations at 15 C.F.R. part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications and other information submitted by applicants and recipients may be released in response to a FOIA request. The Recipient should be aware that EDA may make certain application information publicly available. Accordingly, the Recipient should notify EDA if it believes any Application information to be confidential.

24. **WASTE, FRAUD AND ABUSE:** Consistent with 2 C.F.R. part 200, at EDA's direction, at any time(s) during the estimated useful life of the Project, Recipient's key personnel will take a training on preventing waste, fraud and abuse as provided by the Government. Key personnel include those responsible for managing the Recipient's finances and overseeing any contractors, sub-contractors or sub-grantees (for financial matters and/or general oversight related to this Project). EDA will provide instructions on when and how to take the training. Within 60 days of the date of Award, the Recipient shall provide to the Project Officer all Certificates of Completion for the Waste, Fraud, and Abuse training. In the event there are co-recipients of this Award, the obligations in the Specific Award Condition shall apply to all recipients whether or not designated in this Award as the Lead Recipient.

    Further, Recipient will monitor award activities for common fraud schemes (hereinafter "Fraud Schemes"), such as but not limited to:

    - false claims for materials and labor,
    - bribes related to the acquisition of materials and labor,

- product substitution,
- mismarking or mislabeling on products and materials, and
- time and materials overcharging.

Should Recipient detect any Fraud Schemes or any other suspicious activity, Recipient will contact the EDA staff listed above and the Department of Commerce, Office of Inspector General, as indicated at https://www.oig.doc.gov/Pages/Contact-Us.aspx, as soon as possible.

25. **USE OF EDA'S RECOMPETE LOGO:** EDA has developed a logo for EDA programming under the Distressed Area Recompete Pilot Program ("Recompete Logo"). Recipient may use the Recompete Logo pursuant to the below terms and conditions for the following limited purposes:

    - Press releases, social media posts, and websites that build awareness of this Award (note that some advertising and marketing activities are not allowable costs under federal awards as provided at 2 CFR 200.421); and
    - Work products and deliverables developed under this Award (e.g., tools, publications, resource guides, brochures, PowerPoint presentations, technical assistance materials).
    - Recipient may not use the Recompete Logo for other purposes, including lobbying or issue advocacy, endorsing a product or organization, or communications to elected officials or federal agencies. Recipient may not use the Recompete Logo in a negative or defamatory manner. Recipient must request and obtain EDA permission prior to certain uses of the Recompete Logo (see paragraph B, below).

    A. Grant of License: EDA hereby grants to Recipient a non-exclusive, royalty-free right to use the Recompete Logo for the limited purposes described above (the "License"). Recipient agrees that: (1) the Recompete Logo will not be used in a way that would suggest that it is the property of Recipient or any other third party, and (2) Recipient will include the following notice in conjunction with its use of the Recompete Logo, as appropriate: "The Recompete Logo is a trademark of the Economic Development Administration, used with permission." This License does not grant Recipient the right to use any seal, emblem, logo, or other symbol of the U.S. Department of Commerce or EDA that is not the Recompete Logo.

    B. Required Approvals for Certain Uses of the Recompete Logo: Before Recipient uses the Recompete Logo for press releases and related materials, Recipient shall send a sample of each print, product, design, or other work to show the proposed use to the EDA Recompete Public Affairs Specialist (whose contact information may be obtained from the Project Officer for this Award). Recipient shall not use the Recompete Logo for the above uses until receiving written approval (including via email) from EDA of the proposed use.

C. Quality Control: EDA shall have the right, at all reasonable times, to inspect Recipient's goods, services, and promotional activities employing the Recompete Logo to ensure that such use is of proper quality and otherwise consistent with this License.

D. Duration and Termination: The License shall terminate on the Award End Date. Recipient may request a renewal of the License for an additional term subject to the express written consent of EDA. Such consent shall be in the form of a properly executed agreement signed by authorized signatories of EDA and Recipient. Upon termination of the License, all rights of Recipient to use the Recompete Logo shall immediately terminate. EDA may terminate the License unilaterally and without cause at any time, including if EDA determines that Recipient's use of the Recompete Logo is inconsistent with the License.

E. Validity and Ownership of Recompete Logo: Recipient acknowledges and agrees that EDA is the owner of all right, title, and interest in the Recompete Logo, and all such right, title, interest, and ownership shall remain with EDA. Recipient further acknowledges that Recipient shall not acquire any right, title, interest, or ownership in the Recompete Logo by virtue of the License or use other than the license granted hereunder and disclaims any such right, title, interest, or ownership. Recipient is prohibited from interfering with EDA's rights in the Recompete Logo, including challenging EDA's use, registration of, or application to register the Recompete Logo alone or in combination with other words or designs, as a U.S. or foreign trademark anywhere in the world. Recipient is further prohibited from attempting to register the Recompete Logo, any derivatives thereof, or any confusingly similar mark, whether or not registered by EDA, alone or in combination with other words or designs, as a U.S. or foreign trademark or as a part of a domain name.

F. Assignments and Sub-Licenses: The License is not assignable, and any attempt by Recipient to assign any portion of the License shall be deemed a breach of the License and will result in immediate termination of the License. Recipient may subcontract, thereby engaging in a limited sublicensing arrangement as applicable, for manufacturing and distribution activities under the License; Recipient shall provide notice to EDA—and must receive prior approval from EDA—of any such subcontract prior to manufacturing and distribution activities.

G. Governing Law: The License shall be interpreted and implemented in accordance with the Federal common law as interpreted by the U.S. District Court for the District of Columbia, without giving effect to any conflict of law principle that would result in the application of the substantive law of another jurisdiction.

H. Indemnification: Recipient agrees to indemnify and hold EDA harmless from any and all claims, damages, and attorneys' fees arising from the use of the Recompete Logo by the Recipient and its operations, except to the extent that any such claims, damages, or attorneys' fees arose in connection with any act or failure to act by the U.S. Department of Commerce or any agency, department, or subdivision thereof.

I. Obtaining the Recompete Logo: For an electronic version of the Recompete Logo, Recipient should contact the EDA Recompete Public Affairs Specialist (whose contact information may be obtained from the Project Officer for this Award).

26. STAFFING CHANGES: The Authorized Staffing Plan sets forth Recipient staff primarily responsible for administering this Award. In the event of a change in the professional staff positions primarily funded with the EDA grant, Recipient shall provide the name of the individual selected to fill the position to the Project Officer and a copy of their resume within 30 business days of the selection.

27. CONFLICT OF INTEREST: The Recipient must maintain a written and enforced conflict of interest policy. The policy should at a minimum address actual or potential personal (e.g., employees, agents, members of their immediate family) or organizational conflicts of interest in the performance or administration of the Award. Conflicts of interest may include, but are not limited to, any past, present or planned contractual, financial, or other relationships, obligations, commitments or responsibilities, which may bias the Recipient or affect the Recipient's ability to perform or administer the Award in an impartial and objective manner. The policy must include standards of conduct covering conflicts of interest and governing actions of Recipient employees engaged in the selection, award, or administration of contracts in accordance with 2 C.F.R. § 200.318(c). The Recipient shall ensure that all subrecipients and contractors under the Award: (1) have their own conflict of interest policy in place that meets the requirements of this Specific Award Condition; or (2) adopt the Recipient's conflict of interest policy. The Recipient's policy should provide procedures to disclose, mitigate, and resolve any such conflicts of interest. In accordance with 2 C.F.R. § 200.112, the Recipient must disclose in writing any potential or actual conflict of interest to EDA in a timely manner. EDA will evaluate the disclosure and inform the Recipient of any required remedial action beyond what the Recipient may have already implemented. Failure to comply with this condition, or the Recipient's own conflict of interest policy, may result in appropriate enforcement action pursuant to 2 C.F.R. §§ 200.339 through 200.343 and the DOC STCs, which are incorporated under the Award.

Fraud Awareness Training

EDA

U.S. ECONOMIC DEVELOPMENT ADMINISTRATION

EDA's grantees must successfully complete this training and submit the signed completion certificate(s) to the EDA Project Officer listed in the Specific Award Conditions within 60 days of grant award.

Failure to comply with this requirement may result in a finding of non-compliance with the terms and conditions of your award.

OVERVIEW

- Overview of EDA's Programs
- The Department of Commerce (DOC) Office of Inspector General (OIG)
- Fraud in EDA Programs
- Additional Items
- Certificate

INTRODUCTION

Role of EDA: Facilitate the timely and effective delivery of Federal economic development assistance to support long-term community economic recovery planning and project implementation, redevelopment, and resiliency

EDA's Programs

- EDA's Programs enable EDA to make awards that support a wide range of activities.
- Eligible applicants and project types for each program is set forth in the respective Notices of Funding Opportunity.
- You must read and understand the requirements applicable to the program under which your award is funded, including the applicable Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions.

The U.S. Department of Commerce (DOC) Office of Inspector General (OIG)

DOC – OFFICE OF INSPECTOR GENERAL

- Created by IG Act of 1978 to:
  - Combat fraud, waste, and abuse within the DOC
  - Conduct audits and investigations of DOC operations
  - Keep the DOC and Congress informed
- Mission
  - To improve the programs and operations of the Department of Commerce through independent and objective oversight

This includes oversight of EDA Assistance Programs

DOC – OFFICE OF INSPECTOR GENERAL

- Office of Audit and Evaluation
- Office of Investigations
  - Criminal
  - Civil
  - Administrative
  - Employee misconduct
  - Public corruption

WHISTLEBLOWER PROTECTIONS

Federal employees, applicants, and employees of federal contractors **and grantees** who make certain disclosures—to OIG or elsewhere—are protected under the law from suffering retaliation because of those disclosures.

Basic elements of whistleblower protection law: (1) you make a protected disclosure; (2) you are subject to certain retaliatory acts; and (3) there is a causal connection between your protected disclosure and the retaliatory act.

OIG receives, reviews, and where appropriate, investigates allegations of whistleblower reprisal.

Whistleblower complaints may be submitted to the OIG via the hotline:
https://www.oig.doc.gov/Pages/Hotline.aspx#complainthotline

Whistleblower complaints may also be submitted to the Office of Special Counsel via their website: https://osc.gov/pages/file-complaint.aspx

DOC-OIG Whistleblower Protection Coordinator contact information:

Email: wpo@oig.doc.gov Phone: 202-482-1099

FRAUD IN EDA ASSISTANCE PROGRAMS

- **Fraud Defined**
- **Compliance Requirements**
  - **Eligibility**
  - **Duplicate Funding**
  - **Matching Funds**
  - **Mandatory Reporting of Fraud**
- **Consequences of Fraud**
- **Recommendations/Best Practices**

FRAUD IN EDA ASSISTANCE PROGRAMS

Although it can take many forms, fraud, at its core, is **deception** through the **misrepresentation** or **omission** of **material facts** for the purpose of **illegitimate gain**.

FRAUD IN EDA ASSISTANCE PROGRAMS

Examples of fraud within EDA Assistance Programs include, but are not limited to:

- Accepting federal funding in multiple assistance awards for the same work
- Misrepresentations regarding the eligibility of the project or recipient
- Misrepresentations or omissions about the recipient's facilities, ownership/control, or the work to be performed by the recipient
- Providing falsified letters of support
- Misrepresentations concerning the use of funds expended, work performed, results achieved, or compliance with program requirements under the award
- Inflated labor costs

FRAUD IN EDA ASSISTANCE PROGRAMS (CONTINUED)

- Misuse or conversion of assistance award funds (e.g. using funds for personal expenses)
- Theft of government owned property (18 U.S.C. § 666)
- Embezzlement (18 U.S.C. § 666)
- Fabrication or falsification of data, in applying for, carrying out, or reporting results from an assistance award
- Intentional noncompliance with applicable federal cost principles governing grants / cooperative agreements
- Undisclosed self-dealing, such as a sub-award to an entity in which an awardee, executive, or key employee (or family members of the aforementioned individuals) has a financial interest
- "Buying Expenses", or reporting expenses incurred by another entity for work unrelated to the assistance award

COMPLIANCE REQUIREMENTS

RECIPIENTS MUST COMPLY WITH:

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- Department of Commerce Financial Assistance Standard Terms and Conditions
- EDA Standard Award Conditions for Construction Projects **or** EDA Revolving Loan Fund Standard Award Conditions (as applicable)
- Specific Award Conditions (unique to each award)

COMPLIANCE REQUIREMENTS

2 CFR § 200.339 – REMEDIES FOR NONCOMPLIANCE

If a non-Federal entity fails to comply with **the U.S. Constitution, Federal statutes, regulations or the terms and conditions of a Federal award**, the Federal awarding agency or pass-through entity may impose additional conditions; or, in certain circumstances, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- Temporary withholding of cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity
- Disallowance of (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance
- Whole or partial suspension or termination of the Federal award
- Initiation of suspension or debarment proceedings (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency)
- Withholding of further Federal awards for the project or program
- Other remedies that may be legally available

COMPLIANCE REQUIREMENTS

Eligibility

Within their EDA Assistance Award Proposal, applicants make numerous certifications or recertifications as to their eligibility to receive a federal award, among other certifications.

Falsely certifying to any material fact or representation contained in a certification is fraud.

CASE EXAMPLE

Eligibility

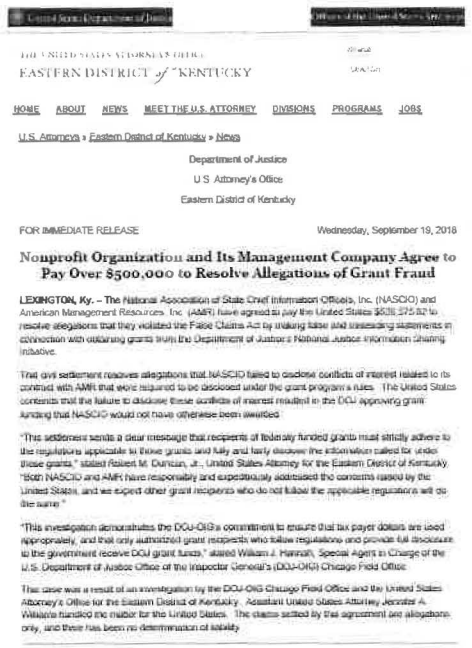
Allegations Included:

- Nonprofit organization made false and misleading statements to obtain federal grant funding
- Failure to disclose conflicts of interest that were required to be disclosed

Outcome:

- Nonprofit agreed to pay $528,575.82 to resolve allegations they violated the False Claims Act

Double-click below for more information



EASTERN DISTRICT of KENTUCKY

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U.S. Attorneys » Eastern District of Kentucky » News

Department of Justice
U.S. Attorney's Office
Eastern District of Kentucky

FOR IMMEDIATE RELEASE Wednesday, September 19, 2018

Nonprofit Organization and Its Management Company Agree to Pay Over $500,000 to Resolve Allegations of Grant Fraud

LEXINGTON, Ky. – The National Association of State Chief Information Officers, Inc. (NASCIO) and American Management Resources, Inc. (AMR) have agreed to pay the United States $528,575.82 to resolve allegations that they violated the False Claims Act by making false and misleading statements in connection with obtaining grants from the Department of Justice's National Justice Information Sharing Initiative.

The civil settlement resolves allegations that NASCIO failed to disclose conflicts of interest related to its contract with AMR that were required to be disclosed under the grant program's rules. The United States contends that the failure to disclose these conflicts of interest resulted in the DOJ approving grant funding that NASCIO would not have otherwise been awarded.

"This settlement sends a clear message that recipients of federally funded grants must strictly adhere to the regulations applicable to those grants and fully and fairly disclose the information called for under those grants," stated Robert M. Duncan, Jr., United States Attorney for the Eastern District of Kentucky. "Both NASCIO and AMR have responsibly and expeditiously addressed the concerns raised by the United States, and we expect other grant recipients who do not follow the applicable regulations will do the same."

"This investigation demonstrates the DOJ-OIG's commitment to ensure that tax payer dollars are used appropriately, and that only authorized grant recipients who follow regulations and provide full disclosure to the government receive DOJ grant funds," stated William J. Hannah, Special Agent in Charge of the U.S. Department of Justice Office of the Inspector General's (DOJ-OIG) Chicago Field Office.

This case was a result of an investigation by the DOJ-OIG Chicago Field Office and the United States Attorney's Office for the Eastern District of Kentucky. Assistant United States Attorney Jennifer A. Williams handled the matter for the United States. The claims settled by the agreement are allegations only, and there has been no determination of liability.

Duplication of Benefits is Prohibited

2 CFR § 200.1 – Improper Payment

Improper payment means any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. This includes overpayments or underpayments to eligible recipients (including inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for an incorrect amount, and **duplicate payments**). It also includes any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments authorized by law).

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." *EDA Standard Terms and Conditions for Construction Projects, March 22, 2021*

CASE EXAMPLE

Duplication of Benefits

Allegations Included:

- Not-for-profit owner applied for funding for similar services
- Owner converted the duplicate funding for his personal and business use

Outcome:

- Owner pleaded guilty to mail fraud and money laundering
- Sentenced to 24 months in prison
- Ordered to pay $480,901 in restitution

Double-click below for more information



CENTRAL DISTRICT of ILLINOIS

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FOR IMMEDIATE RELEASE — Friday, September 23, 2016

Chicago Businessman Sentenced to Two Years in Prison for Grant Fraud Scheme

Springfield, Ill. – A Chicago businessman has been ordered to serve 24 months in prison for a fraud scheme that resulted in two state agencies awarding separate, but nearly identical, grants to his not-for-profit entity in September 2008. U.S. District Court Judge Sue E. Myerscough sentenced George E. Smith, 66, and ordered that Smith pay restitution of nearly $500,000 to the state. Judge Myerscough allowed Smith to self-report as directed by the federal Bureau of Prisons to begin serving his prison sentence. Smith waived indictment and pled guilty in March 2016 to two counts of mail fraud and one count of money laundering.

In rendering today's sentence, Judge Myerscough noted that Smith exploited his personal relationship with a former director of the Illinois Department of Children and Family Services related to a grant in the amount of $450,000 awarded by the agency on Sept. 2, 2008, under the Students at Risk Program. On Sept. 8, 2008, the Illinois Board of Education awarded Smith's not-for-profit a similar grant in the amount of $342,000. According to the terms of the grants, both provided for similar services to be provided to the same at-risk population in the Chicago area during fiscal year 2009. The populations served, sources of referral, services to be provided, and the goals for each grant were essentially identical. Neither DCFS nor ISBE were aware of the issuance of an identical grant by the other state agency. Smith then converted the duplicate funding to his personal and business use.

Both grants were awarded to Diversified Behavioral Comprehensive Care, a not-for-profit entity owned and operated by Smith. In addition, Smith owned and operated three for-profit entities: Diversified Behavioral Services, Inc., Management Planning Institute, Inc., and the Institute for Positive Child and Family Development. From 2005 through 2011, Smith, through both his not-for-profit and for-profit entities, received millions of dollars in funding from agencies of the state of Illinois, including DCFS, ISBE, and the Illinois Department of Human Services.

COMPLIANCE REQUIREMENTS

Matching Funds

- The non-Federal share of the approved project budget (aka the "matching share" or "local share") must be borne by the recipient or provided to the recipient by a third party as a contribution for the purposes of and subject to the terms of the award.

- The applicant must document that the matching share **will**:
  - Be committed to the project for the period of performance
  - Be available as needed
  - Not be conditioned or encumbered in any way that may preclude its use consistent with the requirements of EDA investment assistance

- Applicants must submit, for each source of matching share, a commitment letter or equivalent document signed by an authorized representative of the organization providing the matching funds. *Additional documentation may be requested by EDA in order to substantiate the availability of the matching funds.*

CASE EXAMPLE

Matching Funds

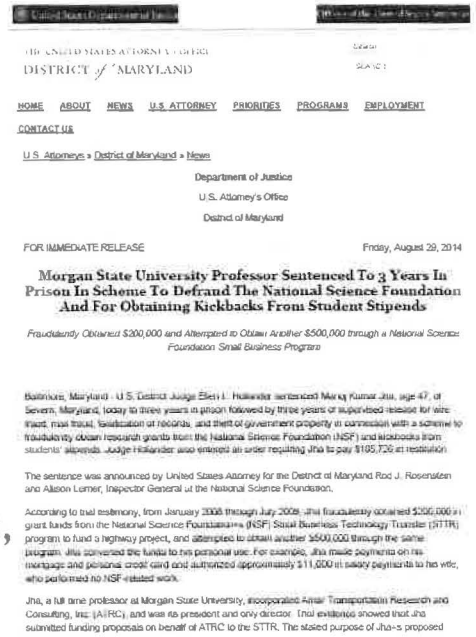
Allegations Included:

- Small business owner made several false statements and misrepresentations to obtain federal grant funding
- Owner misrepresented that he obtained a $100,000 investment from a third party in order to qualify for federal matching funds
- Owner converted grant funds to personal use

Outcome:

- Owner convicted at trial for wire fraud, mail fraud, falsification of records, and theft of government property
- Sentenced to 36 months in prison
- Ordered to pay $105,726 in restitution
- Owner debarred for 5 years

Double-click below for more information



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FOR IMMEDIATE RELEASE Friday, August 29, 2014

Morgan State University Professor Sentenced To 3 Years In Prison In Scheme To Defraud The National Science Foundation And For Obtaining Kickbacks From Student Stipends

Fraudulently Obtained $200,000 and Attempted to Obtain Another $500,000 through a National Science Foundation Small Business Program

Baltimore, Maryland - U.S. District Judge Ellen L. Hollander sentenced Manoj Kumar Jha, age 47, of Severn, Maryland, today to three years in prison followed by three years of supervised release for wire fraud, mail fraud, falsification of records, and theft of government property in connection with a scheme to fraudulently obtain research grants from the National Science Foundation (NSF) and kickbacks from students' stipends. Judge Hollander also entered an order requiring Jha to pay $105,726 in restitution.

The sentence was announced by United States Attorney for the District of Maryland Rod J. Rosenstein and Allison Lerner, Inspector General of the National Science Foundation.

According to trial testimony, from January 2006 through July 2009, Jha fraudulently obtained $200,000 in grant funds from the National Science Foundation's (NSF) Small Business Technology Transfer (STTR) program to fund a highway project, and attempted to obtain another $500,000 through the same program. Jha converted the funds to his personal use. For example, Jha made payments on his mortgage and personal credit card and authorized approximately $11,000 in salary payments to his wife, who performed no NSF-related work.

Jha, a full time professor at Morgan State University, incorporated Amar Transportation Research and Consulting, Inc. (ATRC), and was its president and only director. Trial evidence showed that Jha submitted funding proposals on behalf of ATRC to the STTR. The stated purpose of Jha's proposed

Mandatory Disclosure of Fraud

2 CFR § 200.113 - Mandatory disclosures

The non-Federal entity or applicant for a Federal award **must disclose**, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Failure to disclose could result in the remedies detailed in 2 CFR § 200.339 (slide 16 of this presentation).

CONSEQUENCES OF COMMITTING FRAUD

Criminal Prosecution

Lying to obtain a grant, or lying about the work performed may violate several criminal laws:

- 18 U.S.C. § 1001, False Statements (up to 5 years in prison, forfeiture and $250K fine)
- 18 U.S.C. § 641, Theft of Federal Property (up to 10 years in prison, forfeiture and $250K fine)
- 18 U.S.C. § 1343, Wire Fraud (up to 20 years in prison, forfeiture and $250K fine)
- 18 U.S.C. § 666, Theft or bribery concerning programs receiving Federal funds (up to 10 years in prison, forfeiture and $250K fine)

Fines for organizations may be as high as $500K

Criminal forfeiture = full amount of the grant; personal assets can be seized to satisfy forfeiture or fine

CONSEQUENCES OF COMMITTING FRAUD (CONTINUED)

Civil Prosecution

In addition to or in lieu of criminal prosecution

Civil False Claims Act, 31 U.S.C. §§ 3729-3733

- Liability includes up to treble damages (3x actual damages) and a civil penalty of up to $23,607 for each false claim
- False claims liability may include payments received when the government relied upon false information in the award proposal, in a certification of current cost or pricing data, in a request for payment, or in progress reports
- Although the statute requires knowledge that the claim was false, knowledge includes "deliberate ignorance" or "reckless disregard of the truth"
- Whistleblowers can receive up to 30% of the recovery amount for reporting fraud via *qui tam* provisions of the False Claims Act

CONSEQUENCES OF COMMITTING FRAUD (CONTINUED)

Administrative Remedies

- Government can terminate contracts/grants tainted by fraud
- Government can suspend/debar the entity, owner, and/or employees
  - Results in prohibition from receiving any federal grants or contracts, or working as a sub-grantee on federal grants or a sub-contractor on federal contracts
  - Debarment is typically for three years, but can be for a longer period
- Administrative remedies are in addition to or in lieu of criminal and civil liability

RECOMMENDATIONS

The government retains the right to examine the status of an EDA Assistance award at any time.

Status checks include:

- Site visits
- Requests for records including financial documents and timesheets

Good recordkeeping will help ensure successful status checks and eliminate potential issues.

RECOMMENDATIONS

Good Records: Key to Protecting Yourself

Documentation

- Timesheets for hours worked by ALL involved employees
- All financial receipts, invoices and statements for expenses related to the project

Updates on the project status, including successes/failures

- Keep regular records at the business-level so you have all facts on hand if needed/requested by the government
- Documentation to support performance metrics

Records Retention Time Frames and other Requirements

- See 2 CFR § 200.334

IMPORTANT TO REMEMBER!

:ecord Retention and Access

200.334 Retention requirements for records.

inancial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period f three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the ubmission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a ubrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The nly exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) ***If submitted for negotiation.*** If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(2) ***If not submitted for negotiation.*** If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

IMPORTANT TO REMEMBER!

If you are unsure about any of the requirements relating to the award of an EDA Assistance grant/cooperative agreement:

- Contact the appropriate EDA POC and provide all relevant facts
- Request written guidance from the EDA POC, and
- **Follow it!**

ADDITIONAL RESOURCES

13 CFR Chapter III – Economic Development Administration (Parts 300-315)
https://www.ecfr.gov/current/title-13/chapter-III

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II

Grant Fraud & Scams – Grants.gov
https://www.grants.gov/learn-grants/grant-fraud.html

Department of Commerce – Grants and Cooperative Agreement Manual
https://www.commerce.gov/oam/files/grants-and-cooperative-agreements-grants-manual-april-20-2021

REPORT FRAUD, WASTE, AND ABUSE

U.S. Department of Commerce
Office of Inspector General

Office of Investigations

OIG HOTLINE
Phone: (800) 424-5197

Online Complaint Form:
https://www.oig.doc.gov/Pages/Hotline.aspx#complainthotline

For more information please visit our website
www.oig.doc.gov

CERTIFICATE OF TRAINING COMPLETION

- **All EDA grantees must successfully complete this training and submit the signed completion certificate(s) to the EDA Project Officer listed in the Specific Award Conditions or via the EDGE website within 60 days of grant award.**

Failure to comply with this requirement may result in a finding of non-compliance with the terms and conditions of your award.

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate One**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Two**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Three**

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 entity[1] 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 $750,000 or more in DOC funds during their fiscal year (including both as a recipient and a subrecipient) must submit to the Grants Officer either: (i) a financial related audit of each DOC award or subaward in accordance with Generally Accepted Government Auditing Standards (GAGAS); or (ii) a project specific audit for each award or subaward in accordance with the requirements contained in 2 C.F.R. § 200.507. Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted to the Grants Officer. In accordance with 2 C.F.R. § 200.425, the recipient may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer. Entities that are not subject to Subpart F of 2 C.F.R. Part 200 and that expend less than $750,000 in DOC funds in a given fiscal year are

not required to submit an audit(s) for that year, but must make their award-related records available to DOC or other designated officials for review and audit.

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

e. In accordance with 2 C.F.R. § 200.332(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.

l. 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).

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 et seq.; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate One**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Two**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Three**

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FEB 20 2024

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AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: BOCC

WORK SESSION ☒ **Meeting Date: February 20, 2024**

REGULAR AGENDA ☒ **Meeting Date: February 20, 2024**

Required originals approved and attached? ☐
Will be provided on:

Item summary:

☐ Call for Hearing ☒ Contract/Agreement/MOU - Contract #

☐ Resolution ☐ Proclamation ☐ Budget Item

☐ Draft Ordinance ☐ Final Ordinance ☐ Other

Documents exempt from public disclosure attached: ☐

Executive summary:

Request Approval of Strategy Development Grant award contract by US Department of Commerce/Economic Development Administration (EDA) – SUBAWARD to Clallam County Economic Development Council (EDC)

Clallam County, as the Lead Applicant for North Olympic Peninsula Recomplete Coalition (NOPRC) applied for the Distressed Area Recompete Pilot Program (Recompete) Phase 1 approval and the Strategy Development Grant in October 2023.

December 2023, NOPRC and Clallam County were announced as a Finalist for the Recompete Program and invited to compete in Phase 2 of the grant. Our Phase 1 plan was 1 of 22 selected from 235 nationwide applications, the largest applicant response to an EDA grant ever.

We were also awarded 1 or 24 Strategy Development Grants (SDG), from 339 applicants, to help our coalition with the further development of our Phase 2 projects. The SDG grant is for $498,729. These funds are to cover the following activities:

(1) PAEG Research - Hiring consultant Washinton State University (WSU) to perform needed research on the PAEG population using data from Employment Security Dept (ESD) and Dept of Social & Health Services (DSHS);
(2) Barrier Assessment & Development – Convene and coordinate multiple social services agencies to inventory resources available and barriers they deem need to be addressed. Develop guidance for how to effectively create navigator services to reduce barriers. Develop an PAEG outreach program;
(3) Development of Workforce Training Program – Convene Tribal and Non-Tribal representatives from education and industry to prioritize training opportunities that meet

business demand. Conduct a study of proposed programs focused on analyzing type of jobs that projects create and whether these Good Jobs are appropriately acce3ssible to people in the PAEG;

(4) Economic Impact & Feasibility Analyst – Conduct economic analysis and feasibility studies including the direct, indirect and induced job growth associated with project in NOPRC's Recompete Plan;
(5) Zoning Efforts – Update the Glen Cove Special Study from 1999 including Environmental Impact Statement. Planning work will include public outreach; and
(6) Hiring Recompete Plan Coordinator ("RPC") and staffing – Recruit RPC to facilitate the coordination of Phase 2 grant application process for NOPRC. Funding will cover salary for RPC and support staff.

EDC will be providing the Economic Impact and Feasibility Analysis in Item 4. They will by employing Dr. Dan Underwood to lead this research project.

It has taken a long time to receive our contract from EDA and the timeline to complete this require this contract to movie forward right away and therefore we are bringing it with the others forward in this back-to-back meeting.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Budget supplemental will be brought to the BOCC for approval at prior date.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Staff recommendation is to approve the EDA Contract for the Strategy Development Grant.

County Official signature & print name: Todd Mielke Todd Mielke

Names of Relevant Departments/Employees/Stakeholders attending meeting:

Angi Klahn, Dee Boughton, NOPRC Task Force, Colleen McAleer-Clallam EDC

Date submitted: February 14, 2024

RECOMPLETE – STRATEGY DEVELOPMENT GRANT
SUBRECIPIENT AGREEMENT

This Subrecipient Agreement ("Agreement") is dated as of the _____ day of _____, 2024, by and between Clallam County, a Washington political subdivision ("County"), and Clallam County Economic Development Council (Federal Tax ID 91-1167253, UEI #V157ENJSPDN7), an Associate Economic Development Organization ("ADO") within Clallam County ("Subrecipient").

WHEREAS, the Economic Development Administration ("EDA"), U.S. Department of Commerce ("DOC") has allocated to the County $498,729.00 of federal grant funding from the Distressed Area Recompete Pilot Program ("Recompete") Phase 1 Strategy Development Grant ("SDG") as part of the authorized by the CHIPS and Science Act under ALN No. 11.040 ("SDG") under Section 29 of the Stevenson-Wydler Technology Innovation Act of 1980 as amended (15 U.S.C.& 3722b) effective June 29, 2023. FAIN #ED24OIE0G0085, identified as Attachment A, Attachments A attached hereto and incorporated herein by this reference.

WHEREAS, the County as Lead Applicant for the North Olympic Peninsula Recompete Coalition ("NOPRC") has been applied for Phase 1 Recompete Plan Approval. EDA has selected NOPRC as one of 22 finalists from Phase 1 to compete in the Phase 2 application for Recompete Plan implementation funding. Funding if awarded would invest up to $50 million into the two-county region of Clallam and Jefferson County.

WHEREAS, the EDA authorizes the County to expend SDG Funds awarded to the County to assist in the planning and development of NOPRC's Phase 2 application. The eligible expenditures purposed as outlined in the Scope of Work are as follows:

(1) PAEG Research - Hiring consultant Washinton State University (WSU) to perform needed research on the PAEG population using data from Employment Security Dept (ESD) and Dept of Social & Health Services (DSHS);
(2) Barrier Assessment & Development – Convene and coordinate multiple social services agencies to inventory resources available and barriers they deem need to be addressed. Develop guidance for how to effectively create navigator services to reduce barriers. Develop an PAEG outreach program;
(3) Development of Workforce Training Program – Convene Tribal and Non-Tribal representatives from education and industry to prioritize training opportunities that meet business demand. Conduct a study of proposed programs focused on analyzing type of jobs that projects create and whether these Good Jobs are appropriately acce3ssible to people in the PAEG;
(4) Economic Impact & Feasibility Analyst – Conduct economic analysis and feasibility studies including the direct, indirect and induced job growth associated with project in NOPRC's Recompete Plan;
(5) Zoning Efforts – Update the Glen Cove Special Study from 1999 including Environmental Impact Statement. Planning work will include public outreach; and

(6) Hiring Recompete Plan Coordinator ("RPC") and staffing – Recruit RPC to facilitate the coordination of Phase 2 grant application process for NOPRC. Funding will cover salary for RPC and support staff.

WHEREAS, the Subrecipient, a member of the NOPRC, has been tasked with the Economic Impact and Feasibility Analysis for the Recompete Plan. The County and Subrecipient desire to enter into this Agreement so that the County may provide SDG Funds for appropriate and qualifying expenditures to the Subrecipient for Economic Impact & Feasibility Studies in support of NOPRC Phase 2 application and for other reimbursement costs as specified in Attachment B.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and the terms and conditions set forth below, the parties agree as follows:

1. Effective Date and Term. This Agreement shall commence when last executed by all parties and remain in effect until December 31, 2025, unless terminated by the County in writing.

2. SDG Funds. The County agrees to provide the Subrecipient a total sum not to exceed $200,000 for the Economic Impact & Feasibility Studies as specified based on eligibility criteria outlined in Attachment A and the Scope of Work provided in Attachment B.

3. Subrecipient's Use of SDG Funds. The Subrecipient shall ensure that the SDG Funds requests are necessary Eligible Uses under one of the following cost categories:

4. Reimbursement Request & Reporting Requirements. To facilitate the release of SDG Funds by the County to the Subrecipient and the County's compliance with reporting requirements for usage of SDG funding per Attachment A, the Subrecipient may submit one A-19 equivalent request schedule per month to the County on or before the 10th day following the end of each calendar month during the term of the Agreement, detailing the expenditures disbursed by the Subrecipient based on eligible criteria, outlined in Attachment B. The County shall then distribute SDG Funds, as requested by the Subrecipient. Such schedule may be modified with the prior approval of the County. Failure to provide any of the required documentation may result in the withholding and/or nonpayment of all or a portion of the request, and termination of the Agreement.

5. Termination. The County may terminate this Agreement, for convenience or otherwise and for no consideration or damages, upon prior notice to the Subrecipient.

6. Independent Contractor. Each party under the Agreement shall be for all purposes an Independent Contractor. Nothing contained herein will be deemed to create an association, a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties. The Subrecipient shall not be, or be deemed to be, or act or purport to act, as an employee, agent, or representative of the County for any purpose.

7. Indemnification. The Subrecipient agrees to defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers harmless from and against any and all claims, injuries, damages, losses or expenses including without limitation personal injury, bodily injury, sickness, disease, or death, or damage to or destruction of property, which are alleged or proven to be caused in whole or in part by an act or omission of the Subrecipient, its officers, directors, employees, and/or agents relating to the Subrecipient's performance or failure to perform under this Agreement. The section shall survive the expiration or termination of this Agreement.

8. Compliance with Laws, Guidelines. The Subrecipient shall comply with all federal, state, and local laws and all requirements (including debarment and other required certifications and audits) of the Uniform Administrative Requirements, Cost Principles and Auditor Requirements for Federal Awards as set forth in 2 C.F.R. part 200 and Attachment A.

9. Maintenance and Audit of Records. The Subrecipient shall maintain records, books, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review and audit by the County or its designee, the Washington State Auditor's Office and as required by the Uniform Guidance for five (5) years following termination of this Agreement. If it is determined during the course of the audit that the Subrecipient was reimbursed for unallowable costs under this Agreement, the Subrecipient agrees to promptly reimburse the County for such payments upon request.

10. Notices. Any notice desired or required to be given hereunder shall be in writing, and shall be deemed received three (3) days after deposit with the U.S. Postal Service, postage fully prepaid, certified mail, return receipt requested, and addressed to the party to which it is intended at its last known address, or to such other person or address as either party shall designate to the other from time to time in writing forwarded in like manner:

Subrecipient
Clallam County Economic Development Council
Attn: Colleen McAleer, Executive Director
PO Box 1085
338 W. First Street, Suite 105
Port Angeles, WA 98362

Clallam County
Attn: RPC and Angi Klahn, BOCC Analyst
223 E 4th St, Suite 4
Port Angeles, WA 98362-3015

11. Improper Influence. Each party warrants that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants,

and represents that no gratuity whatsoever has been or will offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.

12. Conflict of Interest. The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

13. Time. Time is of the essence in this Agreement.

14. Survival. The provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive. Those provisions include without limitation Indemnification and Maintenance and Audit of Records.

15. Amendment. No amendment or modification to the Agreement will be effective without the prior written consent of the authorized representatives of the parties.

16. Governing Law; Venue. The Agreement will be governed in all respects by the laws of the Washington State, both as to interpretation and performance, without regard to conflicts of law or choice of law provisions. Any action arising out of or in connection with the Agreement may be instituted and maintained only in a court of competent jurisdiction in Clallam County, Washington or as provided by RCW 36.01.050.

17. Non-Waiver. No failure on the part of the County to exercise, and no delay in exercising, any right hereunder shall operate as a wavier thereof; nor shall any single or partial exercise by the County of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to the County at law or in equity.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

19. Assignment. The Subrecipient shall not assign or transfer any of its interests in or obligations under this Agreement without the prior written consent of the County.

20. Entire Agreement. This Agreement constitutes the entire agreement between the County and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the parties with respect to this Agreement.

21. No Third Party Beneficiaries. Nothing herein shall or be deemed to create or confer any right, action, or benefit in, to, or on the part of any person or entity that is not a party to this Agreement. This provision shall not limit any obligation which either Party has to Treasury in connection with the use of SDG Funds, including the obligations to provide access to records and cooperate with audits as provided in this Agreement.

22. Severability. In the event that one or more provisions of this Agreement shall be determined to be invalid by any court of competent jurisdiction or agency having jurisdiction thereof, the remainder of the Agreement shall remain in full force and effect and the invalid provisions shall be deemed deleted.

23. Counterparts. This Agreement may be executed in one or more counterparts, any of which shall be deemed an original but all of which together shall constitute one and the same instrument.

24. Authorization. Each party signing below warrants to the other party, that they have the full power and authority to execute this Agreement on behalf of the party for whom they sign.

IN WITNESS WHEREOF, this Agreement is executed and shall become effective as of the last date signed below.

DATED this _____ day of _____, 2024.

SUBRECIPIENT

By: 

_____

Print Name: Colleen McAleer

Its: Executive Director

DATED this 14th day of February, 2024.

BOARD OF COUNTY COMMISSIONERS
CLALLAM COUNTY, WASHINGTON

_____
MIKE FRENCH, Chair

_____
RANDY JOHNSON, Commissioner

MARK OZIAS, Commissioner

ATTEST:

L. Gores, Clerk of the Board

APPROVED AS TO FORM by DPA Boughton

ATTACHMENT A

INTERAGENCY AGREEMENT BETWEEN
EDA AND CLALLAM COUNTY

Department of Commerce
Economic Development Administration

Notice of Award (NoA)
ED24OIE0G0085

RECIPIENT INFORMATION

1. **Recipient Name(s)**
   Clallam County
   223 E 4th St, Suite 4 Port Angeles, WA 98362-3000 US
2. **Congressional District of Recipient**
   WA-06
3. **Employer Identification Number (EIN)**
   916001298
4. **UEI**
   JV6JJNELRBS5
5. **Recipient POC**
   Angi Klahn
   angi.klahn@clallamcountywa.gov
6. **Authorized Official**
   Todd Mielke
   todd.mielke@clallamcountywa.gov

FEDERAL AGENCY CONTACT INFORMATION

7. **Grant Specialist**
   Michael Jones
   mjones3@eda.gov
8. **Program Officer**
   Asia King
   aking2@eda.gov
9. **Grant Officer**
   Scott Andes
   sandes@eda.gov

FEDERAL AWARD INFORMATION

10. **Award Number / FAIN**
    ED24OIE0G0085
11. **Award Type**
    Grant
12. **Period of performance Start Date & End Date**
    02/01/2024 - 01/31/2027
13. **Federal Share of Cost**
    $498,729
14. **Recipient Share of Cost**
    $0
15. **Total Federal and Recipient Cost**
    $498,729

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16. **Statutory Authority**
    Distressed Area Recompete Pilot Program (Recompete Pilot Program), as authorized by section 29 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. § 3722b)
17. **NOFO/RFA #**
    EDA-RECOMPETEPHASE1-2023
18. **Project Title**
    North Olympic Peninsula Recompete Plan
19. **Assistance Listing Number and Name**
    11.040 - Distressed Area Recompete Pilot Program
20. **Award Action Type**
    New Competing
21. **Multiyear Award?**
    No
22. **R&D Award?**
    No
23. **Construction Award?**
    No
24. **Grants Officer – Signature and Date**
    – Scott Andes 2/12/24
25. **Recipient – Signature and Date**
    –

Approved as to form only by:
Bert Dee Boughton
Civil Deputy Prosecuting Attorney
Clallam County

BY ACCEPTING THIS AWARD, THE RECIPIENT IS AFFIRMING THAT IT WILL COMPLY WITH ALL THE TERMS AND CONDITIONS OF THE AWARD. THE AWARD MUST BE ACCEPTED BY THE APPLICANT'S AUTHORIZED OFFICIAL.

RECIPIENT NAME: Clallam County
PROJECT TITLE: North Olympic Peninsula Recompete Plan
AWARD NUMBER: ED24OIE0G0085

This Notice of Award includes the following sections and incorporates all regulations, documents and authorities referenced therein.

I. BUDGET INFORMATION
II. STANDARD TERMS AND CONDITIONS
III. SPECIFIC AWARD CONDITIONS
IV. OTHER

Should there be a discrepancy among these documents, the Specific Award Conditions, including any references, shall control.

SECTION I – BUDGET INFORMATION

The following is the Authorized Budget for this award. Reference Section III – Specific Award Conditions for conditions related to the Authorized Budget.

Authorized Budget

Estimated Funding ($)	Proposed	Approved
Federal Share (EDA Amount)	$ 498,729.00	$ 498,729.00
Non-Federal Matching Share	$ 0.00	$ 0.00
Total Project Costs	**$ 498,729.00**	**$ 498,729.00**

Non-Construction

Cost Classification	Proposed	Approved
Personnel	$ 98,537.93	$ 98,537.93
Fringe Benefit	$ 34,488.28	$ 34,488.28
Travel	$ 2,620.00	$ 2,620.00
Equipment	$ 0.00	$ 0.00
Supplies	$ 2,800.00	$ 2,800.00
Contractual	$ 360,282.79	$ 360,282.79
Construction	$ 0.00	$ 0.00
Other	$ 0.00	$ 0.00
Indirect Charges	$ 0.00	$ 0.00
Total Project Costs	**$ 498,729.00**	**$ 498,729.00**

SECTION II – STANDARD TERMS AND CONDITIONS

The following regulations and standard terms and conditions apply to this award:

□ 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements, as Adopted Pursuant to 2 CFR § 1327.101 for Federal Awards
□ Department of Commerce Financial Assistance Standard Terms and Conditions
□ Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements
□ 13 CFR Chapter III Economic Development Administration, Department of Commerce Regulations
□ Other:

SECTION III – SPECIFIC AWARD CONDITIONS

The following Specific Award Conditions apply to this award:
See attached.

SECTION IV – OTHER

ATTACHMENT 1

Authorized Scope of Work

Recipient: **Clallam County**
Award Number: **ED24OIE0G0085**
Recompete Pilot Program – Strategy Development Grant

Executive Summary:

North Olympic Peninsula Recompete Coalition (NOPRC) will use the Strategy Development Funding to research the Prime Age Employment Gap (PAEG) in our two underserved and distressed counties to determine the barriers they face preventing their participation in the workforce and how they may be alleviated. The research will guide the design of an innovative and effective navigator and outreach program to bring people in the PAEG back into the workforce. This PAEG study will also tie into research being done through Peninsula College to design programs that meet both the low barrier needs of the PAEG and the current and future workforce training needs of industry employers. NOPRC will use funds to convene Tribal, industry, and workforce training representatives to guide the development of these programs. Funding will also be used to perform economic analysis and feasibility studies for the job creation projects in our Recompete Plan. These studies will seek to determine their direct, indirect, and induced job growth capabilities, their impact on the PAEG populations we are trying to reach with this program, and that jobs created will meet the criteria of "Good Jobs."

Funding will also support the salary for the Recompete Plan Coordinator (RPC) position and support staff. The RPC will be an integral leadership position to manage, develop, and coordinate the multiple projects within our Recompete Plan.

Summary of Activities:

Activity Title	Short Description of Activity	Output(s) / Deliverable(s)	Responsible Organization(s) / Individual(s)	Approximate Start / End Date
PAEG research	Hiring consultant Washinton State University (WSU) to perform needed research on the PAEG population using data from Employment Security Dept (ESD) and Dept of Social & Health Services (DSHS).	Preliminary Findings Report to be used to design navigator and outreach program for Phase 2 application. Plan for continued monitoring to	Clallam County	2/1/2024 to 6/30/2024

		measure plan progress.		
Barrier Assessment, Development Navigator Program & Outreach	Convene and coordinate multiple social services agencies to inventory resources available and barriers they deem need to be addressed. Develop guidance for how to effectively create navigator services to reduce barriers. Develop an PAEG outreach program.	Comprehensive inventory of programs and resources available to use. Development of navigator program.	Clallam County, EDC Team Jefferson, Jefferson County	2/1/2024 to 6/30/2024
Development of Workforce Training Program	Convene Tribal and Non-Tribal representatives from education and industry to prioritize training opportunities that meet business demand. Conduct a study of proposed programs focused on analyzing types of jobs these projects create and whether these Good Jobs are appropriately accessible to people in the PAEG.	An actionable report to guide higher education institutions (Peninsula College and NW School of Wooden Boatbuilding) to customize their job training programs to support local economic development.	Peninsula College	2/1/2024 to 6/30/2024
Economic Impact & Feasibility Analyst.	Conduct economic analysis and feasibility studies including the direct, indirect, and induced job growth associated with projects in NOPRC's Recompete Plan.	Preliminary Economic Analysis Reports to guide programs to be included in Recompete Plan moving forward. Finalized report to follow on project moving forward.	Clallam County Economic Development Council	2/1/2024 to 5/31/2024
Zoning Efforts	Update the Glen Cove Special Study from 1999 including Environmental	Preliminary Updated Special Study Report for	Jefferson County	2/1/2024 to 6/30/2025

	Impact Statement. Planning work will include public outreach.	Glen Cove UGA boundary adjustment. Documentation of engagement results. Finalized report to follow to inform the Comprehensive Plan Periodic Update.		
Hiring Recompete Plan Coordinator and staffing	Recruit Recompete Plan Coordinator.	Successfully retaining qualified candidate.	Clallam County	2/1/2024 to 12/31/2024
Recompete Plan Development, Coordination and Management	Development overall Recompete Plan and projects, coordinate projects and manage the overall process for NOPRC. Funding will cover salary for RPC and support staff for grant/subaward management.	Strategically developed and coordinated Recompete Plan.	Clallam County	2/1/2024 to 12/31/2024

Lead Applicant Name:	Clallam County
Application ID ("EDA-APP# ..." from EDGE):	EDA-APP#00002863

Authorized Staffing Plan

Staffing Plan - Budget									Checkpoint
Name	Annual Salary/Rate	% of Annual Hours for project	Annual $ from Award	Number of Years	Total Cost by Employee	Year 1	Year 2	Year 3	Does breakdown match your total? (Column G)
Recompete Plan Coordinator - TBD	$110,688	100%	$110,688	0.75	$83,016	$83,016		$0	$ 83,016.00
BOCC Lead Analyst	$84,358	20%	$16,872	0.92	$15,522	$15,522		$0	$ 15,521.93
Employee 3	$0	0%	$0	0.00	$0	$0	$0	$0	$ -
Employee 4	$0	0%	$0	0.00	$0	$0	$0	$0	$ -
Employee 5	$0	0%	$0	0.00	$0	$0	$0	$0	$ -
Employee 6	$0	0%	$0	0.00	$0	$0	$0	$0	
Total Personnel Costs					**$98,538**	**$ 98,537.93**	**$ -**	**$ -**	$ 98,537.93
Total Fringe Costs (Please Provide the Basis for Fringe Calculations)				35.00%	**$34,488**	**$ 34,488.28**	**$ -**	**$ -**	$ 34,488.28

See Attached Schedule A

Staffing Plan - Narrative		
Name	Title	Project Responsibilities
Employee 1 - TBD	Recomplete Plan Coordinator	The Recompete Plan Coordinator will hold a pivotal role in our organization, tasked with facilitating an inclusive community process, strategically managing government contracts and coordination for the multiple projects being developed under the Recomplete Plan.
Employee 2 - Angi Klahn	BOCC Lead Analyst	Angi has 25+ years of accounting experience. She also has grant management, SEFA preparation, and subaward monitoring experience. She will handle the grant management, monitoring and fiscal responsibilities for the Strategy Development Grant.
Employee 3		
Employee 4		
Employee 5		
Employee 6		

SPECIFIC AWARD CONDITIONS
U.S. DEPARTMENT OF COMMERCE
Economic Development Administration (EDA)

NON-CONSTRUCTION PROJECTS: Distressed Area Recompete Pilot Program under Section 29 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended, 15 U.S.C. § 3722b.

Recipient: Clallam County
Award Number: ED24OIE0G0085
Project Name: North Olympic Peninsula Recompete Plan
Distressed Area Recompete Pilot Program (Recompete): Phase 1 Strategy Development Grants

1. **SCOPE OF WORK:** This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award as the *Authorized Scope of Work* (Attachment 1). All work on this project must be consistent with the *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work memorialized in writing through execution of an amendment to the Notice of Award.

2. **UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS:** Along with other controlling law, this Award is governed by the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) as set forth in 2 C.F.R. part 200.

3. **PROJECT CONTACT INFORMATION:** The Recipient agrees to notify EDA promptly of any changes to the Recipient's contact information as specified in the Notice of Award.

4. **ADDITIONAL INCLUDED DOCUMENTS (Non-construction):** In addition to the regulations, documents, or authorities incorporated by reference on the Notice of Award, the following additional documents are hereby incorporated by reference into this Award:

    i. The Recipient's application, including any attachments, Project descriptions, schedules, and subsequently submitted supplemental documentation

    ii. *Authorized Scope of Work* (Attachment 1)

    iii. *Authorized Staffing Plan* (Attachment 2)

    Should there be a discrepancy among these documents, these Specific Award Conditions shall control.

5. **PROJECT DEVELOPMENT TIME SCHEDULE (B2S/STEM):** The Recipient agrees to the following Project development time schedule:

   i. Return of executed Notice of Award (NoA) or Amendment due no later than (NLT) 30 calendar days after receipt of NoA/Amemdment

   ii. ii. Scheduling of Kick-Off Meeting must occur NLT 30 calendar days after receipt of NoA/Amendment

   iii. iii. Finalization of Work Schedule must occur NLT than the date of the Kick-Off Meeting

   iv. iv. Submission of Final Project Progress Report due NLT 120 calendar days from the Award End Date, i.e., the latest date set forth in the "period of performance" field on the NoA or as later memorialized through an Amendment

   v. v. Submission of Final Financial Documents (Form SF-425) due NLT 120 calendar days from the Award End Date.

   The Recipient shall diligently pursue the development and implementation of the Project upon receipt of the Award so as to ensure completion within this time schedule. Moreover, the Recipient shall promptly notify EDA in writing of any event that could substantially delay meeting any of the milestones or deadlines for the Project as set forth above. The Recipient further acknowledges that failure to meet the development time schedule may result in EDA imposing remedies for noncompliance, including termination of the Award, in accordance with the regulations set forth at 2 C.F.R. §§ 200.339 through 200.343.

6. **FINANCIAL DISBURSEMENT INSTRUCTIONS (B2S/STEM)**: EDA will make Award payments using the Department of the Treasury's Automated Standard Application for Payments (ASAP) system. The Recipient is required to furnish documentation as required by ASAP including but not limited to Recipient and Requestor Identification Numbers. Complete information concerning the ASAP system may be obtained by visiting www.fms.treas.gov/asap.

   In order to receive payments, the Recipient must submit Form SF-270 (Request for Advance or Reimbursement) for the applicable period electronically. The Project Officer will review and process the request.

   Prior to the initial disbursement, the Recipient must complete Form SF-3881 (ACH Vendor/Miscellaneous Payment Enrollment Form). The form must be completed by the respective parties (EDA, Recipient's Bank, and Recipient) at the start of the Award. EDA will provide instructions for submitting the form during the project kick-off meeting.

7. **REPORT SCHEDULE:** The Recipient agrees to report to EDA on the Project's performance and impacts as summarized as follows:

    i. During the Period of Performance:

        a. Progress Reports and Financial Status Reports – Semiannually, for the periods ending March 31 and September 30.

        b. Outputs Questionnaire (Form ED-916) – Semiannually, six months after the date the period of performance begins and every six months thereafter, or as otherwise directed by EDA.

        c. Outcomes Questionnaire (Form ED-918) -- Annually, one year after the date the period of performance begins and annually thereafter for a total of five years, or as otherwise directed by EDA (note that this obligation may extend beyond award closeout).

    ii. At the Expiration of the Period of Performance but Before Award Closeout: Progress Reports and Financial Status Reports – One time, within 120 calendar days after the Award End Date.

    iii. After Award Closeout: Report on the Outcomes Questionnaire annually, until the end of the fifth year after the date the period of performance begins, or as otherwise directed by EDA.

    Timely submission of all above-described reports is a condition of this award. Per 2 CFR § 200.344, the Recipient must submit, no later than 120 calendar days after the end of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the award. If the Recipient fails to submit all required reports to EDA within one year of the period of performance end date, EDA will report the material failure to comply with the OMB-designated integrity and performance system (formerly FAPIIS) and/or pursue other enforcement actions per 2 CFR § 200.339.

8. **PROJECT PROGRESS REPORTS:** The Recipient agrees to provide the Project

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

    Progress Reports must be submitted to EDA via EDA's Grants Management Portal in a concise, clear format that outlines the following information in three to six pages:

    1. A clear, concise overview of the activities undertaken during the reporting period. For each activity, provide the name of the activity, the dates of the activity, a summary of the activity, and an explanation of outcomes the activity advances (e.g., preparing a competitive Phase 2 application, identifying other funding mechanisms to implement

Recompete strategy, building out a clear plan that increases prime age employment and per capita wages).

2. A description of anticipated activities for the next reporting period.
3. An outline of challenges that currently impact or could impact progress on the Project over the next reporting period and means of mitigating this risk. Please highlight any areas where EDA assistance is needed to support the project (e.g., connections to subject matter experts or other resources, amplifications of activities or impacts).
4. A description of at least one success story from the reporting period.
5. Any other key information that would be helpful to your EDA Project Officer.

9. **FINAL PROJECT PROGRESS REPORT (B2S/STEM):** The final Progress Report must be submitted to EDA no more than 120 calendar days after the Award End Date and these reports or any part of the information contained therein may be posted on EDA's website, used for promotional materials or policy reviews, or may be otherwise shared. Recipient must clearly identify any information that may constitute a trade secret or may be commercial or financial information that is confidential or privileged in these reports. There is no minimum or maximum page requirement for the **final Progress Report**; however, the final Progress Report should concisely yet completely communicate key Project information as follows:

    a. the specific regional need that the Project was designed to address and progress made during the period of performance and beyond that has mitigated or will mitigate that need and advance economic development;

    b. a high-level overview of the activities undertaken;

    c. details of lessons learned during the period of performance that may be of assistance to EDA or other communities undertaking similar efforts;

    d. the expected and actual economic benefits of the Project at the time that the Report is written; and

    e. any other key information from the period of performance.

10. **FINANCIAL REPORTS:** Financial Status Reports (SF-425) must be submitted to EDA on a semi-annual basis via EDA's Grants Management Portal for the reporting periods ending March 31 and September 30, or any portion thereof if applicable, for the period of performance set forth in the Notice of Award or as later memorialized through a mutually agreed-upon Amendment to the Award. Form SF-425 (and instructions for completing this form) is available at: https://www.grants.gov/forms/post-award-reporting-forms.html. Reports are due no later than 30 calendar days following the end of the reporting period.

11. **FINAL FINANCIAL REPORT (Non-construction):** A **final** Form SF-425 must be submitted to EDA no more than 120 calendar days after the Authorized Award End Date specified on the Notice of Award (or any subsequently executed Amendment to the Notice of

Award). Final Financial Reports should follow the instructions for submitting mid-term Financial Status Reports, but should also ensure that all fields accurately reflect the total outlays for the entire project period and that all matching funds and program income (if applicable) are fully reported. Determination of the **final grant rate and final balances owed to the government will be determined based on the information on the final Form SF-425, so it is imperative that it be submitted in a timely and accurate manner.**

12. **PERFORMANCE MEASURES:** The Recipient agrees to provide EDA with:

(1) Form ED-916 (Outputs Questionnaire) on a semiannual basis, and

(2) Form ED-918 (Outcomes Questionnaire) on an annual basis.

All Outputs Questionnaires and Outcomes Questionnaires should be submitted via a web-based information collection system to be provided by EDA

Outputs Questionnaires (Form ED-916) must be submitted to EDA on a semi-annual basis during the period of performance or as otherwise directed by EDA. The first Outputs Questionnaire must be submitted to EDA six months after the date the period of performance starts, as set forth in the Notice of Award or as later memorialized through an Amendment. The Outputs Questionnaire must be submitted to EDA every six months thereafter through the end of the Period Performance, or any portion thereof if applicable, or as otherwise directed by EDA.

Outcomes Questionnaires (Form ED-918) must be submitted to EDA on an annual basis for a total of five years after the date the period of performance starts, including after Award closeout. The first Outcomes Questionnaire must be submitted to EDA one year after the date the period of performance starts, as set forth in the Notice of Award or as later memorialized through an Amendment. The Outcomes Questionnaire must be submitted to EDA at the end of every year thereafter for a total of five years, or as otherwise directed by EDA.

Note that EDA may revise or replace the Outputs Questionnaire and/or the Outcomes Questionnaire at any time during or following the period of performance. The Recipient agrees to report on program performance measures and program outcomes in such form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993 and the Government Performance and Results Modernization Act of 2010 (collectively, GPRA Reports). Recipient must collect sufficient data and retain sufficient documentation to enable Recipient to submit these required GPRA Reports. **Failure to submit the required GPRA Reports can adversely impact the ability of the Recipient to secure future funding from EDA.** Recipient must retain sufficient data and records to comply with the above reporting requirements at least through the end of the fifth year after the date the period of performance starts, or longer if necessary to comply with the above reporting requirements.

13. **ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined after the final financial documents are submitted in accordance with the applicable authorities specified on the Notice of Award, including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. part 200, and the Authorized Budget. Except as otherwise expressly provided for within these Specific Award Conditions, the federal share of the allowable costs will be based on the Investment Rate for the Award, as established on the Notice of Award or any subsequent Amendment. In the event of an underrun in total allowable costs for this project, the federal share of allowable costs will be determined by the Investment Rate. The federal share of total allowable costs may not exceed the dollar amount specified on the original Award or any subsequent amendments.

14. **FEDERAL SHARE:** The EDA participation in total eligible project costs will be limited to the lesser of the EDA grant amount or the EDA share of total allowable project costs (as stated on the Notice of Award or the most recent Amendment).

15. **REFUNDS, INTEREST, OR UNUSED FUNDS:** If the Recipient needs to return money to EDA, it may use one of the following two methods:

    i. The first is the pay.gov website, which allows the Recipient to pay EDA online. The Recipient will have the option to make a one-time payment or to set up an account to make regular payments.

    ii. The second is paper check conversion. All checks must be made payable to "Department of Commerce, Economic Development Administration" and include the award number and a description of no more than two words identifying the reason for the payment. A copy of the check should be provided to the EDA Project Officer. The check should be mailed to NOAA's Accounting Office, which processes EDA's accounting functions, at the following address:

    NOAA OCFO

    Attn: Finance Office, Travel Dept.

    1315 East West Highway, SSMC3

    Silver Spring, MD 20910

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

16. **ADDITIONAL DOCUMENTATION REQUIRED FOR AWARD COMPLIANCE (Tech Hubs):** Recipient agrees to provide any additional documentation or information required by EDA to confirm compliance of this Award with applicable laws, regulations, and policies and to do so within reasonable deadlines set by EDA. In the event Recipient fails to provide the required documentation in a timely manner, EDA may exercise the remedies provided at 2 C.F.R. §§ 200.339–200.343, up to and including termination.

17. **PROJECT AND PROGRAM EVALUATION:** As part of the process of validating and monitoring the Award and the performance information provided by the Recipient, and as a general method of evaluating the Award and the Recompete Program, EDA reserves the right to conduct project and program evaluations through site visits and/or survey(s) during or after the period of performance. Such evaluations may be conducted by outside parties associated with EDA or by EDA staff. Recipient agrees to participate in the evaluation by answering the evaluator's questions and furnishing information as requested. Evaluators will maintain the confidentiality of business information as required and appropriate. Recipient agrees to provide data and client management system information to facilitate evaluations. For site visits, EDA will provide the Recipient at least two weeks of notice prior to a visit, unless exigent circumstances warrant otherwise. The site visit may include interviews with Recipient's staff or visits with Project clients.

18. **USE OF INFORMATION:** EDA reserves the right to use information contained in the Recipient's Application as well as all reports and performance data submitted by the Recipient to undertake an evaluation of the Program. The Recipient agrees to cooperate with such evaluations, including by sharing performance information that they have collected or will collect as part of their grant activities, including performance information for Project clients.

19. **PROCUREMENT:** The Recipient agrees that all procurement transactions shall be in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. §§ 200.317–200.327. Any noncompetitive procurement requires prior approval from EDA.

20. **SUBAWARDS (B2S/STEM/RLF):** Certain award activities funded under this Award may be accomplished through a subaward by the Recipient to a Subrecipient. Prior EDA permission is needed to include, add, or change a subrecipient. Prior to the award of any subaward or subrecipient performing any work funded through this Award, the Recipient must provide documentation satisfactory to EDA that the proposed subrecipient(s) and any additional or successor subrecipient(s)are eligible to receive EDA assistance. EDA will provide written notice regarding whether the documentation is satisfactory to EDA. No change may be made to the identity of the subrecipient or the scope of the proposed

subaward without prior EDA approval. Subaward are not permitted without EDA prior approval.

Before a subrecipient undertakes any work to be funded through this Award, the Recipient shall enter into a written subaward agreement with the Subrecipient that meets the requirements of 2 C.F.R. § 200.332(a) and includes a requirement that the subrecipient comply with all of the terms and conditions of this Award, including but not limited to the Standard and Specific Award conditions and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. part 200). EDA may disallow any costs incurred by the subrecipient prior to executing the subaward agreement. The Recipient shall be responsible for monitoring the Subrecipient's performance under the subaward in accordance with the requirements of 2 C.F.R. § 200.332. The Recipient is also responsible for ensuring that any subrecipient of a subaward exceeding $100,000 executes form CD-511, Certification Regarding Lobbying, and for retaining a copy of the executed certification. As required by form CD-511, subrecipients must report lobbying activities, if any, to the Recipient on Form SF-LLL. The Recipient is responsible for promptly providing EDA with a copy of any Form SF-LLL submitted by a subrecipient.

The Recipient is responsible for reporting the Federal Subaward Reporting System (FSRS) available at www.FSRS.gov on all subawards over $30,000. Please see the OMB guidance published at 2 C.F.R. part 170, which can be accessed at https://www.govinfo.gov/content/pkg/CFR-2022-title2-vol1/pdf/CFR-2022-title2-vol1-part170.pdf. Appendix A of 2 C.F.R. part 170 is incorporated by reference into these Specific Award Condition.

21. **NONRELOCATION (Non-Construction):** In signing this Award, the Recipient attests that EDA funding is not intended by the Recipient to assist efforts to induce the relocation of existing jobs within the U.S. that are located outside of its jurisdiction to within its jurisdiction in competition with other U.S. jurisdictions for those same jobs. In the event that EDA determines that its assistance was used for such purposes, EDA reserves the right to pursue appropriate enforcement actions in accord with 2 C.F.R. §§ 200.339 through 200.343 and the DOC STCs, including suspension of disbursements and termination of the Award which may include the establishment of a debt requiring the Recipient to reimburse EDA.

22. **REAFFIRMATION OF APPLICATION:** Recipient acknowledges that Recipient's application for this Award may have been submitted to EDA and signed by Recipient, or by an authorized representative of Recipient, electronically without providing an original "wet" signature. In addition, the Recipient or an authorized representative of Recipient may have accepted the Award electronically, which includes drawing down any funds under this Award. Regardless of who submitted the Application to EDA or the means by which Recipient submitted the Application or accepted the Award, Recipient hereby reaffirms and states that:

A. All data in the Application were true and correct when the Application was submitted and remain true and correct as of the date of this Award;

B. The Application was, as of the date of submission and the date of this Award, duly authorized as required by local law by the governing body of the Recipient; and

C. Recipient has read, understood, and will comply with all terms of this Award, including the Assurances and Certifications submitted with, or attached to, the Application and through the System for Award Management (SAM.gov).

The Recipient agrees to immediately notify the EDA of any material changes to the Application within 30 calendar days of the date the Recipient becomes aware of such changes. For purposes of this provisions, the term "Application" includes all documentation and any information provided to EDA as part of, and in furtherance to, the request for funding, including submissions made in response to information requested by EDA after submission of the initial Application.

23. **FREEDOM OF INFORMATION ACT (FOIA)**: EDA is responsible for meeting its Freedom of Information Act (FOIA) (5 U.S.C. § 552) responsibilities for its records. DOC regulations at 15 C.F.R. part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications and other information submitted by applicants and recipients may be released in response to a FOIA request. The Recipient should be aware that EDA may make certain application information publicly available. Accordingly, the Recipient should notify EDA if it believes any Application information to be confidential.

24. **WASTE, FRAUD AND ABUSE:** Consistent with 2 C.F.R. part 200, at EDA's direction, at any time(s) during the estimated useful life of the Project, Recipient's key personnel will take a training on preventing waste, fraud and abuse as provided by the Government. Key personnel include those responsible for managing the Recipient's finances and overseeing any contractors, sub-contractors or sub-grantees (for financial matters and/or general oversight related to this Project). EDA will provide instructions on when and how to take the training. Within 60 days of the date of Award, the Recipient shall provide to the Project Officer all Certificates of Completion for the Waste, Fraud, and Abuse training. In the event there are co-recipients of this Award, the obligations in the Specific Award Condition shall apply to all recipients whether or not designated in this Award as the Lead Recipient.

    Further, Recipient will monitor award activities for common fraud schemes (hereinafter "Fraud Schemes"), such as but not limited to:

    - false claims for materials and labor,
    - bribes related to the acquisition of materials and labor,

- product substitution,
- mismarking or mislabeling on products and materials, and
- time and materials overcharging.

Should Recipient detect any Fraud Schemes or any other suspicious activity, Recipient will contact the EDA staff listed above and the Department of Commerce, Office of Inspector General, as indicated at https://www.oig.doc.gov/Pages/Contact-Us.aspx, as soon as possible.

25. **USE OF EDA'S RECOMPETE LOGO:** EDA has developed a logo for EDA programming under the Distressed Area Recompete Pilot Program ("Recompete Logo"). Recipient may use the Recompete Logo pursuant to the below terms and conditions for the following limited purposes:

    - Press releases, social media posts, and websites that build awareness of this Award (note that some advertising and marketing activities are not allowable costs under federal awards as provided at 2 CFR 200.421); and
    - Work products and deliverables developed under this Award (e.g., tools, publications, resource guides, brochures, PowerPoint presentations, technical assistance materials).
    - Recipient may not use the Recompete Logo for other purposes, including lobbying or issue advocacy, endorsing a product or organization, or communications to elected officials or federal agencies. Recipient may not use the Recompete Logo in a negative or defamatory manner. Recipient must request and obtain EDA permission prior to certain uses of the Recompete Logo (see paragraph B, below).

    A. Grant of License: EDA hereby grants to Recipient a non-exclusive, royalty-free right to use the Recompete Logo for the limited purposes described above (the "License"). Recipient agrees that: (1) the Recompete Logo will not be used in a way that would suggest that it is the property of Recipient or any other third party, and (2) Recipient will include the following notice in conjunction with its use of the Recompete Logo, as appropriate: "The Recompete Logo is a trademark of the Economic Development Administration, used with permission." This License does not grant Recipient the right to use any seal, emblem, logo, or other symbol of the U.S. Department of Commerce or EDA that is not the Recompete Logo.

    B. Required Approvals for Certain Uses of the Recompete Logo: Before Recipient uses the Recompete Logo for press releases and related materials, Recipient shall send a sample of each print, product, design, or other work to show the proposed use to the EDA Recompete Public Affairs Specialist (whose contact information may be obtained from the Project Officer for this Award). Recipient shall not use the Recompete Logo for the above uses until receiving written approval (including via email) from EDA of the proposed use.

C. Quality Control: EDA shall have the right, at all reasonable times, to inspect Recipient's goods, services, and promotional activities employing the Recompete Logo to ensure that such use is of proper quality and otherwise consistent with this License.

D. Duration and Termination: The License shall terminate on the Award End Date. Recipient may request a renewal of the License for an additional term subject to the express written consent of EDA. Such consent shall be in the form of a properly executed agreement signed by authorized signatories of EDA and Recipient. Upon termination of the License, all rights of Recipient to use the Recompete Logo shall immediately terminate. EDA may terminate the License unilaterally and without cause at any time, including if EDA determines that Recipient's use of the Recompete Logo is inconsistent with the License.

E. Validity and Ownership of Recompete Logo: Recipient acknowledges and agrees that EDA is the owner of all right, title, and interest in the Recompete Logo, and all such right, title, interest, and ownership shall remain with EDA. Recipient further acknowledges that Recipient shall not acquire any right, title, interest, or ownership in the Recompete Logo by virtue of the License or use other than the license granted hereunder and disclaims any such right, title, interest, or ownership. Recipient is prohibited from interfering with EDA's rights in the Recompete Logo, including challenging EDA's use, registration of, or application to register the Recompete Logo alone or in combination with other words or designs, as a U.S. or foreign trademark anywhere in the world. Recipient is further prohibited from attempting to register the Recompete Logo, any derivatives thereof, or any confusingly similar mark, whether or not registered by EDA, alone or in combination with other words or designs, as a U.S. or foreign trademark or as a part of a domain name.

F. Assignments and Sub-Licenses: The License is not assignable, and any attempt by Recipient to assign any portion of the License shall be deemed a breach of the License and will result in immediate termination of the License. Recipient may subcontract, thereby engaging in a limited sublicensing arrangement as applicable, for manufacturing and distribution activities under the License; Recipient shall provide notice to EDA—and must receive prior approval from EDA—of any such subcontract prior to manufacturing and distribution activities.

G. Governing Law: The License shall be interpreted and implemented in accordance with the Federal common law as interpreted by the U.S. District Court for the District of Columbia, without giving effect to any conflict of law principle that would result in the application of the substantive law of another jurisdiction.

H. Indemnification: Recipient agrees to indemnify and hold EDA harmless from any and all claims, damages, and attorneys' fees arising from the use of the Recompete Logo by the Recipient and its operations, except to the extent that any such claims, damages, or attorneys' fees arose in connection with any act or failure to act by the U.S. Department of Commerce or any agency, department, or subdivision thereof.

I. Obtaining the Recompete Logo: For an electronic version of the Recompete Logo, Recipient should contact the EDA Recompete Public Affairs Specialist (whose contact information may be obtained from the Project Officer for this Award).

26. STAFFING CHANGES: The Authorized Staffing Plan sets forth Recipient staff primarily responsible for administering this Award. In the event of a change in the professional staff positions primarily funded with the EDA grant, Recipient shall provide the name of the individual selected to fill the position to the Project Officer and a copy of their resume within 30 business days of the selection.

27. CONFLICT OF INTEREST: The Recipient must maintain a written and enforced conflict of interest policy. The policy should at a minimum address actual or potential personal (e.g., employees, agents, members of their immediate family) or organizational conflicts of interest in the performance or administration of the Award. Conflicts of interest may include, but are not limited to, any past, present or planned contractual, financial, or other relationships, obligations, commitments or responsibilities, which may bias the Recipient or affect the Recipient's ability to perform or administer the Award in an impartial and objective manner. The policy must include standards of conduct covering conflicts of interest and governing actions of Recipient employees engaged in the selection, award, or administration of contracts in accordance with 2 C.F.R. § 200.318(c). The Recipient shall ensure that all subrecipients and contractors under the Award: (1) have their own conflict of interest policy in place that meets the requirements of this Specific Award Condition; or (2) adopt the Recipient's conflict of interest policy. The Recipient's policy should provide procedures to disclose, mitigate, and resolve any such conflicts of interest. In accordance with 2 C.F.R. § 200.112, the Recipient must disclose in writing any potential or actual conflict of interest to EDA in a timely manner. EDA will evaluate the disclosure and inform the Recipient of any required remedial action beyond what the Recipient may have already implemented. Failure to comply with this condition, or the Recipient's own conflict of interest policy, may result in appropriate enforcement action pursuant to 2 C.F.R. §§ 200.339 through 200.343 and the DOC STCs, which are incorporated under the Award.

Fraud Awareness Training

EDA

U.S. ECONOMIC DEVELOPMENT ADMINISTRATION

EDA's grantees must successfully complete this training and submit the signed completion certificate(s) to the EDA Project Officer listed in the Specific Award Conditions within 60 days of grant award.

Failure to comply with this requirement may result in a finding of non-compliance with the terms and conditions of your award.

OVERVIEW

- Overview of EDA's Programs
- The Department of Commerce (DOC) Office of Inspector General (OIG)
- Fraud in EDA Programs
- Additional Items
- Certificate

INTRODUCTION

Role of EDA: Facilitate the timely and effective delivery of Federal economic development assistance to support long-term community economic recovery planning and project implementation, redevelopment, and resiliency

EDA's Programs

- EDA's Programs enable EDA to make awards that support a wide range of activities.
- Eligible applicants and project types for each program is set forth in the respective Notices of Funding Opportunity.
- You must read and understand the requirements applicable to the program under which your award is funded, including the applicable Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions.

The U.S. Department of Commerce (DOC) Office of Inspector General (OIG)

DOC – OFFICE OF INSPECTOR GENERAL

- Created by IG Act of 1978 to:
  - Combat fraud, waste, and abuse within the DOC
  - Conduct audits and investigations of DOC operations
  - Keep the DOC and Congress informed
- Mission
  - To improve the programs and operations of the Department of Commerce through independent and objective oversight

This includes oversight of EDA Assistance Programs

DOC – OFFICE OF INSPECTOR GENERAL

- Office of Audit and Evaluation
- Office of Investigations
  - Criminal
  - Civil
  - Administrative
  - Employee misconduct
  - Public corruption

WHISTLEBLOWER PROTECTIONS

Federal employees, applicants, and employees of federal contractors **and grantees** who make certain disclosures—to OIG or elsewhere—are protected under the law from suffering retaliation because of those disclosures.

Basic elements of whistleblower protection law: (1) you make a protected disclosure; (2) you are subject to certain retaliatory acts; and (3) there is a causal connection between your protected disclosure and the retaliatory act.

OIG receives, reviews, and where appropriate, investigates allegations of whistleblower reprisal.

Whistleblower complaints may be submitted to the OIG via the hotline:
https://www.oig.doc.gov/Pages/Hotline.aspx#complainthotline

Whistleblower complaints may also be submitted to the Office of Special Counsel via their website: https://osc.gov/pages/file-complaint.aspx

DOC-OIG Whistleblower Protection Coordinator contact information:

Email: wpo@oig.doc.gov Phone: 202-482-1099

FRAUD IN EDA ASSISTANCE PROGRAMS

- **Fraud Defined**
- **Compliance Requirements**
  - **Eligibility**
  - **Duplicate Funding**
  - **Matching Funds**
  - **Mandatory Reporting of Fraud**
- **Consequences of Fraud**
- **Recommendations/Best Practices**

FRAUD IN EDA ASSISTANCE PROGRAMS

Although it can take many forms, fraud, at its core, is **deception** through the **misrepresentation** or **omission** of **material facts** for the purpose of **illegitimate gain**.

FRAUD IN EDA ASSISTANCE PROGRAMS

Examples of fraud within EDA Assistance Programs include, but are not limited to:

- Accepting federal funding in multiple assistance awards for the same work
- Misrepresentations regarding the eligibility of the project or recipient
- Misrepresentations or omissions about the recipient's facilities, ownership/control, or the work to be performed by the recipient
- Providing falsified letters of support
- Misrepresentations concerning the use of funds expended, work performed, results achieved, or compliance with program requirements under the award
- Inflated labor costs

FRAUD IN EDA ASSISTANCE PROGRAMS (CONTINUED)

- Misuse or conversion of assistance award funds (e.g. using funds for personal expenses)
- Theft of government owned property (18 U.S.C. § 666)
- Embezzlement (18 U.S.C. § 666)
- Fabrication or falsification of data, in applying for, carrying out, or reporting results from an assistance award
- Intentional noncompliance with applicable federal cost principles governing grants / cooperative agreements
- Undisclosed self-dealing, such as a sub-award to an entity in which an awardee, executive, or key employee (or family members of the aforementioned individuals) has a financial interest
- "Buying Expenses", or reporting expenses incurred by another entity for work unrelated to the assistance award

COMPLIANCE REQUIREMENTS

RECIPIENTS MUST COMPLY WITH:

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- Department of Commerce Financial Assistance Standard Terms and Conditions
- EDA Standard Award Conditions for Construction Projects **or** EDA Revolving Loan Fund Standard Award Conditions (as applicable)
- Specific Award Conditions (unique to each award)

2 CFR § 200.339 – REMEDIES FOR NONCOMPLIANCE

If a non-Federal entity fails to comply with **the U.S. Constitution, Federal statutes, regulations or the terms and conditions of a Federal award**, the Federal awarding agency or pass-through entity may impose additional conditions; or, in certain circumstances, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- Temporary withholding of cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity
- Disallowance of (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance
- Whole or partial suspension or termination of the Federal award
- Initiation of suspension or debarment proceedings (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency)
- Withholding of further Federal awards for the project or program
- Other remedies that may be legally available

COMPLIANCE REQUIREMENTS

Eligibility

Within their EDA Assistance Award Proposal, applicants make numerous certifications or recertifications as to their eligibility to receive a federal award, among other certifications.

Falsely certifying to any material fact or representation contained in a certification is fraud.

CASE EXAMPLE

Eligibility

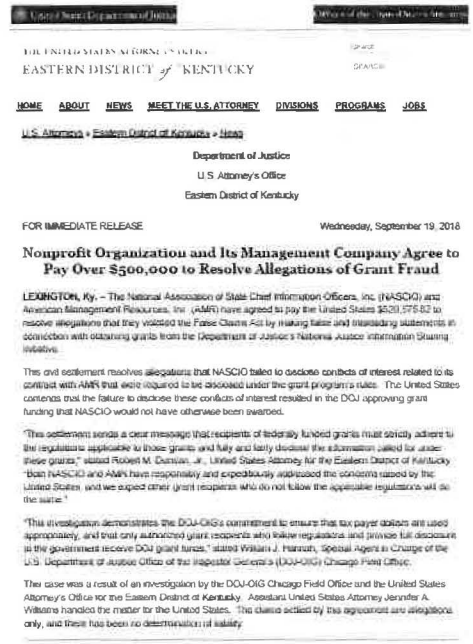
Allegations Included:

- Nonprofit organization made false and misleading statements to obtain federal grant funding
- Failure to disclose conflicts of interest that were required to be disclosed

Outcome:

- Nonprofit agreed to pay $528,575.82 to resolve allegations they violated the False Claims Act

Double-click below for more information



EASTERN DISTRICT of KENTUCKY

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Eastern District of Kentucky

FOR IMMEDIATE RELEASE Wednesday, September 19, 2018

Nonprofit Organization and Its Management Company Agree to Pay Over $500,000 to Resolve Allegations of Grant Fraud

LEXINGTON, Ky. – The National Association of State Chief Information Officers, Inc. (NASCIO) and American Management Resources, Inc. (AMR) have agreed to pay the United States $528,575.82 to resolve allegations that they violated the False Claims Act by making false and misleading statements in connection with obtaining grants from the Department of Justice's National Justice Information Sharing Initiative.

This civil settlement resolves allegations that NASCIO failed to disclose conflicts of interest related to its contract with AMR that were required to be disclosed under the grant program's rules. The United States contends that the failure to disclose these conflicts of interest resulted in the DOJ approving grant funding that NASCIO would not have otherwise been awarded.

"This settlement sends a clear message that recipients of federally funded grants must strictly adhere to the regulations applicable to those grants and fully and fairly disclose the information called for under these grants," stated Robert M. Duncan, Jr., United States Attorney for the Eastern District of Kentucky. "Both NASCIO and AMR have responsibly and expeditiously addressed the concerns raised by the United States, and we expect other grant recipients who do not follow the applicable regulations will do the same."

"This investigation demonstrates the DOJ-OIG's commitment to ensure that tax payer dollars are used appropriately, and that only authorized grant recipients who follow regulations and provide full disclosure to the government receive DOJ grant funds," stated William J. Hannah, Special Agent in Charge of the U.S. Department of Justice Office of the Inspector General's (DOJ-OIG) Chicago Field Office.

The case was a result of an investigation by the DOJ-OIG Chicago Field Office and the United States Attorney's Office for the Eastern District of Kentucky. Assistant United States Attorney Jennifer A. Williams handled the matter for the United States. The claims settled by this agreement are allegations only, and there has been no determination of liability.

Duplication of Benefits is Prohibited

2 CFR § 200.1 – Improper Payment

Improper payment means any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. This includes overpayments or underpayments to eligible recipients (including inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for an incorrect amount, and **duplicate payments**). It also includes any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments authorized by law).

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." *EDA Standard Terms and Conditions for Construction Projects, March 22, 2021*

CASE EXAMPLE

Duplication of Benefits

Double-click below for more information

Allegations Included:

- Not-for-profit owner applied for funding for similar services
- Owner converted the duplicate funding for his personal and business use

Outcome:

- Owner pleaded guilty to mail fraud and money laundering
- Sentenced to 24 months in prison
- Ordered to pay $480,901 in restitution



CENTRAL DISTRICT of ILLINOIS

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Department of Justice
U.S. Attorney's Office
Central District of Illinois

FOR IMMEDIATE RELEASE — Friday, September 23, 2016

Chicago Businessman Sentenced to Two Years in Prison for Grant Fraud Scheme

Springfield, Ill. – A Chicago businessman has been ordered to serve 24 months in prison for a fraud scheme that related to two state agencies awarding separate, but nearly identical, grants to his not-for-profit entity in September 2008. U.S. District Court Judge Sue E. Myerscough sentenced George E. Smith, 66, and ordered that Smith pay restitution of nearly $500,000 to the state. Judge Myerscough allowed Smith to self-report as directed by the federal Bureau of Prisons to begin serving his prison sentence. Smith waived indictment and pled guilty in March 2016, to two counts of mail fraud and one count of money laundering.

In rendering today's sentence, Judge Myerscough noted that Smith exploited his personal relationship with a former director of the Illinois Department of Children and Family Services related to a grant in the amount of $450,000 awarded by the agency on Sept. 2, 2008, under the Students at Risk Program. On Sept. 8, 2008, the Illinois Board of Education awarded Smith's not-for-profit a similar grant in the amount of $342,000. According to the terms of the grants, both provided for similar services to be provided to the same at-risk population in the Chicago area during fiscal year 2009. The populations served, sources of referral, services to be provided, and the goals for each grant were essentially identical. Neither DCFS nor ISBE were aware of the issuance of an identical grant by the other state agency. Smith then converted the duplicate funding to his personal and business use.

Both grants were awarded to Diversified Behavioral Comprehensive Care, a not-for-profit entity owned and operated by Smith. In addition, Smith owned and operated three for-profit entities: Diversified Behavioral Services, Inc., Management Planning Institute, Inc., and the Institute for Positive Child and Family Development. From 2005 through 2011, Smith, through both his not-for-profit and for-profit entities, received millions of dollars in funding from agencies of the state of Illinois, including DCFS, ISBE, and the Illinois Department of Human Services.

COMPLIANCE REQUIREMENTS

Matching Funds

- The non-Federal share of the approved project budget (aka the "matching share" or "local share") must be borne by the recipient or provided to the recipient by a third party as a contribution for the purposes of and subject to the terms of the award.

- The applicant must document that the matching share **will**:
  - Be committed to the project for the period of performance
  - Be available as needed
  - Not be conditioned or encumbered in any way that may preclude its use consistent with the requirements of EDA investment assistance

- Applicants must submit, for each source of matching share, a commitment letter or equivalent document signed by an authorized representative of the organization providing the matching funds. *Additional documentation may be requested by EDA in order to substantiate the availability of the matching funds.*

CASE EXAMPLE

Matching Funds

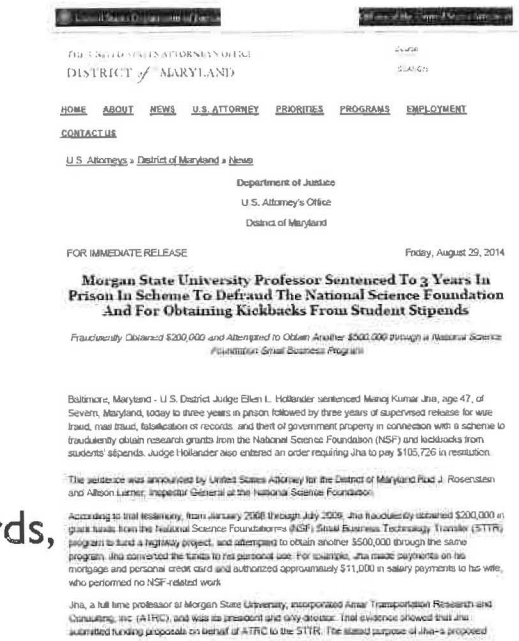
Allegations Included:

- Small business owner made several false statements and misrepresentations to obtain federal grant funding
- Owner misrepresented that he obtained a $100,000 investment from a third party in order to qualify for federal matching funds
- Owner converted grant funds to personal use

Outcome:

- Owner convicted at trial for wire fraud, mail fraud, falsification of records, and theft of government property
- Sentenced to 36 months in prison
- Ordered to pay $105,726 in restitution
- Owner debarred for 5 years

Double-click below for more information



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District of Maryland

FOR IMMEDIATE RELEASE

Friday, August 29, 2014

Morgan State University Professor Sentenced To 3 Years In Prison In Scheme To Defraud The National Science Foundation And For Obtaining Kickbacks From Student Stipends

Fraudulently Obtained $200,000 and Attempted to Obtain Another $500,000 through a National Science Foundation Small Business Program

Baltimore, Maryland - U.S. District Judge Ellen L. Hollander sentenced Manoj Kumar Jha, age 47, of Severn, Maryland, today to three years in prison followed by three years of supervised release for wire fraud, mail fraud, falsification of records, and theft of government property in connection with a scheme to fraudulently obtain research grants from the National Science Foundation (NSF) and kickbacks from students' stipends. Judge Hollander also entered an order requiring Jha to pay $105,726 in restitution.

The sentence was announced by United States Attorney for the District of Maryland Rod J. Rosenstein and Allison Lerner, Inspector General of the National Science Foundation.

According to trial testimony, from January 2008 through July 2009, Jha fraudulently obtained $200,000 in grant funds from the National Science Foundation's (NSF) Small Business Technology Transfer (STTR) program to fund a highway project, and attempted to obtain another $500,000 through the same program. Jha converted the funds to his personal use. For example, Jha made payments on his mortgage and personal credit card and authorized approximately $11,000 in salary payments to his wife, who performed no NSF-related work.

Jha, a full time professor at Morgan State University, incorporated Amar Transportation Research and Consulting, Inc. (ATRC), and was its president and only director. Trial evidence showed that Jha submitted funding proposals on behalf of ATRC to the STTR. The stated purpose of Jha's proposed

Mandatory Disclosure of Fraud

2 CFR § 200.113 - Mandatory disclosures

The non-Federal entity or applicant for a Federal award **must disclose**, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Failure to disclose could result in the remedies detailed in 2 CFR § 200.339 (slide 16 of this presentation).

CONSEQUENCES OF COMMITTING FRAUD

Criminal Prosecution

Lying to obtain a grant, or lying about the work performed may violate several criminal laws:

- 18 U.S.C. § 1001, False Statements (up to 5 years in prison, forfeiture and $250K fine)
- 18 U.S.C. § 641, Theft of Federal Property (up to 10 years in prison, forfeiture and $250K fine)
- 18 U.S.C. § 1343, Wire Fraud (up to 20 years in prison, forfeiture and $250K fine)
- 18 U.S.C. § 666, Theft or bribery concerning programs receiving Federal funds (up to 10 years in prison, forfeiture and $250K fine)

Fines for organizations may be as high as $500K

Criminal forfeiture = full amount of the grant; personal assets can be seized to satisfy forfeiture or fine

CONSEQUENCES OF COMMITTING FRAUD (CONTINUED)

Civil Prosecution

In addition to or in lieu of criminal prosecution

Civil False Claims Act, 31 U.S.C. §§ 3729-3733

- Liability includes up to treble damages (3x actual damages) and a civil penalty of up to $23,607 for each false claim
- False claims liability may include payments received when the government relied upon false information in the award proposal, in a certification of current cost or pricing data, in a request for payment, or in progress reports
- Although the statute requires knowledge that the claim was false, knowledge includes "deliberate ignorance" or "reckless disregard of the truth"
- Whistleblowers can receive up to 30% of the recovery amount for reporting fraud via *qui tam* provisions of the False Claims Act

CONSEQUENCES OF COMMITTING FRAUD (CONTINUED)

Administrative Remedies

- Government can terminate contracts/grants tainted by fraud
- Government can suspend/debar the entity, owner, and/or employees
  - Results in prohibition from receiving any federal grants or contracts, or working as a sub-grantee on federal grants or a sub-contractor on federal contracts
  - Debarment is typically for three years, but can be for a longer period
- Administrative remedies are in addition to or in lieu of criminal and civil liability

RECOMMENDATIONS

The government retains the right to examine the status of an EDA Assistance award at any time.

Status checks include:

- Site visits
- Requests for records including financial documents and timesheets

Good recordkeeping will help ensure successful status checks and eliminate potential issues.

RECOMMENDATIONS

Good Records: Key to Protecting Yourself

Documentation

- Timesheets for hours worked by ALL involved employees
- All financial receipts, invoices and statements for expenses related to the project

Updates on the project status, including successes/failures

- Keep regular records at the business-level so you have all facts on hand if needed/requested by the government
- Documentation to support performance metrics

Records Retention Time Frames and other Requirements

- See 2 CFR § 200.334

IMPORTANT TO REMEMBER!

:ecord Retention and Access

200.334 Retention requirements for records.

inancial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period f three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the ubmission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a ubrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The nly exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) ***If submitted for negotiation.*** If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(2) ***If not submitted for negotiation.*** If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

IMPORTANT TO REMEMBER!

If you are unsure about any of the requirements relating to the award of an EDA Assistance grant/cooperative agreement:

- Contact the appropriate EDA POC and provide all relevant facts
- Request written guidance from the EDA POC, and
- **Follow it!**

ADDITIONAL RESOURCES

13 CFR Chapter III – Economic Development Administration (Parts 300-315)
https://www.ecfr.gov/current/title-13/chapter-III

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II

Grant Fraud & Scams – Grants.gov
https://www.grants.gov/learn-grants/grant-fraud.html

Department of Commerce – Grants and Cooperative Agreement Manual
https://www.commerce.gov/oam/files/grants-and-cooperative-agreements-grants-manual-april-20-2021

REPORT FRAUD, WASTE, AND ABUSE

U.S. Department of Commerce
Office of Inspector General

Office of Investigations

OIG HOTLINE
Phone: (800) 424-5197

Online Complaint Form:
https://www.oig.doc.gov/Pages/Hotline.aspx#complainthotline

For more information please visit our website
www.oig.doc.gov

CERTIFICATE OF TRAINING COMPLETION

- **All EDA grantees must successfully complete this training and submit the signed completion certificate(s) to the EDA Project Officer listed in the Specific Award Conditions or via the EDGE website within 60 days of grant award.**

Failure to comply with this requirement may result in a finding of non-compliance with the terms and conditions of your award.

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate One**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Two**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 et seq.; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Three**

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 entity[1] 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.

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

not required to submit an audit(s) for that year, but must make their award-related records available to DOC or other designated officials for review and audit.

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

e. In accordance with 2 C.F.R. § 200.332(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.

l. 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).

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate One**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Two**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Three**

Attachment B

Clallam EDC Statement of Work
for Economic Analysis & Feasibility Studies:

Purpose

- Conduct economic analysis and feasibility studies including the direct, indirect, and induced job growth associated with projects in NOPRC's Recomplete Plan. Preliminary Economic Analysis Reports to help guide program and project development will be provided and included in the Recomplete Plan as the Task Force moves forward with their proposal.
- Final report will follow on projects moving forward in plan.

Economic Analysis of Projects:

- For each of the following projects assess and analyze existing documentation and studies as appropriate.
- Clallam EDC will receive from Project Proposers an explanation of how PAEGs will be identified and trained for a successful transition to related jobs. Proposers will provide commitment letters from employers for each project. This explanation should include how many jobs over the 5-year period and the entry wage and projected progression wage.
- Conduct impact analysis on how many jobs will be created by their proposed project, including indirect and induced jobs, that include the following:
  - *Port Townsend Boatyard*
  - *Composite Recycling Technology Center (CRTC) ADU Manufacturing Facility*
  - *Natural Resources Innovations Center (NRIC)*
  - *Barging*
  - *Forks Industrial Park*
  - *New projects to be determined.*

Assessment Analysis:

- Establish how we will evaluate the effectiveness of the navigation program in transitioning PAEGs into the labor force.
- Establish how we will evaluate the effectiveness of specialized *short term* workforce training programs to move PAEGs into the labor force.
- Establish how we will evaluate the effectiveness of specialized *long term* workforce training programs to move PAEGs into the labor force.

Budget: Not to exceed $200,000

Timeline:

- Start date February 1, 2024.
- Preliminary Analysis complete by March 31, 2024.
- Approximate End date: May 31, 2024

6

FEB 20 2024

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

2:

Department: BOCC

WORK SESSION ☒ **Meeting Date: February 20, 2024**

REGULAR AGENDA ☒ **Meeting Date: February 20, 2024**

Required originals approved and attached? ☐
Will be provided on:

Item summary:

☐ Call for Hearing ☒ Contract/Agreement/MOU - Contract #

☐ Resolution ☐ Proclamation ☐ Budget Item

☐ Draft Ordinance ☐ Final Ordinance ☐ Other

Documents exempt from public disclosure attached: ☐

Executive summary:

Request Approval of Strategy Development Grant award contract by US Department of Commerce/Economic Development Administration (EDA) – SUBAWARD to Jefferson County.

Clallam County, as the Lead Applicant for North Olympic Peninsula Recomplete Coalition (NOPRC) applied for the Distressed Area Recompete Pilot Program (Recompete) Phase 1 approval and the Strategy Development Grant in October 2023.

December 2023, NOPRC and Clallam County were announced as a Finalist for the Recompete Program and invited to compete in Phase 2 of the grant. Our Phase 1 plan was 1 of 22 selected from 235 nationwide applications, the largest applicant response to an EDA grant ever.

We were also awarded 1 or 24 Strategy Development Grants (SDG), from 339 applicants, to help our coalition with the further development of our Phase 2 projects. The SDG grant is for $498,729. These funds are to cover the following activities:

(1) PAEG Research - Hiring consultant Washinton State University (WSU) to perform needed research on the PAEG population using data from Employment Security Dept (ESD) and Dept of Social & Health Services (DSHS);

(2) Barrier Assessment & Development – Convene and coordinate multiple social services agencies to inventory resources available and barriers they deem need to be addressed. Develop guidance for how to effectively create navigator services to reduce barriers. Develop an PAEG outreach program;

(3) Development of Workforce Training Program – Convene Tribal and Non-Tribal representatives from education and industry to prioritize training opportunities that meet

business demand. Conduct a study of proposed programs focused on analyzing type of jobs that projects create and whether these Good Jobs are appropriately acce3ssible to people in the PAEG;

(4) Economic Impact & Feasibility Analyst – Conduct economic analysis and feasibility studies including the direct, indirect and induced job growth associated with project in NOPRC's Recompete Plan;

(5) Zoning Efforts – Update the Glen Cove Special Study from 1999 including Environmental Impact Statement. Planning work will include public outreach; and

(6) Hiring Recompete Plan Coordinator ("RPC") and staffing – Recruit RPC to facilitate the coordination of Phase 2 grant application process for NOPRC. Funding will cover salary for RPC and support staff.

Jefferson County will be providing the Zoning Efforts for Glen Cove in Item 5.

It has taken a long time to receive our contract from EDA and the timeline to complete this require this contract to movie forward right away and therefore we are bringing it with the others forward in this back-to-back meeting.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Budget supplemental will be brought to the BOCC for approval at prior date.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Staff recommendation is to approve the EDA Contract for the Strategy Development Grant.

County Official signature & print name: Todd Mielke Todd Mielke

Names of Relevant Departments/Employees/Stakeholders attending meeting:

Angi Klahn, Dee Boughton, NOPRC Task Force, Jefferson County

Date submitted: February 14, 2024

RECOMPLETE – STRATEGY DEVELOPMENT GRANT
SUBRECIPIENT AGREEMENT

This Subrecipient Agreement ("Agreement") is dated as of the _____ day of _____, 2024, by and between Clallam County, a Washington political subdivision ("County"), and Jefferson County (Federal Tax ID 91-6001322, UEI #FGN7DDMJA7H7), a Washington political subdivision ("Subrecipient").

WHEREAS, the Economic Development Administration ("EDA"), U.S. Department of Commerce ("DOC") has allocated to the County $498,729.00 of federal grant funding from the Distressed Area Recompete Pilot Program ("Recompete") Phase 1 Strategy Development Grant ("SDG") as part of the authorized by the CHIPS and Science Act under ALN No. 11.040 ("SDG") under Section 29 of the Stevenson-Wydler Technology Innovation Act of 1980 as amended (15 U.S.C.& 3722b) effective June 29, 2023. FAIN #ED24OIE0G0085, identified as Attachment A, Attachment A attached hereto and incorporated herein by this reference.

WHEREAS, the County as Lead Applicant for the North Olympic Peninsula Recompete Coalition ("NOPRC") has been applied for Phase 1 Recompete Plan Approval. EDA has selected NOPRC as one of 22 finalists from Phase 1 to compete in the Phase 2 application for Recompete Plan implementation funding. Funding if awarded would invest up to $50 million into the two-county region of Clallam and Jefferson County.

WHEREAS, the EDA authorizes the County to expend SDG Funds awarded to the County to assist in the planning and development of NOPRC's Phase 2 application. The eligible expenditures purposed as outlined in the Scope of Work are as follows:

(1) PAEG Research - Hiring consultant Washinton State University (WSU) to perform needed research on the PAEG population using data from Employment Security Dept (ESD) and Dept of Social & Health Services (DSHS);
(2) Barrier Assessment & Development – Convene and coordinate multiple social services agencies to inventory resources available and barriers they deem need to be addressed. Develop guidance for how to effectively create navigator services to reduce barriers. Develop an PAEG outreach program;
(3) Development of Workforce Training Program – Convene Tribal and Non-Tribal representatives from education and industry to prioritize training opportunities that meet business demand. Conduct a study of proposed programs focused on analyzing type of jobs that projects create and whether these Good Jobs are appropriately acce3ssible to people in the PAEG;
(4) Economic Impact & Feasibility Analyst – Conduct economic analysis and feasibility studies including the direct, indirect and induced job growth associated with project in NOPRC's Recompete Plan;
(5) Zoning Efforts – Update the Glen Cove Special Study from 1999 including Environmental Impact Statement. Planning work will include public outreach; and

(6) Hiring Recompete Plan Coordinator ("RPC") and staffing – Recruit RPC to facilitate the coordination of Phase 2 grant application process for NOPRC. Funding will cover salary for RPC and support staff.

WHEREAS, the Subrecipient, a member of the NOPRC, has been task with the rezoning efforts in Jefferson County as part of the Phase 2 application. The County and Subrecipient desire to enter into this Agreement so that the County may provide SDG Funding for appropriate and qualifying expenditures by the Subrecipient for Zoning Efforts in Glen Gove UGA in support of NOPRC Phase 2 application.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and the terms and conditions set forth below, the parties agree as follows:

1. Effective Date and Term. This Agreement shall commence when last executed by all parties and remain in effect until December 31, 2025, unless terminated by the County in writing.

2. SDG Funds. The County agrees to provide the Subrecipient a total sum not to exceed $60,000 for the rezoning and outreach efforts for Glen Cove UGA as specified based on eligibility criteria outlined in Attachment A and the Scope of Work provided in Attachment B.

3. Subrecipient's Use of SDG Funds. The Subrecipient shall ensure that the SDG Funds requests are necessary Eligible Uses under the criteria set forth in Attachment A and described in detail in Attachment B as well as Federal Uniform Guidance.

4. Reimbursement Request & Reporting Requirements. To facilitate the release of SDG Funds by the County to the Subrecipient and the County's compliance with reporting requirements for usage of SDG funding per Attachment A, the Subrecipient may submit one A-19 equivalent request schedule per month to the County on or before the 10th day following the end of each calendar month during the term of the Agreement, detailing the expenditures disbursed by the Subrecipient based on eligible criteria, outlined in Attachment B. The County shall then distribute SDG Funds, as requested by the Subrecipient. Such schedule may be modified with the prior approval of the County. Failure to provide any of the required documentation may result in the withholding and/or nonpayment of all or a portion of the request, and termination of the Agreement.

5. Termination. The County may terminate this Agreement, for convenience or otherwise and for no consideration or damages, upon prior notice to the Subrecipient.

6. Independent Contractor. Each party under the Agreement shall be for all purposes an Independent Contractor. Nothing contained herein will be deemed to create an association,

a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties. The Subrecipient shall not be, or be deemed to be, or act or purport to act, as an employee, agent, or representative of the County for any purpose.

7. Indemnification. The Subrecipient agrees to defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers harmless from and against any and all claims, injuries, damages, losses or expenses including without limitation personal injury, bodily injury, sickness, disease, or death, or damage to or destruction of property, which are alleged or proven to be caused in whole or in part by an act or omission of the Subrecipient, its officers, directors, employees, and/or agents relating to the Subrecipient's performance or failure to perform under this Agreement. The section shall survive the expiration or termination of this Agreement.

8. Compliance with Laws, Guidelines. The Subrecipient shall comply with all federal, state, and local laws and all requirements (including debarment and other required certifications and audits) of the Uniform Administrative Requirements, Cost Principles and Auditor Requirements for Federal Awards as set forth in 2 C.F.R. part 200 and Attachment A.

9. Maintenance and Audit of Records. The Subrecipient shall maintain records, books, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review and audit by the County or its designee, the Washington State Auditor's Office and as required by the Uniform Guidance for five (5) years following termination of this Agreement. If it is determined during the course of the audit that the Subrecipient was reimbursed for unallowable costs under this Agreement, the Subrecipient agrees to promptly reimburse the County for such payments upon request.

10. Notices. Any notice desired or required to be given hereunder shall be in writing, and shall be deemed received three (3) days after deposit with the U.S. Postal Service, postage fully prepaid, certified mail, return receipt requested, and addressed to the party to which it is intended at its last known address, or to such other person or address as either party shall designate to the other from time to time in writing forwarded in like manner:

Subrecipient
Jefferson County
Attn: Commissioner Greg Brotherton
1820 Jefferson St.
Port Townsend, WA 98368

Clallam County
Attn: RPC and Angi Klahn, BOCC Analyst
223 E 4th St, Suite 4
Port Angeles, WA 98362-3015

11. Improper Influence. Each party warrants that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of

seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.

12. Conflict of Interest. The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

13. Time. Time is of the essence in this Agreement.

14. Survival. The provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive. Those provisions include without limitation Indemnification and Maintenance and Audit of Records.

15. Amendment. No amendment or modification to the Agreement will be effective without the prior written consent of the authorized representatives of the parties.

16. Governing Law; Venue. The Agreement will be governed in all respects by the laws of the Washington State, both as to interpretation and performance, without regard to conflicts of law or choice of law provisions. Any action arising out of or in connection with the Agreement may be instituted and maintained only in a court of competent jurisdiction in Clallam County, Washington or as provided by RCW 36.01.050.

17. Non-Waiver. No failure on the part of the County to exercise, and no delay in exercising, any right hereunder shall operate as a wavier thereof; nor shall any single or partial exercise by the County of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to the County at law or in equity.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

19. Assignment. The Subrecipient shall not assign or transfer any of its interests in or obligations under this Agreement without the prior written consent of the County.

20. Entire Agreement. This Agreement constitutes the entire agreement between the County and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the parties with respect to this Agreement.

21. No Third Party Beneficiaries. Nothing herein shall or be deemed to create or confer any right, action, or benefit in, to, or on the part of any person or entity that is not a party to this Agreement. This provision shall not limit any obligation which either Party has to EDA in connection with the use of SDG Funds, including the obligations to provide access to records and cooperate with audits as provided in this Agreement.

22. Severability. In the event that one or more provisions of this Agreement shall be determined to be invalid by any court of competent jurisdiction or agency having jurisdiction thereof, the remainder of the Agreement shall remain in full force and effect and the invalid provisions shall be deemed deleted.

23. Counterparts. This Agreement may be executed in one or more counterparts, any of which shall be deemed an original but all of which together shall constitute one and the same instrument.

24. Authorization. Each party signing below warrants to the other party, that they have the full power and authority to execute this Agreement on behalf of the party for whom they sign.

IN WITNESS WHEREOF, this Agreement is executed and shall become effective as of the last date signed below.

DATED this _____ day of _____, 2024.

SUBRECIPIENT

By: _____

Print Name: _____

Its: _____

DATED this _____ day of _____ _____, 2024.

BOARD OF COUNTY COMMISSIONERS
CLALLAM COUNTY, WASHINGTON

_____
MIKE FRENCH, Chair

RANDY JOHNSON, Commissioner

MARK OZIAS, Commissioner

ATTEST:

L. Gores, Clerk of the Board

APPROVED AS TO FORM by DPA Boughton

ATTACHMENT A

INTERAGENCY AGREEMENT BETWEEN
EDA AND CLALLAM COUNTY

Department of Commerce
Economic Development Administration

Notice of Award (NoA)
ED24OIE0G0085

RECIPIENT INFORMATION

1. **Recipient Name(s)**
   Clallam County
   223 E 4th St, Suite 4 Port Angeles, WA 98362-3000 US
2. **Congressional District of Recipient**
   WA-06
3. **Employer Identification Number (EIN)**
   916001298
4. **UEI**
   JV6JJNELRBS5
5. **Recipient POC**
   Angi Klahn
   angi.klahn@clallamcountywa.gov
6. **Authorized Official**
   Todd Mielke
   todd.mielke@clallamcountywa.gov

FEDERAL AGENCY CONTACT INFORMATION

7. **Grant Specialist**
   Michael Jones
   mjones3@eda.gov
8. **Program Officer**
   Asia King
   aking2@eda.gov
9. **Grant Officer**
   Scott Andes
   sandes@eda.gov

FEDERAL AWARD INFORMATION

10. **Award Number / FAIN**
    ED24OIE0G0085
11. **Award Type**
    Grant
12. **Period of performance Start Date & End Date**
    02/01/2024 - 01/31/2027
13. **Federal Share of Cost**
    $498,729
14. **Recipient Share of Cost**
    $0
15. **Total Federal and Recipient Cost**
    $498,729

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16. **Statutory Authority**
    Distressed Area Recompete Pilot Program (Recompete Pilot Program), as authorized by section 29 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. § 3722b)
17. **NOFO/RFA #**
    EDA-RECOMPETEPHASE1-2023
18. **Project Title**
    North Olympic Peninsula Recompete Plan
19. **Assistance Listing Number and Name**
    11.040 - Distressed Area Recompete Pilot Program
20. **Award Action Type**
    New Competing
21. **Multiyear Award?**
    No
22. **R&D Award?**
    No
23. **Construction Award?**
    No
24. **Grants Officer – Signature and Date**
    Scott Andes 2/12/24
25. **Recipient – Signature and Date**
    –

Approved as to form only by:
Bert Dee Boughton
Civil Deputy Prosecuting Attorney
Clallam County

BY ACCEPTING THIS AWARD, THE RECIPIENT IS AFFIRMING THAT IT WILL COMPLY WITH ALL THE TERMS AND CONDITIONS OF THE AWARD. THE AWARD MUST BE ACCEPTED BY THE APPLICANT'S AUTHORIZED OFFICIAL.

RECIPIENT NAME: Clallam County
PROJECT TITLE: North Olympic Peninsula Recompete Plan
AWARD NUMBER: ED24OIE0G0085

This Notice of Award includes the following sections and incorporates all regulations, documents and authorities referenced therein.

I. BUDGET INFORMATION
II. STANDARD TERMS AND CONDITIONS
III. SPECIFIC AWARD CONDITIONS
IV. OTHER

Should there be a discrepancy among these documents, the Specific Award Conditions, including any references, shall control.

SECTION I – BUDGET INFORMATION

The following is the Authorized Budget for this award. Reference Section III – Specific Award Conditions for conditions related to the Authorized Budget.

Authorized Budget

Estimated Funding ($)	**Proposed**	**Approved**
Federal Share (EDA Amount)	$ 498,729.00	$ 498,729.00
Non-Federal Matching Share	$ 0.00	$ 0.00
Total Project Costs	**$ 498,729.00**	**$ 498,729.00**

Non-Construction

Cost Classification	**Proposed**	**Approved**
Personnel	$ 98,537.93	$ 98,537.93
Fringe Benefit	$ 34,488.28	$ 34,488.28
Travel	$ 2,620.00	$ 2,620.00
Equipment	$ 0.00	$ 0.00
Supplies	$ 2,800.00	$ 2,800.00
Contractual	$ 360,282.79	$ 360,282.79
Construction	$ 0.00	$ 0.00
Other	$ 0.00	$ 0.00
Indirect Charges	$ 0.00	$ 0.00
Total Project Costs	**$ 498,729.00**	**$ 498,729.00**

SECTION II – STANDARD TERMS AND CONDITIONS

The following regulations and standard terms and conditions apply to this award:

□ 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements, as Adopted Pursuant to 2 CFR § 1327.101 for Federal Awards
□ Department of Commerce Financial Assistance Standard Terms and Conditions
□ Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements
□ 13 CFR Chapter III Economic Development Administration, Department of Commerce Regulations
□ Other:

SECTION III – SPECIFIC AWARD CONDITIONS

The following Specific Award Conditions apply to this award:
See attached.

SECTION IV – OTHER

ATTACHMENT 1

Authorized Scope of Work

Recipient: **Clallam County**
Award Number: **ED24OIE0G0085**
Recompete Pilot Program – Strategy Development Grant

Executive Summary:

North Olympic Peninsula Recompete Coalition (NOPRC) will use the Strategy Development Funding to research the Prime Age Employment Gap (PAEG) in our two underserved and distressed counties to determine the barriers they face preventing their participation in the workforce and how they may be alleviated. The research will guide the design of an innovative and effective navigator and outreach program to bring people in the PAEG back into the workforce. This PAEG study will also tie into research being done through Peninsula College to design programs that meet both the low barrier needs of the PAEG and the current and future workforce training needs of industry employers. NOPRC will use funds to convene Tribal, industry, and workforce training representatives to guide the development of these programs. Funding will also be used to perform economic analysis and feasibility studies for the job creation projects in our Recompete Plan. These studies will seek to determine their direct, indirect, and induced job growth capabilities, their impact on the PAEG populations we are trying to reach with this program, and that jobs created will meet the criteria of "Good Jobs."

Funding will also support the salary for the Recompete Plan Coordinator (RPC) position and support staff. The RPC will be an integral leadership position to manage, develop, and coordinate the multiple projects within our Recompete Plan.

Summary of Activities:

Activity Title	Short Description of Activity	Output(s) / Deliverable(s)	Responsible Organization(s) / Individual(s)	Approximate Start / End Date
PAEG research	Hiring consultant Washinton State University (WSU) to perform needed research on the PAEG population using data from Employment Security Dept (ESD) and Dept of Social & Health Services (DSHS).	Preliminary Findings Report to be used to design navigator and outreach program for Phase 2 application. Plan for continued monitoring to	Clallam County	2/1/2024 to 6/30/2024

		measure plan progress.		
Barrier Assessment, Development Navigator Program & Outreach	Convene and coordinate multiple social services agencies to inventory resources available and barriers they deem need to be addressed. Develop guidance for how to effectively create navigator services to reduce barriers. Develop an PAEG outreach program.	Comprehensive inventory of programs and resources available to use. Development of navigator program.	Clallam County, EDC Team Jefferson, Jefferson County	2/1/2024 to 6/30/2024
Development of Workforce Training Program	Convene Tribal and Non-Tribal representatives from education and industry to prioritize training opportunities that meet business demand. Conduct a study of proposed programs focused on analyzing types of jobs these projects create and whether these Good Jobs are appropriately accessible to people in the PAEG.	An actionable report to guide higher education institutions (Peninsula College and NW School of Wooden Boatbuilding) to customize their job training programs to support local economic development.	Peninsula College	2/1/2024 to 6/30/2024
Economic Impact & Feasibility Analyst.	Conduct economic analysis and feasibility studies including the direct, indirect, and induced job growth associated with projects in NOPRC's Recompete Plan.	Preliminary Economic Analysis Reports to guide programs to be included in Recompete Plan moving forward. Finalized report to follow on project moving forward.	Clallam County Economic Development Council	2/1/2024 to 5/31/2024
Zoning Efforts	Update the Glen Cove Special Study from 1999 including Environmental	Preliminary Updated Special Study Report for	Jefferson County	2/1/2024 to 6/30/2025

	Impact Statement. Planning work will include public outreach.	Glen Cove UGA boundary adjustment. Documentation of engagement results. Finalized report to follow to inform the Comprehensive Plan Periodic Update.		
Hiring Recompete Plan Coordinator and staffing	Recruit Recompete Plan Coordinator.	Successfully retaining qualified candidate.	Clallam County	2/1/2024 to 12/31/2024
Recompete Plan Development, Coordination and Management	Development overall Recompete Plan and projects, coordinate projects and manage the overall process for NOPRC. Funding will cover salary for RPC and support staff for grant/subaward management.	Strategically developed and coordinated Recompete Plan.	Clallam County	2/1/2024 to 12/31/2024

Lead Applicant Name:	Clallam County
Application ID ("EDA-APP# ..." from EDGE):	EDA-APP#00002863

Authorized Staffing Plan

Staffing Plan - Budget						Year 1	Year 2	Year 3	Checkpoint
Name	Annual Salary/Rate	% of Annual Hours for project	Annual $ from Award	Number of Years	Total Cost by Employee				Does breakdown match your total? (Column G)
Recompete Plan Coordinator - TBD	$110,688	100%	$110,688	0.75	$83,016	$83,016		$0	$ 83,016.00
BOCC Lead Analyst	$84,358	20%	$16,872	0.92	$15,522	$15,522		$0	$ 15,521.93
Employee 3	$0	0%	$0	0.00	$0	$0	$0	$0	$ -
Employee 4	$0	0%	$0	0.00	$0	$0	$0	$0	$ -
Employee 5	$0	0%	$0	0.00	$0	$0	$0	$0	$ -
Employee 6	$0	0%	$0	0.00	$0	$0	$0	$0	$ -
Total Personnel Costs					**$98,538**	**$ 98,537.93**	**$ -**	**$ -**	$ 98,537.93
Total Fringe Costs (Please Provide the Basis for Fringe Calculations)				35.00%	**$34,488**	**$ 34,488.28**	**$ -**	**$ -**	$ 34,488.28

See Attached Schedule A

Staffing Plan - Narrative		
Name	Title	Project Responsibilities
Employee 1 - TBD	Recomplete Plan Coordinator	The Recompete Plan Coordinator will hold a pivotal role in our organization, tasked with facilitating an inclusive community process, strategically managing government contracts and coordination for the multiple projects being developed under the Recomplete Plan.
Employee 2 - Angi Klahn	BOCC Lead Analyst	Angi has 25+ years of accounting experience. She also has grant management, SEFA preparation, and subaward monitoring experience. She will handle the grant management, monitoring and fiscal responsibilities for the Strategy Development Grant.
Employee 3		
Employee 4		
Employee 5		
Employee 6		

SPECIFIC AWARD CONDITIONS
U.S. DEPARTMENT OF COMMERCE
Economic Development Administration (EDA)

NON-CONSTRUCTION PROJECTS: Distressed Area Recompete Pilot Program under Section 29 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended, 15 U.S.C. § 3722b.

Recipient: Clallam County
Award Number: ED24OIE0G0085
Project Name: North Olympic Peninsula Recompete Plan
Distressed Area Recompete Pilot Program (Recompete): Phase 1 Strategy Development Grants

1. **SCOPE OF WORK:** This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award as the *Authorized Scope of Work* (Attachment 1). All work on this project must be consistent with the *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work memorialized in writing through execution of an amendment to the Notice of Award.

2. **UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS:** Along with other controlling law, this Award is governed by the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) as set forth in 2 C.F.R. part 200.

3. **PROJECT CONTACT INFORMATION:** The Recipient agrees to notify EDA promptly of any changes to the Recipient's contact information as specified in the Notice of Award.

4. **ADDITIONAL INCLUDED DOCUMENTS (Non-construction):** In addition to the regulations, documents, or authorities incorporated by reference on the Notice of Award, the following additional documents are hereby incorporated by reference into this Award:

    i. The Recipient's application, including any attachments, Project descriptions, schedules, and subsequently submitted supplemental documentation

    ii. *Authorized Scope of Work* (Attachment 1)

    iii. *Authorized Staffing Plan* (Attachment 2)

    Should there be a discrepancy among these documents, these Specific Award Conditions shall control.

5. **PROJECT DEVELOPMENT TIME SCHEDULE (B2S/STEM):** The Recipient agrees to the following Project development time schedule:

   i. Return of executed Notice of Award (NoA) or Amendment due no later than (NLT) 30 calendar days after receipt of NoA/Amemdment

   ii. ii. Scheduling of Kick-Off Meeting must occur NLT 30 calendar days after receipt of NoA/Amendment

   iii. iii. Finalization of Work Schedule must occur NLT than the date of the Kick-Off Meeting

   iv. iv. Submission of Final Project Progress Report due NLT 120 calendar days from the Award End Date, i.e., the latest date set forth in the "period of performance" field on the NoA or as later memorialized through an Amendment

   v. v. Submission of Final Financial Documents (Form SF-425) due NLT 120 calendar days from the Award End Date.

   The Recipient shall diligently pursue the development and implementation of the Project upon receipt of the Award so as to ensure completion within this time schedule. Moreover, the Recipient shall promptly notify EDA in writing of any event that could substantially delay meeting any of the milestones or deadlines for the Project as set forth above. The Recipient further acknowledges that failure to meet the development time schedule may result in EDA imposing remedies for noncompliance, including termination of the Award, in accordance with the regulations set forth at 2 C.F.R. §§ 200.339 through 200.343.

6. **FINANCIAL DISBURSEMENT INSTRUCTIONS (B2S/STEM)**: EDA will make Award payments using the Department of the Treasury's Automated Standard Application for Payments (ASAP) system. The Recipient is required to furnish documentation as required by ASAP including but not limited to Recipient and Requestor Identification Numbers. Complete information concerning the ASAP system may be obtained by visiting www.fms.treas.gov/asap.

   In order to receive payments, the Recipient must submit Form SF-270 (Request for Advance or Reimbursement) for the applicable period electronically. The Project Officer will review and process the request.

   Prior to the initial disbursement, the Recipient must complete Form SF-3881 (ACH Vendor/Miscellaneous Payment Enrollment Form). The form must be completed by the respective parties (EDA, Recipient's Bank, and Recipient) at the start of the Award. EDA will provide instructions for submitting the form during the project kick-off meeting.

7. **REPORT SCHEDULE:** The Recipient agrees to report to EDA on the Project's performance and impacts as summarized as follows:

    i. During the Period of Performance:

        a. Progress Reports and Financial Status Reports – Semiannually, for the periods ending March 31 and September 30.

        b. Outputs Questionnaire (Form ED-916) – Semiannually, six months after the date the period of performance begins and every six months thereafter, or as otherwise directed by EDA.

        c. Outcomes Questionnaire (Form ED-918) -- Annually, one year after the date the period of performance begins and annually thereafter for a total of five years, or as otherwise directed by EDA (note that this obligation may extend beyond award closeout).

    ii. At the Expiration of the Period of Performance but Before Award Closeout: Progress Reports and Financial Status Reports – One time, within 120 calendar days after the Award End Date.

    iii. After Award Closeout: Report on the Outcomes Questionnaire annually, until the end of the fifth year after the date the period of performance begins, or as otherwise directed by EDA.

    Timely submission of all above-described reports is a condition of this award. Per 2 CFR § 200.344, the Recipient must submit, no later than 120 calendar days after the end of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the award. If the Recipient fails to submit all required reports to EDA within one year of the period of performance end date, EDA will report the material failure to comply with the OMB-designated integrity and performance system (formerly FAPIIS) and/or pursue other enforcement actions per 2 CFR § 200.339.

8. **PROJECT PROGRESS REPORTS:** The Recipient agrees to provide the Project

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

    Progress Reports must be submitted to EDA via EDA's Grants Management Portal in a concise, clear format that outlines the following information in three to six pages:

    1. A clear, concise overview of the activities undertaken during the reporting period. For each activity, provide the name of the activity, the dates of the activity, a summary of the activity, and an explanation of outcomes the activity advances (e.g., preparing a competitive Phase 2 application, identifying other funding mechanisms to implement

Recompete strategy, building out a clear plan that increases prime age employment and per capita wages).

2. A description of anticipated activities for the next reporting period.
3. An outline of challenges that currently impact or could impact progress on the Project over the next reporting period and means of mitigating this risk. Please highlight any areas where EDA assistance is needed to support the project (e.g., connections to subject matter experts or other resources, amplifications of activities or impacts).
4. A description of at least one success story from the reporting period.
5. Any other key information that would be helpful to your EDA Project Officer.

9. **FINAL PROJECT PROGRESS REPORT (B2S/STEM):** The final Progress Report must be submitted to EDA no more than 120 calendar days after the Award End Date and these reports or any part of the information contained therein may be posted on EDA's website, used for promotional materials or policy reviews, or may be otherwise shared. Recipient must clearly identify any information that may constitute a trade secret or may be commercial or financial information that is confidential or privileged in these reports. There is no minimum or maximum page requirement for the **final Progress Report**; however, the final Progress Report should concisely yet completely communicate key Project information as follows:

    a. the specific regional need that the Project was designed to address and progress made during the period of performance and beyond that has mitigated or will mitigate that need and advance economic development;

    b. a high-level overview of the activities undertaken;

    c. details of lessons learned during the period of performance that may be of assistance to EDA or other communities undertaking similar efforts;

    d. the expected and actual economic benefits of the Project at the time that the Report is written; and

    e. any other key information from the period of performance.

10. **FINANCIAL REPORTS:** Financial Status Reports (SF-425) must be submitted to EDA on a semi-annual basis via EDA's Grants Management Portal for the reporting periods ending March 31 and September 30, or any portion thereof if applicable, for the period of performance set forth in the Notice of Award or as later memorialized through a mutually agreed-upon Amendment to the Award. Form SF-425 (and instructions for completing this form) is available at: https://www.grants.gov/forms/post-award-reporting-forms.html. Reports are due no later than 30 calendar days following the end of the reporting period.

11. **FINAL FINANCIAL REPORT (Non-construction):** A **final** Form SF-425 must be submitted to EDA no more than 120 calendar days after the Authorized Award End Date specified on the Notice of Award (or any subsequently executed Amendment to the Notice of

Award). Final Financial Reports should follow the instructions for submitting mid-term Financial Status Reports, but should also ensure that all fields accurately reflect the total outlays for the entire project period and that all matching funds and program income (if applicable) are fully reported. Determination of the **final grant rate and final balances owed to the government will be determined based on the information on the final Form SF-425, so it is imperative that it be submitted in a timely and accurate manner.**

12. **PERFORMANCE MEASURES:** The Recipient agrees to provide EDA with:

(1) Form ED-916 (Outputs Questionnaire) on a semiannual basis, and

(2) Form ED-918 (Outcomes Questionnaire) on an annual basis.

All Outputs Questionnaires and Outcomes Questionnaires should be submitted via a web-based information collection system to be provided by EDA

Outputs Questionnaires (Form ED-916) must be submitted to EDA on a semi-annual basis during the period of performance or as otherwise directed by EDA. The first Outputs Questionnaire must be submitted to EDA six months after the date the period of performance starts, as set forth in the Notice of Award or as later memorialized through an Amendment. The Outputs Questionnaire must be submitted to EDA every six months thereafter through the end of the Period Performance, or any portion thereof if applicable, or as otherwise directed by EDA.

Outcomes Questionnaires (Form ED-918) must be submitted to EDA on an annual basis for a total of five years after the date the period of performance starts, including after Award closeout. The first Outcomes Questionnaire must be submitted to EDA one year after the date the period of performance starts, as set forth in the Notice of Award or as later memorialized through an Amendment. The Outcomes Questionnaire must be submitted to EDA at the end of every year thereafter for a total of five years, or as otherwise directed by EDA.

Note that EDA may revise or replace the Outputs Questionnaire and/or the Outcomes Questionnaire at any time during or following the period of performance. The Recipient agrees to report on program performance measures and program outcomes in such form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993 and the Government Performance and Results Modernization Act of 2010 (collectively, GPRA Reports). Recipient must collect sufficient data and retain sufficient documentation to enable Recipient to submit these required GPRA Reports. **Failure to submit the required GPRA Reports can adversely impact the ability of the Recipient to secure future funding from EDA.** Recipient must retain sufficient data and records to comply with the above reporting requirements at least through the end of the fifth year after the date the period of performance starts, or longer if necessary to comply with the above reporting requirements.

13. **ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined after the final financial documents are submitted in accordance with the applicable authorities specified on the Notice of Award, including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. part 200, and the Authorized Budget. Except as otherwise expressly provided for within these Specific Award Conditions, the federal share of the allowable costs will be based on the Investment Rate for the Award, as established on the Notice of Award or any subsequent Amendment. In the event of an underrun in total allowable costs for this project, the federal share of allowable costs will be determined by the Investment Rate. The federal share of total allowable costs may not exceed the dollar amount specified on the original Award or any subsequent amendments.

14. **FEDERAL SHARE:** The EDA participation in total eligible project costs will be limited to the lesser of the EDA grant amount or the EDA share of total allowable project costs (as stated on the Notice of Award or the most recent Amendment).

15. **REFUNDS, INTEREST, OR UNUSED FUNDS:** If the Recipient needs to return money to EDA, it may use one of the following two methods:

    i. The first is the pay.gov website, which allows the Recipient to pay EDA online. The Recipient will have the option to make a one-time payment or to set up an account to make regular payments.

    ii. The second is paper check conversion. All checks must be made payable to "Department of Commerce, Economic Development Administration" and include the award number and a description of no more than two words identifying the reason for the payment. A copy of the check should be provided to the EDA Project Officer. The check should be mailed to NOAA's Accounting Office, which processes EDA's accounting functions, at the following address:

    NOAA OCFO

    Attn: Finance Office, Travel Dept.

    1315 East West Highway, SSMC3

    Silver Spring, MD 20910

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

16. **ADDITIONAL DOCUMENTATION REQUIRED FOR AWARD COMPLIANCE (Tech Hubs):** Recipient agrees to provide any additional documentation or information required by EDA to confirm compliance of this Award with applicable laws, regulations, and policies and to do so within reasonable deadlines set by EDA. In the event Recipient fails to provide the required documentation in a timely manner, EDA may exercise the remedies provided at 2 C.F.R. §§ 200.339–200.343, up to and including termination.

17. **PROJECT AND PROGRAM EVALUATION:** As part of the process of validating and monitoring the Award and the performance information provided by the Recipient, and as a general method of evaluating the Award and the Recompete Program, EDA reserves the right to conduct project and program evaluations through site visits and/or survey(s) during or after the period of performance. Such evaluations may be conducted by outside parties associated with EDA or by EDA staff. Recipient agrees to participate in the evaluation by answering the evaluator's questions and furnishing information as requested. Evaluators will maintain the confidentiality of business information as required and appropriate. Recipient agrees to provide data and client management system information to facilitate evaluations. For site visits, EDA will provide the Recipient at least two weeks of notice prior to a visit, unless exigent circumstances warrant otherwise. The site visit may include interviews with Recipient's staff or visits with Project clients.

18. **USE OF INFORMATION:** EDA reserves the right to use information contained in the Recipient's Application as well as all reports and performance data submitted by the Recipient to undertake an evaluation of the Program. The Recipient agrees to cooperate with such evaluations, including by sharing performance information that they have collected or will collect as part of their grant activities, including performance information for Project clients.

19. **PROCUREMENT:** The Recipient agrees that all procurement transactions shall be in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. §§ 200.317–200.327. Any noncompetitive procurement requires prior approval from EDA.

20. **SUBAWARDS (B2S/STEM/RLF):** Certain award activities funded under this Award may be accomplished through a subaward by the Recipient to a Subrecipient. Prior EDA permission is needed to include, add, or change a subrecipient. Prior to the award of any subaward or subrecipient performing any work funded through this Award, the Recipient must provide documentation satisfactory to EDA that the proposed subrecipient(s) and any additional or successor subrecipient(s)are eligible to receive EDA assistance. EDA will provide written notice regarding whether the documentation is satisfactory to EDA. No change may be made to the identity of the subrecipient or the scope of the proposed

subaward without prior EDA approval. Subaward are not permitted without EDA prior approval.

Before a subrecipient undertakes any work to be funded through this Award, the Recipient shall enter into a written subaward agreement with the Subrecipient that meets the requirements of 2 C.F.R. § 200.332(a) and includes a requirement that the subrecipient comply with all of the terms and conditions of this Award, including but not limited to the Standard and Specific Award conditions and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. part 200). EDA may disallow any costs incurred by the subrecipient prior to executing the subaward agreement. The Recipient shall be responsible for monitoring the Subrecipient's performance under the subaward in accordance with the requirements of 2 C.F.R. § 200.332. The Recipient is also responsible for ensuring that any subrecipient of a subaward exceeding $100,000 executes form CD-511, Certification Regarding Lobbying, and for retaining a copy of the executed certification. As required by form CD-511, subrecipients must report lobbying activities, if any, to the Recipient on Form SF-LLL. The Recipient is responsible for promptly providing EDA with a copy of any Form SF-LLL submitted by a subrecipient.

The Recipient is responsible for reporting the Federal Subaward Reporting System (FSRS) available at www.FSRS.gov on all subawards over $30,000. Please see the OMB guidance published at 2 C.F.R. part 170, which can be accessed at https://www.govinfo.gov/content/pkg/CFR-2022-title2-vol1/pdf/CFR-2022-title2-vol1-part170.pdf. Appendix A of 2 C.F.R. part 170 is incorporated by reference into these Specific Award Condition.

21. **NONRELOCATION (Non-Construction):** In signing this Award, the Recipient attests that EDA funding is not intended by the Recipient to assist efforts to induce the relocation of existing jobs within the U.S. that are located outside of its jurisdiction to within its jurisdiction in competition with other U.S. jurisdictions for those same jobs. In the event that EDA determines that its assistance was used for such purposes, EDA reserves the right to pursue appropriate enforcement actions in accord with 2 C.F.R. §§ 200.339 through 200.343 and the DOC STCs, including suspension of disbursements and termination of the Award which may include the establishment of a debt requiring the Recipient to reimburse EDA.

22. **REAFFIRMATION OF APPLICATION:** Recipient acknowledges that Recipient's application for this Award may have been submitted to EDA and signed by Recipient, or by an authorized representative of Recipient, electronically without providing an original "wet" signature. In addition, the Recipient or an authorized representative of Recipient may have accepted the Award electronically, which includes drawing down any funds under this Award. Regardless of who submitted the Application to EDA or the means by which Recipient submitted the Application or accepted the Award, Recipient hereby reaffirms and states that:

A. All data in the Application were true and correct when the Application was submitted and remain true and correct as of the date of this Award;

B. The Application was, as of the date of submission and the date of this Award, duly authorized as required by local law by the governing body of the Recipient; and

C. Recipient has read, understood, and will comply with all terms of this Award, including the Assurances and Certifications submitted with, or attached to, the Application and through the System for Award Management (SAM.gov).

The Recipient agrees to immediately notify the EDA of any material changes to the Application within 30 calendar days of the date the Recipient becomes aware of such changes. For purposes of this provisions, the term "Application" includes all documentation and any information provided to EDA as part of, and in furtherance to, the request for funding, including submissions made in response to information requested by EDA after submission of the initial Application.

23. **FREEDOM OF INFORMATION ACT (FOIA)**: EDA is responsible for meeting its Freedom of Information Act (FOIA) (5 U.S.C. § 552) responsibilities for its records. DOC regulations at 15 C.F.R. part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications and other information submitted by applicants and recipients may be released in response to a FOIA request. The Recipient should be aware that EDA may make certain application information publicly available. Accordingly, the Recipient should notify EDA if it believes any Application information to be confidential.

24. **WASTE, FRAUD AND ABUSE:** Consistent with 2 C.F.R. part 200, at EDA's direction, at any time(s) during the estimated useful life of the Project, Recipient's key personnel will take a training on preventing waste, fraud and abuse as provided by the Government. Key personnel include those responsible for managing the Recipient's finances and overseeing any contractors, sub-contractors or sub-grantees (for financial matters and/or general oversight related to this Project). EDA will provide instructions on when and how to take the training. Within 60 days of the date of Award, the Recipient shall provide to the Project Officer all Certificates of Completion for the Waste, Fraud, and Abuse training. In the event there are co-recipients of this Award, the obligations in the Specific Award Condition shall apply to all recipients whether or not designated in this Award as the Lead Recipient.

Further, Recipient will monitor award activities for common fraud schemes (hereinafter "Fraud Schemes"), such as but not limited to:

- false claims for materials and labor,
- bribes related to the acquisition of materials and labor,

- product substitution,
- mismarking or mislabeling on products and materials, and
- time and materials overcharging.

Should Recipient detect any Fraud Schemes or any other suspicious activity, Recipient will contact the EDA staff listed above and the Department of Commerce, Office of Inspector General, as indicated at https://www.oig.doc.gov/Pages/Contact-Us.aspx, as soon as possible.

25. **USE OF EDA'S RECOMPETE LOGO:** EDA has developed a logo for EDA programming under the Distressed Area Recompete Pilot Program ("Recompete Logo"). Recipient may use the Recompete Logo pursuant to the below terms and conditions for the following limited purposes:

    - Press releases, social media posts, and websites that build awareness of this Award (note that some advertising and marketing activities are not allowable costs under federal awards as provided at 2 CFR 200.421); and
    - Work products and deliverables developed under this Award (e.g., tools, publications, resource guides, brochures, PowerPoint presentations, technical assistance materials).
    - Recipient may not use the Recompete Logo for other purposes, including lobbying or issue advocacy, endorsing a product or organization, or communications to elected officials or federal agencies. Recipient may not use the Recompete Logo in a negative or defamatory manner. Recipient must request and obtain EDA permission prior to certain uses of the Recompete Logo (see paragraph B, below).

    A. Grant of License: EDA hereby grants to Recipient a non-exclusive, royalty-free right to use the Recompete Logo for the limited purposes described above (the "License"). Recipient agrees that: (1) the Recompete Logo will not be used in a way that would suggest that it is the property of Recipient or any other third party, and (2) Recipient will include the following notice in conjunction with its use of the Recompete Logo, as appropriate: "The Recompete Logo is a trademark of the Economic Development Administration, used with permission." This License does not grant Recipient the right to use any seal, emblem, logo, or other symbol of the U.S. Department of Commerce or EDA that is not the Recompete Logo.

    B. Required Approvals for Certain Uses of the Recompete Logo: Before Recipient uses the Recompete Logo for press releases and related materials, Recipient shall send a sample of each print, product, design, or other work to show the proposed use to the EDA Recompete Public Affairs Specialist (whose contact information may be obtained from the Project Officer for this Award). Recipient shall not use the Recompete Logo for the above uses until receiving written approval (including via email) from EDA of the proposed use.

C. Quality Control: EDA shall have the right, at all reasonable times, to inspect Recipient's goods, services, and promotional activities employing the Recompete Logo to ensure that such use is of proper quality and otherwise consistent with this License.

D. Duration and Termination: The License shall terminate on the Award End Date. Recipient may request a renewal of the License for an additional term subject to the express written consent of EDA. Such consent shall be in the form of a properly executed agreement signed by authorized signatories of EDA and Recipient. Upon termination of the License, all rights of Recipient to use the Recompete Logo shall immediately terminate. EDA may terminate the License unilaterally and without cause at any time, including if EDA determines that Recipient's use of the Recompete Logo is inconsistent with the License.

E. Validity and Ownership of Recompete Logo: Recipient acknowledges and agrees that EDA is the owner of all right, title, and interest in the Recompete Logo, and all such right, title, interest, and ownership shall remain with EDA. Recipient further acknowledges that Recipient shall not acquire any right, title, interest, or ownership in the Recompete Logo by virtue of the License or use other than the license granted hereunder and disclaims any such right, title, interest, or ownership. Recipient is prohibited from interfering with EDA's rights in the Recompete Logo, including challenging EDA's use, registration of, or application to register the Recompete Logo alone or in combination with other words or designs, as a U.S. or foreign trademark anywhere in the world. Recipient is further prohibited from attempting to register the Recompete Logo, any derivatives thereof, or any confusingly similar mark, whether or not registered by EDA, alone or in combination with other words or designs, as a U.S. or foreign trademark or as a part of a domain name.

F. Assignments and Sub-Licenses: The License is not assignable, and any attempt by Recipient to assign any portion of the License shall be deemed a breach of the License and will result in immediate termination of the License. Recipient may subcontract, thereby engaging in a limited sublicensing arrangement as applicable, for manufacturing and distribution activities under the License; Recipient shall provide notice to EDA—and must receive prior approval from EDA—of any such subcontract prior to manufacturing and distribution activities.

G. Governing Law: The License shall be interpreted and implemented in accordance with the Federal common law as interpreted by the U.S. District Court for the District of Columbia, without giving effect to any conflict of law principle that would result in the application of the substantive law of another jurisdiction.

H. Indemnification: Recipient agrees to indemnify and hold EDA harmless from any and all claims, damages, and attorneys' fees arising from the use of the Recompete Logo by the Recipient and its operations, except to the extent that any such claims, damages, or attorneys' fees arose in connection with any act or failure to act by the U.S. Department of Commerce or any agency, department, or subdivision thereof.

I. Obtaining the Recompete Logo: For an electronic version of the Recompete Logo, Recipient should contact the EDA Recompete Public Affairs Specialist (whose contact information may be obtained from the Project Officer for this Award).

26. STAFFING CHANGES: The Authorized Staffing Plan sets forth Recipient staff primarily responsible for administering this Award. In the event of a change in the professional staff positions primarily funded with the EDA grant, Recipient shall provide the name of the individual selected to fill the position to the Project Officer and a copy of their resume within 30 business days of the selection.

27. CONFLICT OF INTEREST: The Recipient must maintain a written and enforced conflict of interest policy. The policy should at a minimum address actual or potential personal (e.g., employees, agents, members of their immediate family) or organizational conflicts of interest in the performance or administration of the Award. Conflicts of interest may include, but are not limited to, any past, present or planned contractual, financial, or other relationships, obligations, commitments or responsibilities, which may bias the Recipient or affect the Recipient's ability to perform or administer the Award in an impartial and objective manner. The policy must include standards of conduct covering conflicts of interest and governing actions of Recipient employees engaged in the selection, award, or administration of contracts in accordance with 2 C.F.R. § 200.318(c). The Recipient shall ensure that all subrecipients and contractors under the Award: (1) have their own conflict of interest policy in place that meets the requirements of this Specific Award Condition; or (2) adopt the Recipient's conflict of interest policy. The Recipient's policy should provide procedures to disclose, mitigate, and resolve any such conflicts of interest. In accordance with 2 C.F.R. § 200.112, the Recipient must disclose in writing any potential or actual conflict of interest to EDA in a timely manner. EDA will evaluate the disclosure and inform the Recipient of any required remedial action beyond what the Recipient may have already implemented. Failure to comply with this condition, or the Recipient's own conflict of interest policy, may result in appropriate enforcement action pursuant to 2 C.F.R. §§ 200.339 through 200.343 and the DOC STCs, which are incorporated under the Award.

Fraud Awareness Training

EDA

U.S. ECONOMIC DEVELOPMENT ADMINISTRATION

EDA's grantees must successfully complete this training and submit the signed completion certificate(s) to the EDA Project Officer listed in the Specific Award Conditions within 60 days of grant award.

Failure to comply with this requirement may result in a finding of non-compliance with the terms and conditions of your award.

OVERVIEW

- Overview of EDA's Programs
- The Department of Commerce (DOC) Office of Inspector General (OIG)
- Fraud in EDA Programs
- Additional Items
- Certificate

INTRODUCTION

Role of EDA: Facilitate the timely and effective delivery of Federal economic development assistance to support long-term community economic recovery planning and project implementation, redevelopment, and resiliency

EDA's Programs

- EDA's Programs enable EDA to make awards that support a wide range of activities.
- Eligible applicants and project types for each program is set forth in the respective Notices of Funding Opportunity.
- You must read and understand the requirements applicable to the program under which your award is funded, including the applicable Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions.

The U.S. Department of Commerce (DOC) Office of Inspector General (OIG)

DOC – OFFICE OF INSPECTOR GENERAL

- Created by IG Act of 1978 to:
  - Combat fraud, waste, and abuse within the DOC
  - Conduct audits and investigations of DOC operations
  - Keep the DOC and Congress informed
- Mission
  - To improve the programs and operations of the Department of Commerce through independent and objective oversight

This includes oversight of EDA Assistance Programs

DOC – OFFICE OF INSPECTOR GENERAL

- Office of Audit and Evaluation
- Office of Investigations
  - Criminal
  - Civil
  - Administrative
  - Employee misconduct
  - Public corruption

WHISTLEBLOWER PROTECTIONS

Federal employees, applicants, and employees of federal contractors **and grantees** who make certain disclosures—to OIG or elsewhere—are protected under the law from suffering retaliation because of those disclosures.

Basic elements of whistleblower protection law: (1) you make a protected disclosure; (2) you are subject to certain retaliatory acts; and (3) there is a causal connection between your protected disclosure and the retaliatory act.

OIG receives, reviews, and where appropriate, investigates allegations of whistleblower reprisal.

Whistleblower complaints may be submitted to the OIG via the hotline:
https://www.oig.doc.gov/Pages/Hotline.aspx#complainthotline

Whistleblower complaints may also be submitted to the Office of Special Counsel via their website: https://osc.gov/pages/file-complaint.aspx

DOC-OIG Whistleblower Protection Coordinator contact information:

Email: wpo@oig.doc.gov Phone: 202-482-1099

FRAUD IN EDA ASSISTANCE PROGRAMS

- **Fraud Defined**
- **Compliance Requirements**
  - **Eligibility**
  - **Duplicate Funding**
  - **Matching Funds**
  - **Mandatory Reporting of Fraud**
- **Consequences of Fraud**
- **Recommendations/Best Practices**

FRAUD IN EDA ASSISTANCE PROGRAMS

Although it can take many forms, fraud, at its core, is **deception** through the **misrepresentation** or **omission** of **material facts** for the purpose of **illegitimate gain**.

FRAUD IN EDA ASSISTANCE PROGRAMS

Examples of fraud within EDA Assistance Programs include, but are not limited to:

- Accepting federal funding in multiple assistance awards for the same work
- Misrepresentations regarding the eligibility of the project or recipient
- Misrepresentations or omissions about the recipient's facilities, ownership/control, or the work to be performed by the recipient
- Providing falsified letters of support
- Misrepresentations concerning the use of funds expended, work performed, results achieved, or compliance with program requirements under the award
- Inflated labor costs

FRAUD IN EDA ASSISTANCE PROGRAMS (CONTINUED)

- Misuse or conversion of assistance award funds (e.g. using funds for personal expenses)
- Theft of government owned property (18 U.S.C. § 666)
- Embezzlement (18 U.S.C. § 666)
- Fabrication or falsification of data, in applying for, carrying out, or reporting results from an assistance award
- Intentional noncompliance with applicable federal cost principles governing grants / cooperative agreements
- Undisclosed self-dealing, such as a sub-award to an entity in which an awardee, executive, or key employee (or family members of the aforementioned individuals) has a financial interest
- "Buying Expenses", or reporting expenses incurred by another entity for work unrelated to the assistance award

COMPLIANCE REQUIREMENTS

RECIPIENTS MUST COMPLY WITH:

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- Department of Commerce Financial Assistance Standard Terms and Conditions
- EDA Standard Award Conditions for Construction Projects **or** EDA Revolving Loan Fund Standard Award Conditions (as applicable)
- Specific Award Conditions (unique to each award)

COMPLIANCE REQUIREMENTS

2 CFR § 200.339 – REMEDIES FOR NONCOMPLIANCE

If a non-Federal entity fails to comply with **the U.S. Constitution, Federal statutes, regulations or the terms and conditions of a Federal award**, the Federal awarding agency or pass-through entity may impose additional conditions; or, in certain circumstances, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- Temporary withholding of cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity
- Disallowance of (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance
- Whole or partial suspension or termination of the Federal award
- Initiation of suspension or debarment proceedings (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency)
- Withholding of further Federal awards for the project or program
- Other remedies that may be legally available

COMPLIANCE REQUIREMENTS

Eligibility

Within their EDA Assistance Award Proposal, applicants make numerous certifications or recertifications as to their eligibility to receive a federal award, among other certifications.

Falsely certifying to any material fact or representation contained in a certification is fraud.

CASE EXAMPLE

Eligibility

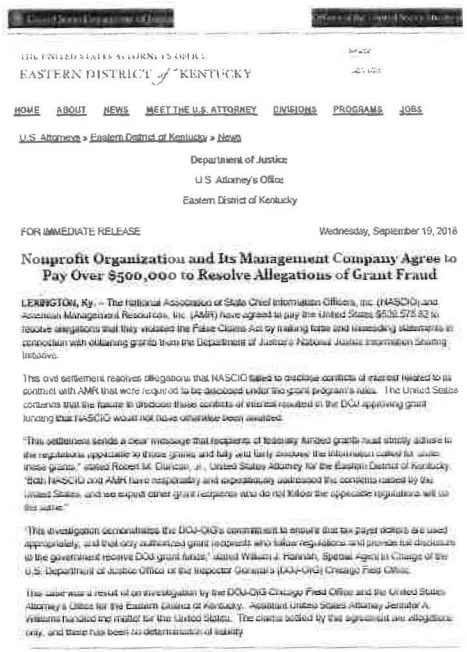
Allegations Included:

- Nonprofit organization made false and misleading statements to obtain federal grant funding
- Failure to disclose conflicts of interest that were required to be disclosed

Outcome:

- Nonprofit agreed to pay $528,575.82 to resolve allegations they violated the False Claims Act

Double-click below for more information



THE UNITED STATES ATTORNEY'S OFFICE
EASTERN DISTRICT of KENTUCKY

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Department of Justice
U.S. Attorney's Office
Eastern District of Kentucky

FOR IMMEDIATE RELEASE Wednesday, September 19, 2018

Nonprofit Organization and Its Management Company Agree to Pay Over $500,000 to Resolve Allegations of Grant Fraud

LEXINGTON, Ky. – The National Association of State Chief Information Officers, Inc. (NASCIO) and American Management Resources, Inc. (AMR) have agreed to pay the United States $528,575.82 to resolve allegations that they violated the False Claims Act by making false and misleading statements in connection with obtaining grants from the Department of Justice's National Justice Information Sharing Initiative.

This civil settlement resolves allegations that NASCIO failed to disclose conflicts of interest related to its contract with AMR that were required to be disclosed under the grant program's rules. The United States contends that the failure to disclose these conflicts of interest resulted in the DOJ approving grant funding that NASCIO would not have otherwise been awarded.

"This settlement sends a clear message that recipients of federally funded grants must strictly adhere to the regulations applicable to those grants and fully and fairly disclose the information called for under those grants," stated Robert M. Duncan, Jr., United States Attorney for the Eastern District of Kentucky. "Both NASCIO and AMR have cooperated and expeditiously addressed the concerns raised by the United States, and we expect other grant recipients who do not follow the applicable regulations will do the same."

"This investigation demonstrates the DOJ-OIG's commitment to ensure that tax payer dollars are used appropriately, and that only authorized grant recipients who follow regulations and provide full disclosure to the government receive DOJ grant funds," stated William J. Hannah, Special Agent in Charge of the U.S. Department of Justice Office of the Inspector General's (DOJ-OIG) Chicago Field Office.

This case was a result of an investigation by the DOJ-OIG Chicago Field Office and the United States Attorney's Office for the Eastern District of Kentucky. Assistant United States Attorney Jennifer A. Williams handled the matter for the United States. The claims settled by the agreement are allegations only, and there has been no determination of liability.

COMPLIANCE REQUIREMENTS

Duplication of Benefits is Prohibited

2 CFR § 200.1 – Improper Payment

Improper payment means any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. This includes overpayments or underpayments to eligible recipients (including inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for an incorrect amount, and **duplicate payments**). It also includes any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments authorized by law).

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." *EDA Standard Terms and Conditions for Construction Projects, March 22, 2021*

CASE EXAMPLE

Duplication of Benefits

Allegations Included:

- Not-for-profit owner applied for funding for similar services
- Owner converted the duplicate funding for his personal and business use

Outcome:

- Owner pleaded guilty to mail fraud and money laundering
- Sentenced to 24 months in prison
- Ordered to pay $480,901 in restitution

Double-click below for more information



CENTRAL DISTRICT of ILLINOIS

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Central District of Illinois

FOR IMMEDIATE RELEASE — Friday, September 23, 2016

Chicago Businessman Sentenced to Two Years in Prison for Grant Fraud Scheme

Springfield, Ill. – A Chicago businessman has been ordered to serve 24 months in prison for a fraud scheme that involved two state agencies awarding separate, but nearly identical, grants to his not-for-profit entity in September 2008. U.S. District Court Judge Sue E. Myerscough sentenced George E. Smith, 66, and ordered that Smith pay restitution of nearly $500,000 to the state. Judge Myerscough allowed Smith to self-report as directed by the federal Bureau of Prisons to begin serving his prison sentence. Smith waived indictment and pled guilty in March 2016, to two counts of mail fraud and one count of money laundering.

In rendering today's sentence, Judge Myerscough noted that Smith exploited his personal relationship with a former director of the Illinois Department of Children and Family Services related to a grant in the amount of $450,000 awarded by the agency on Sept. 3, 2008, under the Students at Risk Program. On Sept. 8, 2008, the Illinois Board of Education awarded Smith's not-for-profit a similar grant in the amount of $342,000. According to the terms of the grants, both provided for similar services to be provided to the same at-risk population in the Chicago area during fiscal year 2009. The populations served, scheme of referral, services to be provided, and the goals for each grant were essentially identical. Neither DCFS nor ISBE were aware of the existence of an identical grant by the other state agency. Smith then converted the duplicate funding to his personal and business use.

Both grants were awarded to Diversified Behavioral Comprehensive Care, a not-for-profit entity owned and operated by Smith. In addition, Smith owned and operated three for-profit entities: Diversified Behavioral Services, Inc., Management Planning Institute, Inc., and the Institute for Positive Child and Family Development. From 2005 through 2011, Smith, through both his not-for-profit and for-profit entities, received millions of dollars in funding from agencies of the state of Illinois, including DCFS, ISBE, and the Illinois Department of Human Services.

COMPLIANCE REQUIREMENTS

Matching Funds

- The non-Federal share of the approved project budget (aka the "matching share" or "local share") must be borne by the recipient or provided to the recipient by a third party as a contribution for the purposes of and subject to the terms of the award.

- The applicant must document that the matching share **will**:
  - Be committed to the project for the period of performance
  - Be available as needed
  - Not be conditioned or encumbered in any way that may preclude its use consistent with the requirements of EDA investment assistance

- Applicants must submit, for each source of matching share, a commitment letter or equivalent document signed by an authorized representative of the organization providing the matching funds. *Additional documentation may be requested by EDA in order to substantiate the availability of the matching funds.*

CASE EXAMPLE

Matching Funds

Double-click below for more information

Allegations Included:

- Small business owner made several false statements and misrepresentations to obtain federal grant funding
- Owner misrepresented that he obtained a $100,000 investment from a third party in order to qualify for federal matching funds
- Owner converted grant funds to personal use

Outcome:

- Owner convicted at trial for wire fraud, mail fraud, falsification of records, and theft of government property
- Sentenced to 36 months in prison
- Ordered to pay $105,726 in restitution
- Owner debarred for 5 years



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FOR IMMEDIATE RELEASE — Friday, August 29, 2014

Morgan State University Professor Sentenced To 3 Years In Prison In Scheme To Defraud The National Science Foundation And For Obtaining Kickbacks From Student Stipends

Fraudulently Obtained $200,000 and Attempted to Obtain Another $500,000 through a National Science Foundation Small Business Program

Baltimore, Maryland - U.S. District Judge Ellen L. Hollander sentenced Manoj Kumar Jha, age 47, of Severn, Maryland, today to three years in prison followed by three years of supervised release for wire fraud, mail fraud, falsification of records, and theft of government property in connection with a scheme to fraudulently obtain research grants from the National Science Foundation (NSF) and kickbacks from students' stipends. Judge Hollander also entered an order requiring Jha to pay $105,726 in restitution.

The sentence was announced by United States Attorney for the District of Maryland Rod J. Rosenstein and Allison Lerner, Inspector General of the National Science Foundation.

According to trial testimony, from January 2008 through July 2009, Jha fraudulently obtained $200,000 in grant funds from the National Science Foundation's (NSF) Small Business Technology Transfer (STTR) program to fund a highway project, and attempted to obtain another $500,000 through the same program. Jha converted the funds to his personal use. For example, Jha made payments on his mortgage and personal credit card and authorized approximately $11,000 in salary payments to his wife who performed no NSF-related work.

Jha, a full time professor at Morgan State University, incorporated Amar Transportation Research and Consulting, Inc. (ATRC), and was its president and only director. Trial evidence showed that Jha submitted funding proposals on behalf of ATRC to the STTR. The stated purpose of Jha's proposed

COMPLIANCE REQUIREMENTS

Mandatory Disclosure of Fraud

2 CFR § 200.113 - Mandatory disclosures

The non-Federal entity or applicant for a Federal award **must disclose**, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Failure to disclose could result in the remedies detailed in 2 CFR § 200.339 (slide 16 of this presentation).

CONSEQUENCES OF COMMITTING FRAUD

Criminal Prosecution

Lying to obtain a grant, or lying about the work performed may violate several criminal laws:

- 18 U.S.C. § 1001, False Statements (up to 5 years in prison, forfeiture and $250K fine)
- 18 U.S.C. § 641, Theft of Federal Property (up to 10 years in prison, forfeiture and $250K fine)
- 18 U.S.C. § 1343, Wire Fraud (up to 20 years in prison, forfeiture and $250K fine)
- 18 U.S.C. § 666, Theft or bribery concerning programs receiving Federal funds (up to 10 years in prison, forfeiture and $250K fine)

Fines for organizations may be as high as $500K

Criminal forfeiture = full amount of the grant; personal assets can be seized to satisfy forfeiture or fine

CONSEQUENCES OF COMMITTING FRAUD (CONTINUED)

Civil Prosecution

In addition to or in lieu of criminal prosecution

Civil False Claims Act, 31 U.S.C. §§ 3729-3733

- Liability includes up to treble damages (3x actual damages) and a civil penalty of up to $23,607 for each false claim
- False claims liability may include payments received when the government relied upon false information in the award proposal, in a certification of current cost or pricing data, in a request for payment, or in progress reports
- Although the statute requires knowledge that the claim was false, knowledge includes "deliberate ignorance" or "reckless disregard of the truth"
- Whistleblowers can receive up to 30% of the recovery amount for reporting fraud via *qui tam* provisions of the False Claims Act

CONSEQUENCES OF COMMITTING FRAUD (CONTINUED)

Administrative Remedies

- Government can terminate contracts/grants tainted by fraud
- Government can suspend/debar the entity, owner, and/or employees
  - Results in prohibition from receiving any federal grants or contracts, or working as a sub-grantee on federal grants or a sub-contractor on federal contracts
  - Debarment is typically for three years, but can be for a longer period
- Administrative remedies are in addition to or in lieu of criminal and civil liability

RECOMMENDATIONS

The government retains the right to examine the status of an EDA Assistance award at any time.

Status checks include:

- Site visits
- Requests for records including financial documents and timesheets

Good recordkeeping will help ensure successful status checks and eliminate potential issues.

RECOMMENDATIONS

Good Records: Key to Protecting Yourself

Documentation

- Timesheets for hours worked by ALL involved employees
- All financial receipts, invoices and statements for expenses related to the project

Updates on the project status, including successes/failures

- Keep regular records at the business-level so you have all facts on hand if needed/requested by the government
- Documentation to support performance metrics

Records Retention Time Frames and other Requirements

- See 2 CFR § 200.334

IMPORTANT TO REMEMBER!

ecord Retention and Access

200.334 Retention requirements for records.

inancial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a perio f three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the ubmission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a ubrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The nly exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) ***If submitted for negotiation.*** If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(2) ***If not submitted for negotiation.*** If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

IMPORTANT TO REMEMBER!

If you are unsure about any of the requirements relating to the award of an EDA Assistance grant/cooperative agreement:

- Contact the appropriate EDA POC and provide all relevant facts
- Request written guidance from the EDA POC, and
- **Follow it!**

ADDITIONAL RESOURCES

13 CFR Chapter III – Economic Development Administration (Parts 300-315)
https://www.ecfr.gov/current/title-13/chapter-III

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II

Grant Fraud & Scams – Grants.gov
https://www.grants.gov/learn-grants/grant-fraud.html

Department of Commerce – Grants and Cooperative Agreement Manual
https://www.commerce.gov/oam/files/grants-and-cooperative-agreements-grants-manual-april-20-2021

REPORT FRAUD, WASTE, AND ABUSE

U.S. Department of Commerce
Office of Inspector General

Office of Investigations

OIG HOTLINE

Phone: (800) 424-5197

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https://www.oig.doc.gov/Pages/Hotline.aspx#complainthotline

For more information please visit our website
www.oig.doc.gov

CERTIFICATE OF TRAINING COMPLETION

- **All EDA grantees must successfully complete this training and submit the signed completion certificate(s) to the EDA Project Officer listed in the Specific Award Conditions or via the EDGE website within 60 days of grant award.**

Failure to comply with this requirement may result in a finding of non-compliance with the terms and conditions of your award.

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate One**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 et seq.; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Two**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 et seq.; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Three**

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 entity[1] 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.

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

not required to submit an audit(s) for that year, but must make their award-related records available to DOC or other designated officials for review and audit.

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

e. In accordance with 2 C.F.R. § 200.332(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.

l. 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).

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate One**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Two**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 et seq.; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Three**

ATTACHMENT B

Authorized Scope of Work

Recompete Pilot Program – Strategy Development Grant

Executive Summary:

Clallam County Board of Commissioners, as Lead Applicant for the North Olympic Peninsula Recompete Coalition (NOPRC) will apply authorized Strategy Development Funding ($60,000) for Project 5. Glen Cove Infrastructure Extension to the following three closely related activities. All are intrinsic to the goal of expanding the Port Townsend Urban Growth Area (UGA) boundary to include the Glen Cove industrial zone for the purpose of providing urban level infrastructure services ie.water, sewer, and stormwater to the industrial and manufacturing properties.:

1. Analysis of Planning Requirements
2. Stakeholder Engagement
3. County/City Collaboration

Together, these activities comprise the community planning required in order to develop and consider policy and budget options and requirements under the Washington State Growth Management Act (GMA). The overarching goal of the effort is to multiply the development potential of existing businesses and create space primed for future business development. Glen Cove is one of the only industrial/manufacturing zones in rural Jefferson County. Its proximity to the City of Port Townsend brings a crucial opportunity to connect to existing infrastructure. This project leverages other federal and state investments in a nearby sanitary sewer lift station by extending sewer service and other urban-level infrastructure into the Glen Cove industrial zone.

Both Jefferson County and the City of Port Townsend are undertaking a "Periodic Review" of their respective land use plans and development regulations that is required by GMA to be completed by mid-2025. The process involves coordination between the county and city to plan for projected population, along with related needs for business expansion and retention and housing. The three activities summarized below will dovetail with the 2025 Periodic Update requirements and position the county and the city to make critical policy and infrastructure development decisions that determine the economic development prospects for Glen Cove and surrounding "gateway" area between unincorporated Jefferson County and the City of Port Townsend.

Summary of Activities:

Activity Title	Short Description of Activity	Output(s) / Deliverable(s)	Responsible Organization(s) / Individual(s)	Approximate Start / End Date
Analysis of Planning Requirements	The Jefferson County Department of Community Development (DCD) will work with consultants to scope additional planning work needed to fulfill statutory requirements for adjusting the Port Townsend Urban Growth Area (UGA) boundary, currently coincident with the city's municipal boundary. A UGA "swap" or expansion requires both land use analysis under the state Growth Management Act (GMA) and environmental analysis under the State Environmental Policy Act (SEPA).	A Findings Report to be used to guide decision-making regarding potential UGA boundary adjustment in and around the Glen Cove area. Re: GMA, the report will consider consistency with required criteria for UGA boundary changes. Re: SEPA, the report will outline work needed to supplement the 1999 Environmental Impact Statement (EIS) that was part of the Tri-Area & Glen Cove Special Study in order to provide sufficient analysis for any proposed UGA boundary changes.	Jefferson County with consultant assistance	3/1/2024 – 6/30/2025
Stakeholder Engagement	DCD will engage with stakeholders—including businesses, landowners, economic development organizations, and the public at large—concerning options for extending urban-level infrastructure (sewer service, most specifically) and potential amendments to zoning and development regulations for the Glen Cove industrial area for the purpose of enhancing business opportunity.	Documentation of engagement results (issues, interests, concerns, commitments).	Jefferson County with consultant assistance	4/1/2024 – 3/30/2025

County/City Collaboration	Jefferson County and the City of Port Townsend will develop an agreement that outlines this work in harmony the 2025 Periodic Update required by the state Growth Management Act (GMA) for both jurisdictions. The Periodic Update process, to be completed by 6/30/2025, involves analysis and associated amendments to the respective county and city Comprehensive Plans and development regulations, including goals and policies related to economic development, housing, and land use.	Memorandum of Understanding (MOU) or Agreement (MOA) that describes the goals, objectives, and commitments for a joint process to develop Port Townsend UGA boundary adjustment options for policy consideration.	Jefferson County & City of Port Townsend	2/8/2023 – 6/30/2025

AGENDA ITEM SUMMARY

FEB 20 2024

(Must be submitted NLT 3PM Wednesday for next week agenda)

2K

Department: BOCC

WORK SESSION ☒ **Meeting Date: February 20, 2024**

REGULAR AGENDA ☒ **Meeting Date: February 20, 2024**

Required originals approved and attached? ☐
Will be provided on:

Item summary:

☐ Call for Hearing ☒ Contract/Agreement/MOU - Contract #

☐ Resolution ☐ Proclamation ☐ Budget Item

☐ Draft Ordinance ☐ Final Ordinance ☐ Other

Documents exempt from public disclosure attached: ☐

Executive summary:

Request Approval of Strategy Development Grant award contract by US Department of Commerce/Economic Development Administration (EDA) – SUBAWARD to Peninsula College.

Clallam County, as the Lead Applicant for North Olympic Peninsula Recomplete Coalition (NOPRC) applied for the Distressed Area Recompete Pilot Program (Recompete) Phase 1 approval and the Strategy Development Grant in October 2023.

December 2023, NOPRC and Clallam County were announced as a Finalist for the Recompete Program and invited to compete in Phase 2 of the grant. Our Phase 1 plan was 1 of 22 selected from 235 nationwide applications, the largest applicant response to an EDA grant ever.

We were also awarded 1 or 24 Strategy Development Grants (SDG), from 339 applicants, to help our coalition with the further development of our Phase 2 projects. The SDG grant is for $498,729. These funds are to cover the following activities:

(1) PAEG Research - Hiring consultant Washinton State University (WSU) to perform needed research on the PAEG population using data from Employment Security Dept (ESD) and Dept of Social & Health Services (DSHS);
(2) Barrier Assessment & Development – Convene and coordinate multiple social services agencies to inventory resources available and barriers they deem need to be addressed. Develop guidance for how to effectively create navigator services to reduce barriers. Develop an PAEG outreach program;
(3) Development of Workforce Training Program – Convene Tribal and Non-Tribal representatives from education and industry to prioritize training opportunities that meet

business demand. Conduct a study of proposed programs focused on analyzing type of jobs that projects create and whether these Good Jobs are appropriately acce3ssible to people in the PAEG;

(4) Economic Impact & Feasibility Analyst – Conduct economic analysis and feasibility studies including the direct, indirect and induced job growth associated with project in NOPRC's Recompete Plan;
(5) Zoning Efforts – Update the Glen Cove Special Study from 1999 including Environmental Impact Statement. Planning work will include public outreach; and
(6) Hiring Recompete Plan Coordinator ("RPC") and staffing – Recruit RPC to facilitate the coordination of Phase 2 grant application process for NOPRC. Funding will cover salary for RPC and support staff.

Peninsula College will be providing the Development of the Workforce Training Program in Item 3.

It has taken a long time to receive our contract from EDA and the timeline to complete this require this contract to movie forward right away and therefore we are bringing it with the others forward in this back-to-back meeting.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Budget supplemental will be brought to the BOCC for approval at prior date.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Staff recommendation is to approve the EDA Contract for the Strategy Development Grant.

County Official signature & print name: Todd Mielke Todd Mielke

Names of Relevant Departments/Employees/Stakeholders attending meeting:

Angi Klahn, Dee Boughton, NOPRC Task Force, Suzy Ames-Peninsula College

Date submitted: February 14, 2024

RECOMPLETE – STRATEGY DEVELOPMENT GRANT
SUBRECIPIENT AGREEMENT

This Subrecipient Agreement ("Agreement") is dated as of the _____ day of _____, 2024, by and between Clallam County, a Washington political subdivision ("County"), and Peninsula College (Federal Tax ID 91-0824213, UEI # NM7EFNJ4N179), a Washington State public community college within Clallam County ("Subrecipient").

WHEREAS, the Economic Development Administration ("EDA"), U.S. Department of Commerce ("DOC") has allocated to the County $498,729.00 of federal grant funding from the Distressed Area Recompete Pilot Program ("Recompete") Phase 1 Strategy Development Grant ("SDG") as part of the authorized by the CHIPS and Science Act under ALN No. 11.040 ("SDG") under Section 29 of the Stevenson-Wydler Technology Innovation Act of 1980 as amended (15 U.S.C.& 3722b) effective June 29, 2023. FAIN #ED24OIE0G0085, identified as Attachment A, the Attachments A attached hereto and incorporated herein by this reference.

WHEREAS, the County as Lead Applicant for the North Olympic Peninsula Recompete Coalition ("NOPRC") has been applied for Phase 1 Recompete Plan Approval. EDA has selected NOPRC as one of 22 finalists from Phase 1 to compete in the Phase 2 application for Recompete Plan implementation funding. Funding if awarded would invest up to $50 million into the two-county region of Clallam and Jefferson County.

WHEREAS, the EDA authorizes the County to expend SDG Funds awarded to the County to assist in the planning and development of NOPRC's Phase 2 application. The eligible expenditures purposed as outlined in the Scope of Work are as follows:

(1) PAEG Research - Hiring consultant Washinton State University (WSU) to perform needed research on the PAEG population using data from Employment Security Dept (ESD) and Dept of Social & Health Services (DSHS);
(2) Barrier Assessment & Development – Convene and coordinate multiple social services agencies to inventory resources available and barriers they deem need to be addressed. Develop guidance for how to effectively create navigator services to reduce barriers. Develop an PAEG outreach program;
(3) Development of Workforce Training Program – Convene Tribal and Non-Tribal representatives from education and industry to prioritize training opportunities that meet business demand. Conduct a study of proposed programs focused on analyzing type of jobs that projects create and whether these Good Jobs are appropriately acce3ssible to people in the PAEG;
(4) Economic Impact & Feasibility Analyst – Conduct economic analysis and feasibility studies including the direct, indirect and induced job growth associated with project in NOPRC's Recompete Plan;
(5) Zoning Efforts – Update the Glen Cove Special Study from 1999 including Environmental Impact Statement. Planning work will include public outreach; and

(6) Hiring Recompete Plan Coordinator ("RPC") and staffing – Recruit RPC to facilitate the coordination of Phase 2 grant application process for NOPRC. Funding will cover salary for RPC and support staff.

WHEREAS, the Subrecipient, a member of the NOPRC, has been task with research and design of the Workforce training program to be a critical component of the Phase 2 application. The County and Subrecipient desire to enter into this Agreement so that the County may provide SDG Funding for appropriate and qualifying expenditures by the Subrecipient for Development of Workforce Training Program in support of NOPRC Phase 2 application.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and the terms and conditions set forth below, the parties agree as follows:

1. Effective Date and Term. This Agreement shall commence when last executed by all parties and remain in effect until December 31, 2025, unless terminated by the County in writing.

2. SDG Funds. The County agrees to provide the Subrecipient a total sum not to exceed $25,000 for the Development of the Workforce Training program as specified based on eligibility criteria outlined in Attachment A and the Scope of Work provided in Attachment B.

3. Subrecipient's Use of SDG Funds. The Subrecipient shall ensure that the SDG Funds requests are necessary Eligible Uses under the criteria set forth in Attachment A and described in detail in Attachment B as well as Federal Uniform Guidance.

4. Reimbursement Request & Reporting Requirements. To facilitate the release of SDG Funds by the County to the Subrecipient and the County's compliance with reporting requirements for usage of SDG funding per Attachment A, the Subrecipient may submit one A-19 equivalent request schedule per month to the County on or before the 10th day following the end of each calendar month during the term of the Agreement, detailing the expenditures disbursed by the Subrecipient based on eligible criteria, outlined in Attachment B. The County shall then distribute SDG Funds, as requested by the Subrecipient. Such schedule may be modified with the prior approval of the County. Failure to provide any of the required documentation may result in the withholding and/or nonpayment of all or a portion of the request, and termination of the Agreement.

5. Termination. The County may terminate this Agreement, for convenience or otherwise and for no consideration or damages, upon prior notice to the Subrecipient.

6. Independent Contractor. Each party under the Agreement shall be for all purposes an Independent Contractor. Nothing contained herein will be deemed to create an association,

a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties. The Subrecipient shall not be, or be deemed to be, or act or purport to act, as an employee, agent, or representative of the County for any purpose.

7. Indemnification. The Subrecipient agrees to defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers harmless from and against any and all claims, injuries, damages, losses or expenses including without limitation personal injury, bodily injury, sickness, disease, or death, or damage to or destruction of property, which are alleged or proven to be caused in whole or in part by an act or omission of the Subrecipient, its officers, directors, employees, and/or agents relating to the Subrecipient's performance or failure to perform under this Agreement. The section shall survive the expiration or termination of this Agreement.

8. Compliance with Laws, Guidelines. The Subrecipient shall comply with all federal, state, and local laws and all requirements (including debarment and other required certifications and audits) of Uniform Administrative Requirements, Cost Principles and Auditor Requirements for Federal Awards as set forth in 2 C.F.R. part 200 and Attachment A.

9. Maintenance and Audit of Records. The Subrecipient shall maintain records, books, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review and audit by the County or its designee, the Washington State Auditor's Office and as required by the Uniform Guidance for five (5) years following termination of this Agreement. If it is determined during the course of the audit that the Subrecipient was reimbursed for unallowable costs under this Agreement, the Subrecipient agrees to promptly reimburse the County for such payments upon request.

10. Notices. Any notice desired or required to be given hereunder shall be in writing, and shall be deemed received three (3) days after deposit with the U.S. Postal Service, postage fully prepaid, certified mail, return receipt requested, and addressed to the party to which it is intended at its last known address, or to such other person or address as either party shall designate to the other from time to time in writing forwarded in like manner:

Subrecipient
Peninsula College
Attn: Suzy Ames, President
1502 East Lauridsen Blvd
Port Angeles, WA 98362

Clallam County
Attn: RPC and Angi Klahn, BOCC Analyst
223 E 4th St, Suite 4
Port Angeles, WA 98362-3015

11. Improper Influence. Each party warrants that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of

seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.

12. Conflict of Interest. The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

13. Time. Time is of the essence in this Agreement.

14. Survival. The provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive. Those provisions include without limitation Indemnification and Maintenance and Audit of Records.

15. Amendment. No amendment or modification to the Agreement will be effective without the prior written consent of the authorized representatives of the parties.

16. Governing Law; Venue. The Agreement will be governed in all respects by the laws of the Washington State, both as to interpretation and performance, without regard to conflicts of law or choice of law provisions. Any action arising out of or in connection with the Agreement may be instituted and maintained only in a court of competent jurisdiction in Clallam County, Washington or as provided by RCW 36.01.050.

17. Non-Waiver. No failure on the part of the County to exercise, and no delay in exercising, any right hereunder shall operate as a wavier thereof; nor shall any single or partial exercise by the County of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to the County at law or in equity.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

19. Assignment. The Subrecipient shall not assign or transfer any of its interests in or obligations under this Agreement without the prior written consent of the County.

20. Entire Agreement. This Agreement constitutes the entire agreement between the County and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the parties with respect to this Agreement.

21. No Third Party Beneficiaries. Nothing herein shall or be deemed to create or confer any right, action, or benefit in, to, or on the part of any person or entity that is not a party to this Agreement. This provision shall not limit any obligation which either Party has to EDA in connection with the use of SDG Funds, including the obligations to provide access to records and cooperate with audits as provided in this Agreement.

22. Severability. In the event that one or more provisions of this Agreement shall be determined to be invalid by any court of competent jurisdiction or agency having jurisdiction thereof, the remainder of the Agreement shall remain in full force and effect and the invalid provisions shall be deemed deleted.

23. Counterparts. This Agreement may be executed in one or more counterparts, any of which shall be deemed an original but all of which together shall constitute one and the same instrument.

24. Authorization. Each party signing below warrants to the other party, that they have the full power and authority to execute this Agreement on behalf of the party for whom they sign.

IN WITNESS WHEREOF, this Agreement is executed and shall become effective as of the last date signed below.

DATED this _____ day of _____, 2024.

SUBRECIPIENT

By: _____

Print Name: Suzy Ames

Its: President

DATED this _____ day of _____ _____, 2024.

BOARD OF COUNTY COMMISSIONERS
CLALLAM COUNTY, WASHINGTON

_____
MIKE FRENCH, Chair

RANDY JOHNSON, Commissioner

MARK OZIAS, Commissioner

ATTEST:

L. Gores, Clerk of the Board

APPROVED AS TO FORM by DPA Boughton

ATTACHMENT A

INTERAGENCY AGREEMENT BETWEEN
EDA AND CLALLAM COUNTY

Department of Commerce
Economic Development Administration

Notice of Award (NoA)
ED24OIE0G0085

RECIPIENT INFORMATION

1. **Recipient Name(s)**
   Clallam County
   223 E 4th St, Suite 4 Port Angeles, WA 98362-3000 US
2. **Congressional District of Recipient**
   WA-06
3. **Employer Identification Number (EIN)**
   916001298
4. **UEI**
   JV6JJNELRBS5
5. **Recipient POC**
   Angi Klahn
   angi.klahn@clallamcountywa.gov
6. **Authorized Official**
   Todd Mielke
   todd.mielke@clallamcountywa.gov

FEDERAL AGENCY CONTACT INFORMATION

7. **Grant Specialist**
   Michael Jones
   mjones3@eda.gov
8. **Program Officer**
   Asia King
   aking2@eda.gov
9. **Grant Officer**
   Scott Andes
   sandes@eda.gov

FEDERAL AWARD INFORMATION

10. **Award Number / FAIN**
    ED24OIE0G0085
11. **Award Type**
    Grant
12. **Period of performance Start Date & End Date**
    02/01/2024 - 01/31/2027
13. **Federal Share of Cost**
    $498,729
14. **Recipient Share of Cost**
    $0
15. **Total Federal and Recipient Cost**
    $498,729

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16. **Statutory Authority**
    Distressed Area Recompete Pilot Program (Recompete Pilot Program), as authorized by section 29 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. § 3722b)
17. **NOFO/RFA #**
    EDA-RECOMPETEPHASE1-2023
18. **Project Title**
    North Olympic Peninsula Recompete Plan
19. **Assistance Listing Number and Name**
    11.040 - Distressed Area Recompete Pilot Program
20. **Award Action Type**
    New Competing
21. **Multiyear Award?**
    No
22. **R&D Award?**
    No
23. **Construction Award?**
    No
24. **Grants Officer – Signature and Date**
    – Scott Andes 2/12/24
25. **Recipient – Signature and Date**
    –

Approved as to form only by:
Bert Dee Boughton
Civil Deputy Prosecuting Attorney
Clallam County

BY ACCEPTING THIS AWARD, THE RECIPIENT IS AFFIRMING THAT IT WILL COMPLY WITH ALL THE TERMS AND CONDITIONS OF THE AWARD. THE AWARD MUST BE ACCEPTED BY THE APPLICANT'S AUTHORIZED OFFICIAL.

RECIPIENT NAME: Clallam County
PROJECT TITLE: North Olympic Peninsula Recompete Plan
AWARD NUMBER: ED24OIE0G0085

This Notice of Award includes the following sections and incorporates all regulations, documents and authorities referenced therein.

I. BUDGET INFORMATION
II. STANDARD TERMS AND CONDITIONS
III. SPECIFIC AWARD CONDITIONS
IV. OTHER

Should there be a discrepancy among these documents, the Specific Award Conditions, including any references, shall control.

SECTION I – BUDGET INFORMATION

The following is the Authorized Budget for this award. Reference Section III – Specific Award Conditions for conditions related to the Authorized Budget.

Authorized Budget

Estimated Funding ($)	Proposed	Approved
Federal Share (EDA Amount)	$ 498,729.00	$ 498,729.00
Non-Federal Matching Share	$ 0.00	$ 0.00
Total Project Costs	**$ 498,729.00**	**$ 498,729.00**

Non-Construction

Cost Classification	Proposed	Approved
Personnel	$ 98,537.93	$ 98,537.93
Fringe Benefit	$ 34,488.28	$ 34,488.28
Travel	$ 2,620.00	$ 2,620.00
Equipment	$ 0.00	$ 0.00
Supplies	$ 2,800.00	$ 2,800.00
Contractual	$ 360,282.79	$ 360,282.79
Construction	$ 0.00	$ 0.00
Other	$ 0.00	$ 0.00
Indirect Charges	$ 0.00	$ 0.00
Total Project Costs	**$ 498,729.00**	**$ 498,729.00**

SECTION II – STANDARD TERMS AND CONDITIONS

The following regulations and standard terms and conditions apply to this award:

□ 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements, as Adopted Pursuant to 2 CFR § 1327.101 for Federal Awards
□ Department of Commerce Financial Assistance Standard Terms and Conditions
□ Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements
□ 13 CFR Chapter III Economic Development Administration, Department of Commerce Regulations
□ Other:

SECTION III – SPECIFIC AWARD CONDITIONS

The following Specific Award Conditions apply to this award:
See attached.

SECTION IV – OTHER

ATTACHMENT 1

Authorized Scope of Work

Recipient: **Clallam County**
Award Number: **ED24OIE0G0085**
Recompete Pilot Program – Strategy Development Grant

Executive Summary:

North Olympic Peninsula Recompete Coalition (NOPRC) will use the Strategy Development Funding to research the Prime Age Employment Gap (PAEG) in our two underserved and distressed counties to determine the barriers they face preventing their participation in the workforce and how they may be alleviated. The research will guide the design of an innovative and effective navigator and outreach program to bring people in the PAEG back into the workforce. This PAEG study will also tie into research being done through Peninsula College to design programs that meet both the low barrier needs of the PAEG and the current and future workforce training needs of industry employers. NOPRC will use funds to convene Tribal, industry, and workforce training representatives to guide the development of these programs. Funding will also be used to perform economic analysis and feasibility studies for the job creation projects in our Recompete Plan. These studies will seek to determine their direct, indirect, and induced job growth capabilities, their impact on the PAEG populations we are trying to reach with this program, and that jobs created will meet the criteria of "Good Jobs."

Funding will also support the salary for the Recompete Plan Coordinator (RPC) position and support staff. The RPC will be an integral leadership position to manage, develop, and coordinate the multiple projects within our Recompete Plan.

Summary of Activities:

Activity Title	Short Description of Activity	Output(s) / Deliverable(s)	Responsible Organization(s) / Individual(s)	Approximate Start / End Date
PAEG research	Hiring consultant Washinton State University (WSU) to perform needed research on the PAEG population using data from Employment Security Dept (ESD) and Dept of Social & Health Services (DSHS).	Preliminary Findings Report to be used to design navigator and outreach program for Phase 2 application. Plan for continued monitoring to	Clallam County	2/1/2024 to 6/30/2024

		measure plan progress.		
Barrier Assessment, Development Navigator Program & Outreach	Convene and coordinate multiple social services agencies to inventory resources available and barriers they deem need to be addressed. Develop guidance for how to effectively create navigator services to reduce barriers. Develop an PAEG outreach program.	Comprehensive inventory of programs and resources available to use. Development of navigator program.	Clallam County, EDC Team Jefferson, Jefferson County	2/1/2024 to 6/30/2024
Development of Workforce Training Program	Convene Tribal and Non-Tribal representatives from education and industry to prioritize training opportunities that meet business demand. Conduct a study of proposed programs focused on analyzing types of jobs these projects create and whether these Good Jobs are appropriately accessible to people in the PAEG.	An actionable report to guide higher education institutions (Peninsula College and NW School of Wooden Boatbuilding) to customize their job training programs to support local economic development.	Peninsula College	2/1/2024 to 6/30/2024
Economic Impact & Feasibility Analyst.	Conduct economic analysis and feasibility studies including the direct, indirect, and induced job growth associated with projects in NOPRC's Recompete Plan.	Preliminary Economic Analysis Reports to guide programs to be included in Recompete Plan moving forward. Finalized report to follow on project moving forward.	Clallam County Economic Development Council	2/1/2024 to 5/31/2024
Zoning Efforts	Update the Glen Cove Special Study from 1999 including Environmental	Preliminary Updated Special Study Report for	Jefferson County	2/1/2024 to 6/30/2025

	Impact Statement. Planning work will include public outreach.	Glen Cove UGA boundary adjustment. Documentation of engagement results. Finalized report to follow to inform the Comprehensive Plan Periodic Update.		
Hiring Recompete Plan Coordinator and staffing	Recruit Recompete Plan Coordinator.	Successfully retaining qualified candidate.	Clallam County	2/1/2024 to 12/31/2024
Recompete Plan Development, Coordination and Management	Development overall Recompete Plan and projects, coordinate projects and manage the overall process for NOPRC. Funding will cover salary for RPC and support staff for grant/subaward management.	Strategically developed and coordinated Recompete Plan.	Clallam County	2/1/2024 to 12/31/2024

Lead Applicant Name:	Clallam County
Application ID ("EDA-APP# ..." from EDGE):	EDA-APP#00002863

Authorized Staffing Plan

Staffing Plan - Budget						Year 1	Year 2	Year 3	Checkpoint
Name	Annual Salary/Rate	% of Annual Hours for project	Annual $ from Award	Number of Years	Total Cost by Employee				Does breakdown match your total? (Column G)
Recompete Plan Coordinator - TBD	$110,688	100%	$110,688	0.75	$83,016	$83,016		$0	$ 83,016.00
BOCC Lead Analyst	$84,358	20%	$16,872	0.92	$15,522	$15,522		$0	$ 15,521.93
Employee 3	$0	0%	$0	0.00	$0	$0	$0	$0	$ -
Employee 4	$0	0%	$0	0.00	$0	$0	$0	$0	$ -
Employee 5	$0	0%	$0	0.00	$0	$0	$0	$0	$ -
Employee 6	$0	0%	$0	0.00	$0	$0	$0	$0	$ -
Total Personnel Costs					**$98,538**	**$ 98,537.93**	**$ -**	**$ -**	$ 98,537.93
Total Fringe Costs (Please Provide the Basis for Fringe Calculations)				35.00%	**$34,488**	**$ 34,488.28**	**$ -**	**$ -**	$ 34,488.28

See Attached Schedule A

Staffing Plan - Narrative		
Name	Title	Project Responsibilities
Employee 1 - TBD	Recomplete Plan Coordinator	The Recompete Plan Coordinator will hold a pivotal role in our organization, tasked with facilitating an inclusive community process, strategically managing government contracts and coordination for the multiple projects being developed under the Recomplete Plan.
Employee 2 - Angi Klahn	BOCC Lead Analyst	Angi has 25+ years of accounting experience. She also has grant management, SEFA preparation, and subaward monitoring experience. She will handle the grant management, monitoring and fiscal responsibilities for the Strategy Development Grant.
Employee 3		
Employee 4		
Employee 5		
Employee 6		

SPECIFIC AWARD CONDITIONS
U.S. DEPARTMENT OF COMMERCE
Economic Development Administration (EDA)

NON-CONSTRUCTION PROJECTS: Distressed Area Recompete Pilot Program under Section 29 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended, 15 U.S.C. § 3722b.

Recipient: Clallam County
Award Number: ED24OIE0G0085
Project Name: North Olympic Peninsula Recompete Plan
Distressed Area Recompete Pilot Program (Recompete): Phase 1 Strategy Development Grants

1. **SCOPE OF WORK:** This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award as the *Authorized Scope of Work* (Attachment 1). All work on this project must be consistent with the *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work memorialized in writing through execution of an amendment to the Notice of Award.

2. **UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS:** Along with other controlling law, this Award is governed by the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) as set forth in 2 C.F.R. part 200.

3. **PROJECT CONTACT INFORMATION:** The Recipient agrees to notify EDA promptly of any changes to the Recipient's contact information as specified in the Notice of Award.

4. **ADDITIONAL INCLUDED DOCUMENTS (Non-construction):** In addition to the regulations, documents, or authorities incorporated by reference on the Notice of Award, the following additional documents are hereby incorporated by reference into this Award:

    i. The Recipient's application, including any attachments, Project descriptions, schedules, and subsequently submitted supplemental documentation

    ii. *Authorized Scope of Work* (Attachment 1)

    iii. *Authorized Staffing Plan* (Attachment 2)

    Should there be a discrepancy among these documents, these Specific Award Conditions shall control.

5. **PROJECT DEVELOPMENT TIME SCHEDULE (B2S/STEM):** The Recipient agrees to the following Project development time schedule:

   i. Return of executed Notice of Award (NoA) or Amendment due no later than (NLT) 30 calendar days after receipt of NoA/Amemdment

   ii. ii. Scheduling of Kick-Off Meeting must occur NLT 30 calendar days after receipt of NoA/Amendment

   iii. iii. Finalization of Work Schedule must occur NLT than the date of the Kick-Off Meeting

   iv. iv. Submission of Final Project Progress Report due NLT 120 calendar days from the Award End Date, i.e., the latest date set forth in the "period of performance" field on the NoA or as later memorialized through an Amendment

   v. v. Submission of Final Financial Documents (Form SF-425) due NLT 120 calendar days from the Award End Date.

   The Recipient shall diligently pursue the development and implementation of the Project upon receipt of the Award so as to ensure completion within this time schedule. Moreover, the Recipient shall promptly notify EDA in writing of any event that could substantially delay meeting any of the milestones or deadlines for the Project as set forth above. The Recipient further acknowledges that failure to meet the development time schedule may result in EDA imposing remedies for noncompliance, including termination of the Award, in accordance with the regulations set forth at 2 C.F.R. §§ 200.339 through 200.343.

6. **FINANCIAL DISBURSEMENT INSTRUCTIONS (B2S/STEM)**: EDA will make Award payments using the Department of the Treasury's Automated Standard Application for Payments (ASAP) system. The Recipient is required to furnish documentation as required by ASAP including but not limited to Recipient and Requestor Identification Numbers. Complete information concerning the ASAP system may be obtained by visiting www.fms.treas.gov/asap.

   In order to receive payments, the Recipient must submit Form SF-270 (Request for Advance or Reimbursement) for the applicable period electronically. The Project Officer will review and process the request.

   Prior to the initial disbursement, the Recipient must complete Form SF-3881 (ACH Vendor/Miscellaneous Payment Enrollment Form). The form must be completed by the respective parties (EDA, Recipient's Bank, and Recipient) at the start of the Award. EDA will provide instructions for submitting the form during the project kick-off meeting.

7. **REPORT SCHEDULE:** The Recipient agrees to report to EDA on the Project's performance and impacts as summarized as follows:

    i. During the Period of Performance:

        a. Progress Reports and Financial Status Reports – Semiannually, for the periods ending March 31 and September 30.

        b. Outputs Questionnaire (Form ED-916) – Semiannually, six months after the date the period of performance begins and every six months thereafter, or as otherwise directed by EDA.

        c. Outcomes Questionnaire (Form ED-918) -- Annually, one year after the date the period of performance begins and annually thereafter for a total of five years, or as otherwise directed by EDA (note that this obligation may extend beyond award closeout).

    ii. At the Expiration of the Period of Performance but Before Award Closeout: Progress Reports and Financial Status Reports – One time, within 120 calendar days after the Award End Date.

    iii. After Award Closeout: Report on the Outcomes Questionnaire annually, until the end of the fifth year after the date the period of performance begins, or as otherwise directed by EDA.

    Timely submission of all above-described reports is a condition of this award. Per 2 CFR § 200.344, the Recipient must submit, no later than 120 calendar days after the end of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the award. If the Recipient fails to submit all required reports to EDA within one year of the period of performance end date, EDA will report the material failure to comply with the OMB-designated integrity and performance system (formerly FAPIIS) and/or pursue other enforcement actions per 2 CFR § 200.339.

8. **PROJECT PROGRESS REPORTS:** The Recipient agrees to provide the Project

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

    Progress Reports must be submitted to EDA via EDA's Grants Management Portal in a concise, clear format that outlines the following information in three to six pages:

    1. A clear, concise overview of the activities undertaken during the reporting period. For each activity, provide the name of the activity, the dates of the activity, a summary of the activity, and an explanation of outcomes the activity advances (e.g., preparing a competitive Phase 2 application, identifying other funding mechanisms to implement

Recompete strategy, building out a clear plan that increases prime age employment and per capita wages).

2. A description of anticipated activities for the next reporting period.
3. An outline of challenges that currently impact or could impact progress on the Project over the next reporting period and means of mitigating this risk. Please highlight any areas where EDA assistance is needed to support the project (e.g., connections to subject matter experts or other resources, amplifications of activities or impacts).
4. A description of at least one success story from the reporting period.
5. Any other key information that would be helpful to your EDA Project Officer.

9. **FINAL PROJECT PROGRESS REPORT (B2S/STEM):** The final Progress Report must be submitted to EDA no more than 120 calendar days after the Award End Date and these reports or any part of the information contained therein may be posted on EDA's website, used for promotional materials or policy reviews, or may be otherwise shared. Recipient must clearly identify any information that may constitute a trade secret or may be commercial or financial information that is confidential or privileged in these reports. There is no minimum or maximum page requirement for the **final Progress Report**; however, the final Progress Report should concisely yet completely communicate key Project information as follows:

    a. the specific regional need that the Project was designed to address and progress made during the period of performance and beyond that has mitigated or will mitigate that need and advance economic development;

    b. a high-level overview of the activities undertaken;

    c. details of lessons learned during the period of performance that may be of assistance to EDA or other communities undertaking similar efforts;

    d. the expected and actual economic benefits of the Project at the time that the Report is written; and

    e. any other key information from the period of performance.

10. **FINANCIAL REPORTS:** Financial Status Reports (SF-425) must be submitted to EDA on a semi-annual basis via EDA's Grants Management Portal for the reporting periods ending March 31 and September 30, or any portion thereof if applicable, for the period of performance set forth in the Notice of Award or as later memorialized through a mutually agreed-upon Amendment to the Award. Form SF-425 (and instructions for completing this form) is available at: https://www.grants.gov/forms/post-award-reporting-forms.html. Reports are due no later than 30 calendar days following the end of the reporting period.

11. **FINAL FINANCIAL REPORT (Non-construction):** A **final** Form SF-425 must be submitted to EDA no more than 120 calendar days after the Authorized Award End Date specified on the Notice of Award (or any subsequently executed Amendment to the Notice of

Award). Final Financial Reports should follow the instructions for submitting mid-term Financial Status Reports, but should also ensure that all fields accurately reflect the total outlays for the entire project period and that all matching funds and program income (if applicable) are fully reported. Determination of the **final grant rate and final balances owed to the government will be determined based on the information on the final Form SF-425, so it is imperative that it be submitted in a timely and accurate manner.**

12. PERFORMANCE MEASURES: The Recipient agrees to provide EDA with:

(1) Form ED-916 (Outputs Questionnaire) on a semiannual basis, and

(2) Form ED-918 (Outcomes Questionnaire) on an annual basis.

All Outputs Questionnaires and Outcomes Questionnaires should be submitted via a web-based information collection system to be provided by EDA

Outputs Questionnaires (Form ED-916) must be submitted to EDA on a semi-annual basis during the period of performance or as otherwise directed by EDA. The first Outputs Questionnaire must be submitted to EDA six months after the date the period of performance starts, as set forth in the Notice of Award or as later memorialized through an Amendment. The Outputs Questionnaire must be submitted to EDA every six months thereafter through the end of the Period Performance, or any portion thereof if applicable, or as otherwise directed by EDA.

Outcomes Questionnaires (Form ED-918) must be submitted to EDA on an annual basis for a total of five years after the date the period of performance starts, including after Award closeout. The first Outcomes Questionnaire must be submitted to EDA one year after the date the period of performance starts, as set forth in the Notice of Award or as later memorialized through an Amendment. The Outcomes Questionnaire must be submitted to EDA at the end of every year thereafter for a total of five years, or as otherwise directed by EDA.

Note that EDA may revise or replace the Outputs Questionnaire and/or the Outcomes Questionnaire at any time during or following the period of performance. The Recipient agrees to report on program performance measures and program outcomes in such form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993 and the Government Performance and Results Modernization Act of 2010 (collectively, GPRA Reports). Recipient must collect sufficient data and retain sufficient documentation to enable Recipient to submit these required GPRA Reports. **Failure to submit the required GPRA Reports can adversely impact the ability of the Recipient to secure future funding from EDA.** Recipient must retain sufficient data and records to comply with the above reporting requirements at least through the end of the fifth year after the date the period of performance starts, or longer if necessary to comply with the above reporting requirements.

13. **ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined after the final financial documents are submitted in accordance with the applicable authorities specified on the Notice of Award, including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. part 200, and the Authorized Budget. Except as otherwise expressly provided for within these Specific Award Conditions, the federal share of the allowable costs will be based on the Investment Rate for the Award, as established on the Notice of Award or any subsequent Amendment. In the event of an underrun in total allowable costs for this project, the federal share of allowable costs will be determined by the Investment Rate. The federal share of total allowable costs may not exceed the dollar amount specified on the original Award or any subsequent amendments.

14. **FEDERAL SHARE:** The EDA participation in total eligible project costs will be limited to the lesser of the EDA grant amount or the EDA share of total allowable project costs (as stated on the Notice of Award or the most recent Amendment).

15. **REFUNDS, INTEREST, OR UNUSED FUNDS:** If the Recipient needs to return money to EDA, it may use one of the following two methods:

    i. The first is the pay.gov website, which allows the Recipient to pay EDA online. The Recipient will have the option to make a one-time payment or to set up an account to make regular payments.

    ii. The second is paper check conversion. All checks must be made payable to "Department of Commerce, Economic Development Administration" and include the award number and a description of no more than two words identifying the reason for the payment. A copy of the check should be provided to the EDA Project Officer. The check should be mailed to NOAA's Accounting Office, which processes EDA's accounting functions, at the following address:

    NOAA OCFO

    Attn: Finance Office, Travel Dept.

    1315 East West Highway, SSMC3

    Silver Spring, MD 20910

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

16. **ADDITIONAL DOCUMENTATION REQUIRED FOR AWARD COMPLIANCE (Tech Hubs):** Recipient agrees to provide any additional documentation or information required by EDA to confirm compliance of this Award with applicable laws, regulations, and policies and to do so within reasonable deadlines set by EDA. In the event Recipient fails to provide the required documentation in a timely manner, EDA may exercise the remedies provided at 2 C.F.R. §§ 200.339–200.343, up to and including termination.

17. **PROJECT AND PROGRAM EVALUATION:** As part of the process of validating and monitoring the Award and the performance information provided by the Recipient, and as a general method of evaluating the Award and the Recompete Program, EDA reserves the right to conduct project and program evaluations through site visits and/or survey(s) during or after the period of performance. Such evaluations may be conducted by outside parties associated with EDA or by EDA staff. Recipient agrees to participate in the evaluation by answering the evaluator's questions and furnishing information as requested. Evaluators will maintain the confidentiality of business information as required and appropriate. Recipient agrees to provide data and client management system information to facilitate evaluations. For site visits, EDA will provide the Recipient at least two weeks of notice prior to a visit, unless exigent circumstances warrant otherwise. The site visit may include interviews with Recipient's staff or visits with Project clients.

18. **USE OF INFORMATION:** EDA reserves the right to use information contained in the Recipient's Application as well as all reports and performance data submitted by the Recipient to undertake an evaluation of the Program. The Recipient agrees to cooperate with such evaluations, including by sharing performance information that they have collected or will collect as part of their grant activities, including performance information for Project clients.

19. **PROCUREMENT:** The Recipient agrees that all procurement transactions shall be in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. §§ 200.317–200.327. Any noncompetitive procurement requires prior approval from EDA.

20. **SUBAWARDS (B2S/STEM/RLF):** Certain award activities funded under this Award may be accomplished through a subaward by the Recipient to a Subrecipient. Prior EDA permission is needed to include, add, or change a subrecipient. Prior to the award of any subaward or subrecipient performing any work funded through this Award, the Recipient must provide documentation satisfactory to EDA that the proposed subrecipient(s) and any additional or successor subrecipient(s)are eligible to receive EDA assistance. EDA will provide written notice regarding whether the documentation is satisfactory to EDA. No change may be made to the identity of the subrecipient or the scope of the proposed

subaward without prior EDA approval. Subaward are not permitted without EDA prior approval.

Before a subrecipient undertakes any work to be funded through this Award, the Recipient shall enter into a written subaward agreement with the Subrecipient that meets the requirements of 2 C.F.R. § 200.332(a) and includes a requirement that the subrecipient comply with all of the terms and conditions of this Award, including but not limited to the Standard and Specific Award conditions and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. part 200). EDA may disallow any costs incurred by the subrecipient prior to executing the subaward agreement. The Recipient shall be responsible for monitoring the Subrecipient's performance under the subaward in accordance with the requirements of 2 C.F.R. § 200.332. The Recipient is also responsible for ensuring that any subrecipient of a subaward exceeding $100,000 executes form CD-511, Certification Regarding Lobbying, and for retaining a copy of the executed certification. As required by form CD-511, subrecipients must report lobbying activities, if any, to the Recipient on Form SF-LLL. The Recipient is responsible for promptly providing EDA with a copy of any Form SF-LLL submitted by a subrecipient.

The Recipient is responsible for reporting the Federal Subaward Reporting System (FSRS) available at www.FSRS.gov on all subawards over $30,000. Please see the OMB guidance published at 2 C.F.R. part 170, which can be accessed at https://www.govinfo.gov/content/pkg/CFR-2022-title2-vol1/pdf/CFR-2022-title2-vol1-part170.pdf. Appendix A of 2 C.F.R. part 170 is incorporated by reference into these Specific Award Condition.

21. **NONRELOCATION (Non-Construction):** In signing this Award, the Recipient attests that EDA funding is not intended by the Recipient to assist efforts to induce the relocation of existing jobs within the U.S. that are located outside of its jurisdiction to within its jurisdiction in competition with other U.S. jurisdictions for those same jobs. In the event that EDA determines that its assistance was used for such purposes, EDA reserves the right to pursue appropriate enforcement actions in accord with 2 C.F.R. §§ 200.339 through 200.343 and the DOC STCs, including suspension of disbursements and termination of the Award which may include the establishment of a debt requiring the Recipient to reimburse EDA.

22. **REAFFIRMATION OF APPLICATION:** Recipient acknowledges that Recipient's application for this Award may have been submitted to EDA and signed by Recipient, or by an authorized representative of Recipient, electronically without providing an original "wet" signature. In addition, the Recipient or an authorized representative of Recipient may have accepted the Award electronically, which includes drawing down any funds under this Award. Regardless of who submitted the Application to EDA or the means by which Recipient submitted the Application or accepted the Award, Recipient hereby reaffirms and states that:

A. All data in the Application were true and correct when the Application was submitted and remain true and correct as of the date of this Award;

B. The Application was, as of the date of submission and the date of this Award, duly authorized as required by local law by the governing body of the Recipient; and

C. Recipient has read, understood, and will comply with all terms of this Award, including the Assurances and Certifications submitted with, or attached to, the Application and through the System for Award Management (SAM.gov).

The Recipient agrees to immediately notify the EDA of any material changes to the Application within 30 calendar days of the date the Recipient becomes aware of such changes. For purposes of this provisions, the term "Application" includes all documentation and any information provided to EDA as part of, and in furtherance to, the request for funding, including submissions made in response to information requested by EDA after submission of the initial Application.

23. **FREEDOM OF INFORMATION ACT (FOIA)**: EDA is responsible for meeting its Freedom of Information Act (FOIA) (5 U.S.C. § 552) responsibilities for its records. DOC regulations at 15 C.F.R. part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications and other information submitted by applicants and recipients may be released in response to a FOIA request. The Recipient should be aware that EDA may make certain application information publicly available. Accordingly, the Recipient should notify EDA if it believes any Application information to be confidential.

24. **WASTE, FRAUD AND ABUSE:** Consistent with 2 C.F.R. part 200, at EDA's direction, at any time(s) during the estimated useful life of the Project, Recipient's key personnel will take a training on preventing waste, fraud and abuse as provided by the Government. Key personnel include those responsible for managing the Recipient's finances and overseeing any contractors, sub-contractors or sub-grantees (for financial matters and/or general oversight related to this Project). EDA will provide instructions on when and how to take the training. Within 60 days of the date of Award, the Recipient shall provide to the Project Officer all Certificates of Completion for the Waste, Fraud, and Abuse training. In the event there are co-recipients of this Award, the obligations in the Specific Award Condition shall apply to all recipients whether or not designated in this Award as the Lead Recipient.

Further, Recipient will monitor award activities for common fraud schemes (hereinafter "Fraud Schemes"), such as but not limited to:

- false claims for materials and labor,
- bribes related to the acquisition of materials and labor,

- product substitution,
- mismarking or mislabeling on products and materials, and
- time and materials overcharging.

Should Recipient detect any Fraud Schemes or any other suspicious activity, Recipient will contact the EDA staff listed above and the Department of Commerce, Office of Inspector General, as indicated at https://www.oig.doc.gov/Pages/Contact-Us.aspx, as soon as possible.

25. **USE OF EDA'S RECOMPETE LOGO:** EDA has developed a logo for EDA programming under the Distressed Area Recompete Pilot Program ("Recompete Logo"). Recipient may use the Recompete Logo pursuant to the below terms and conditions for the following limited purposes:

    - Press releases, social media posts, and websites that build awareness of this Award (note that some advertising and marketing activities are not allowable costs under federal awards as provided at 2 CFR 200.421); and
    - Work products and deliverables developed under this Award (e.g., tools, publications, resource guides, brochures, PowerPoint presentations, technical assistance materials).
    - Recipient may not use the Recompete Logo for other purposes, including lobbying or issue advocacy, endorsing a product or organization, or communications to elected officials or federal agencies. Recipient may not use the Recompete Logo in a negative or defamatory manner. Recipient must request and obtain EDA permission prior to certain uses of the Recompete Logo (see paragraph B, below).

    A. Grant of License: EDA hereby grants to Recipient a non-exclusive, royalty-free right to use the Recompete Logo for the limited purposes described above (the "License"). Recipient agrees that: (1) the Recompete Logo will not be used in a way that would suggest that it is the property of Recipient or any other third party, and (2) Recipient will include the following notice in conjunction with its use of the Recompete Logo, as appropriate: "The Recompete Logo is a trademark of the Economic Development Administration, used with permission." This License does not grant Recipient the right to use any seal, emblem, logo, or other symbol of the U.S. Department of Commerce or EDA that is not the Recompete Logo.

    B. Required Approvals for Certain Uses of the Recompete Logo: Before Recipient uses the Recompete Logo for press releases and related materials, Recipient shall send a sample of each print, product, design, or other work to show the proposed use to the EDA Recompete Public Affairs Specialist (whose contact information may be obtained from the Project Officer for this Award). Recipient shall not use the Recompete Logo for the above uses until receiving written approval (including via email) from EDA of the proposed use.

C. Quality Control: EDA shall have the right, at all reasonable times, to inspect Recipient's goods, services, and promotional activities employing the Recompete Logo to ensure that such use is of proper quality and otherwise consistent with this License.

D. Duration and Termination: The License shall terminate on the Award End Date. Recipient may request a renewal of the License for an additional term subject to the express written consent of EDA. Such consent shall be in the form of a properly executed agreement signed by authorized signatories of EDA and Recipient. Upon termination of the License, all rights of Recipient to use the Recompete Logo shall immediately terminate. EDA may terminate the License unilaterally and without cause at any time, including if EDA determines that Recipient's use of the Recompete Logo is inconsistent with the License.

E. Validity and Ownership of Recompete Logo: Recipient acknowledges and agrees that EDA is the owner of all right, title, and interest in the Recompete Logo, and all such right, title, interest, and ownership shall remain with EDA. Recipient further acknowledges that Recipient shall not acquire any right, title, interest, or ownership in the Recompete Logo by virtue of the License or use other than the license granted hereunder and disclaims any such right, title, interest, or ownership. Recipient is prohibited from interfering with EDA's rights in the Recompete Logo, including challenging EDA's use, registration of, or application to register the Recompete Logo alone or in combination with other words or designs, as a U.S. or foreign trademark anywhere in the world. Recipient is further prohibited from attempting to register the Recompete Logo, any derivatives thereof, or any confusingly similar mark, whether or not registered by EDA, alone or in combination with other words or designs, as a U.S. or foreign trademark or as a part of a domain name.

F. Assignments and Sub-Licenses: The License is not assignable, and any attempt by Recipient to assign any portion of the License shall be deemed a breach of the License and will result in immediate termination of the License. Recipient may subcontract, thereby engaging in a limited sublicensing arrangement as applicable, for manufacturing and distribution activities under the License; Recipient shall provide notice to EDA—and must receive prior approval from EDA—of any such subcontract prior to manufacturing and distribution activities.

G. Governing Law: The License shall be interpreted and implemented in accordance with the Federal common law as interpreted by the U.S. District Court for the District of Columbia, without giving effect to any conflict of law principle that would result in the application of the substantive law of another jurisdiction.

H. Indemnification: Recipient agrees to indemnify and hold EDA harmless from any and all claims, damages, and attorneys' fees arising from the use of the Recompete Logo by the Recipient and its operations, except to the extent that any such claims, damages, or attorneys' fees arose in connection with any act or failure to act by the U.S. Department of Commerce or any agency, department, or subdivision thereof.

I. Obtaining the Recompete Logo: For an electronic version of the Recompete Logo, Recipient should contact the EDA Recompete Public Affairs Specialist (whose contact information may be obtained from the Project Officer for this Award).

26. STAFFING CHANGES: The Authorized Staffing Plan sets forth Recipient staff primarily responsible for administering this Award. In the event of a change in the professional staff positions primarily funded with the EDA grant, Recipient shall provide the name of the individual selected to fill the position to the Project Officer and a copy of their resume within 30 business days of the selection.

27. CONFLICT OF INTEREST: The Recipient must maintain a written and enforced conflict of interest policy. The policy should at a minimum address actual or potential personal (e.g., employees, agents, members of their immediate family) or organizational conflicts of interest in the performance or administration of the Award. Conflicts of interest may include, but are not limited to, any past, present or planned contractual, financial, or other relationships, obligations, commitments or responsibilities, which may bias the Recipient or affect the Recipient's ability to perform or administer the Award in an impartial and objective manner. The policy must include standards of conduct covering conflicts of interest and governing actions of Recipient employees engaged in the selection, award, or administration of contracts in accordance with 2 C.F.R. § 200.318(c). The Recipient shall ensure that all subrecipients and contractors under the Award: (1) have their own conflict of interest policy in place that meets the requirements of this Specific Award Condition; or (2) adopt the Recipient's conflict of interest policy. The Recipient's policy should provide procedures to disclose, mitigate, and resolve any such conflicts of interest. In accordance with 2 C.F.R. § 200.112, the Recipient must disclose in writing any potential or actual conflict of interest to EDA in a timely manner. EDA will evaluate the disclosure and inform the Recipient of any required remedial action beyond what the Recipient may have already implemented. Failure to comply with this condition, or the Recipient's own conflict of interest policy, may result in appropriate enforcement action pursuant to 2 C.F.R. §§ 200.339 through 200.343 and the DOC STCs, which are incorporated under the Award.

Fraud Awareness Training

EDA

U.S. ECONOMIC DEVELOPMENT ADMINISTRATION

EDA's grantees must successfully complete this training and submit the signed completion certificate(s) to the EDA Project Officer listed in the Specific Award Conditions within 60 days of grant award.

Failure to comply with this requirement may result in a finding of non-compliance with the terms and conditions of your award.

OVERVIEW

- Overview of EDA's Programs
- The Department of Commerce (DOC) Office of Inspector General (OIG)
- Fraud in EDA Programs
- Additional Items
- Certificate

INTRODUCTION

Role of EDA: Facilitate the timely and effective delivery of Federal economic development assistance to support long-term community economic recovery planning and project implementation, redevelopment, and resiliency

EDA's Programs

- EDA's Programs enable EDA to make awards that support a wide range of activities.
- Eligible applicants and project types for each program is set forth in the respective Notices of Funding Opportunity.
- You must read and understand the requirements applicable to the program under which your award is funded, including the applicable Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions.

The U.S. Department of Commerce (DOC) Office of Inspector General (OIG)

DOC – OFFICE OF INSPECTOR GENERAL

- Created by IG Act of 1978 to:
  - Combat fraud, waste, and abuse within the DOC
  - Conduct audits and investigations of DOC operations
  - Keep the DOC and Congress informed
- Mission
  - To improve the programs and operations of the Department of Commerce through independent and objective oversight

This includes oversight of EDA Assistance Programs

DOC – OFFICE OF INSPECTOR GENERAL

- Office of Audit and Evaluation
- Office of Investigations
  - Criminal
  - Civil
  - Administrative
  - Employee misconduct
  - Public corruption

WHISTLEBLOWER PROTECTIONS

Federal employees, applicants, and employees of federal contractors **and grantees** who make certain disclosures—to OIG or elsewhere—are protected under the law from suffering retaliation because of those disclosures.

Basic elements of whistleblower protection law: (1) you make a protected disclosure; (2) you are subject to certain retaliatory acts; and (3) there is a causal connection between your protected disclosure and the retaliatory act.

OIG receives, reviews, and where appropriate, investigates allegations of whistleblower reprisal.

Whistleblower complaints may be submitted to the OIG via the hotline:
https://www.oig.doc.gov/Pages/Hotline.aspx#complainthotline

Whistleblower complaints may also be submitted to the Office of Special Counsel via their website: https://osc.gov/pages/file-complaint.aspx

DOC-OIG Whistleblower Protection Coordinator contact information:

Email: wpo@oig.doc.gov Phone: 202-482-1099

FRAUD IN EDA ASSISTANCE PROGRAMS

- **Fraud Defined**
- **Compliance Requirements**
  - **Eligibility**
  - **Duplicate Funding**
  - **Matching Funds**
  - **Mandatory Reporting of Fraud**
- **Consequences of Fraud**
- **Recommendations/Best Practices**

FRAUD IN EDA ASSISTANCE PROGRAMS

Although it can take many forms, fraud, at its core, is **deception** through the **misrepresentation** or **omission** of **material facts** for the purpose of **illegitimate gain**.

FRAUD IN EDA ASSISTANCE PROGRAMS

Examples of fraud within EDA Assistance Programs include, but are not limited to:

- Accepting federal funding in multiple assistance awards for the same work
- Misrepresentations regarding the eligibility of the project or recipient
- Misrepresentations or omissions about the recipient's facilities, ownership/control, or the work to be performed by the recipient
- Providing falsified letters of support
- Misrepresentations concerning the use of funds expended, work performed, results achieved, or compliance with program requirements under the award
- Inflated labor costs

FRAUD IN EDA ASSISTANCE PROGRAMS (CONTINUED)

- Misuse or conversion of assistance award funds (e.g. using funds for personal expenses)
- Theft of government owned property (18 U.S.C. § 666)
- Embezzlement (18 U.S.C. § 666)
- Fabrication or falsification of data, in applying for, carrying out, or reporting results from an assistance award
- Intentional noncompliance with applicable federal cost principles governing grants / cooperative agreements
- Undisclosed self-dealing, such as a sub-award to an entity in which an awardee, executive, or key employee (or family members of the aforementioned individuals) has a financial interest
- "Buying Expenses", or reporting expenses incurred by another entity for work unrelated to the assistance award

COMPLIANCE REQUIREMENTS

RECIPIENTS MUST COMPLY WITH:

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- Department of Commerce Financial Assistance Standard Terms and Conditions
- EDA Standard Award Conditions for Construction Projects **or** EDA Revolving Loan Fund Standard Award Conditions (as applicable)
- Specific Award Conditions (unique to each award)

COMPLIANCE REQUIREMENTS

2 CFR § 200.339 – REMEDIES FOR NONCOMPLIANCE

If a non-Federal entity fails to comply with **the U.S. Constitution, Federal statutes, regulations or the terms and conditions of a Federal award**, the Federal awarding agency or pass-through entity may impose additional conditions; or, in certain circumstances, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- Temporary withholding of cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity
- Disallowance of (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance
- Whole or partial suspension or termination of the Federal award
- Initiation of suspension or debarment proceedings (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency)
- Withholding of further Federal awards for the project or program
- Other remedies that may be legally available

COMPLIANCE REQUIREMENTS

Eligibility

Within their EDA Assistance Award Proposal, applicants make numerous certifications or recertifications as to their eligibility to receive a federal award, among other certifications.

Falsely certifying to any material fact or representation contained in a certification is fraud.

CASE EXAMPLE

Eligibility

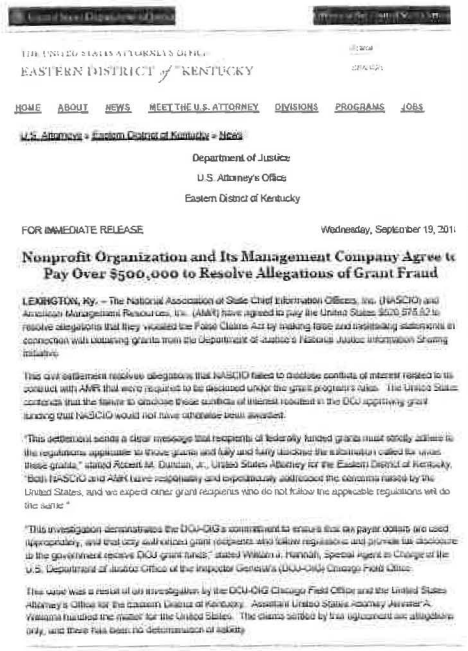
Allegations Included:

- Nonprofit organization made false and misleading statements to obtain federal grant funding
- Failure to disclose conflicts of interest that were required to be disclosed

Outcome:

- Nonprofit agreed to pay $528,575.82 to resolve allegations they violated the False Claims Act

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FOR IMMEDIATE RELEASE Wednesday, September 19, 201

Nonprofit Organization and Its Management Company Agree to Pay Over $500,000 to Resolve Allegations of Grant Fraud

LEXINGTON, Ky. – The National Association of State Chief Information Officers, Inc. (NASCIO) and American Management Resources, Inc. (AMR) have agreed to pay the United States $528,575.82 to resolve allegations that they violated the False Claims Act by making false and misleading statements in connection with obtaining grants from the Department of Justice's National Justice Information Sharing Initiative.

The civil settlement resolves allegations that NASCIO failed to disclose conflicts of interest related to its contract with AMR that were required to be disclosed under the grant program's rules. The United States contends that the failure to disclose these conflicts of interest resulted in the DOJ approving grant funding that NASCIO would not have otherwise been awarded.

"This settlement sends a clear message that recipients of federally funded grants must strictly adhere to the regulations applicable to those grants and fully and fairly disclose the information called for under those grants," stated Robert M. Duncan, Jr., United States Attorney for the Eastern District of Kentucky. "Both NASCIO and AMR have cooperated and expeditiously addressed the concerns raised by the United States, and we expect other grant recipients who do not follow the applicable regulations will do the same."

"This investigation demonstrates the DOJ-OIG's commitment to ensure that tax payer dollars are used appropriately, and that duly authorized grant recipients also follow regulations and provide full disclosure to the government receive DOJ grant funds," stated William J. Hannah, Special Agent in Charge of the U.S. Department of Justice Office of the Inspector General's (DOJ-OIG) Chicago Field Office.

The case was a result of an investigation by the DOJ-OIG Chicago Field Office and the United States Attorney's Office for the Eastern District of Kentucky. Assistant United States Attorney Jennifer A. Williams handled the matter for the United States. The claims settled by this agreement are allegations only, and there has been no determination of liability.

COMPLIANCE REQUIREMENTS

Duplication of Benefits is Prohibited

2 CFR § 200.1 – Improper Payment

Improper payment means any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. This includes overpayments or underpayments to eligible recipients (including inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for an incorrect amount, and **duplicate payments**). It also includes any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments authorized by law).

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." *EDA Standard Terms and Conditions for Construction Projects, March 22, 2021*

CASE EXAMPLE

Duplication of Benefits

Allegations Included:

- Not-for-profit owner applied for funding for similar services
- Owner converted the duplicate funding for his personal and business use

Outcome:

- Owner pleaded guilty to mail fraud and money laundering
- Sentenced to 24 months in prison
- Ordered to pay $480,901 in restitution

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CENTRAL DISTRICT of ILLINOIS

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FOR IMMEDIATE RELEASE Friday, September 23, 201

Chicago Businessman Sentenced to Two Years in Prison for Grant Fraud Scheme

Springfield, Ill. – A Chicago businessman has been ordered to serve 24 months in prison for a fraud scheme that resulted in two state agencies awarding separate, but nearly identical, grants to his not-for-profit entity in September 2008. U.S. District Court Judge Sue E. Myerscough sentenced George E. Smith, 68, and ordered that Smith pay restitution of nearly $500,000 to the state. Judge Myerscough allowed Smith to self-report as directed by the federal Bureau of Prisons to begin serving his prison sentence. Smith waived indictment and pled guilty in March 2016 to two counts of mail fraud and one count of money laundering.

In rendering today's sentence, Judge Myerscough noted that Smith exploited his personal relationship with a former director of the Illinois Department of Children and Family Services related to a grant in the amount of $480,000 awarded by the agency on Sept. 2, 2008, under the Violence at Risk Program. On Sept. 8, 2008, the Illinois Board of Education awarded Smith's not-for-profit a similar grant in the amount of $342,000. According to the terms of the grants, both provided for similar services to be provided to the same at-risk population in the Chicago area during fiscal year 2009. The populations served, sources of referral, services to be provided, and the goals for each grant were essentially identical. Neither DCFS nor ISBE were aware of the issuance of an identical grant by the other state agency. Smith then converted the duplicate funding to his personal and business use.

Both grants were awarded to Elevated Behavioral Comprehensive Care, a not-for-profit entity owned and operated by Smith. In addition, Smith owned and operated three for-profit entities: Elevated Behavioral Services, Inc., Management Planning Institute, Inc., and the Institute for Positive Child and Family Development. From 2005 through 2011, Smith, through both his for-profit and not-for-profit entities, received millions of dollars in funding from agencies of the state of Illinois, including DCFS, ISBE, and the Illinois Department of Human Services.

COMPLIANCE REQUIREMENTS

Matching Funds

- The non-Federal share of the approved project budget (aka the "matching share" or "local share") must be borne by the recipient or provided to the recipient by a third party as a contribution for the purposes of and subject to the terms of the award.

- The applicant must document that the matching share **will**:
  - Be committed to the project for the period of performance
  - Be available as needed
  - Not be conditioned or encumbered in any way that may preclude its use consistent with the requirements of EDA investment assistance

- Applicants must submit, for each source of matching share, a commitment letter or equivalent document signed by an authorized representative of the organization providing the matching funds. *Additional documentation may be requested by EDA in order to substantiate the availability of the matching funds.*

CASE EXAMPLE

Matching Funds

Allegations Included:

- Small business owner made several false statements and misrepresentations to obtain federal grant funding
- Owner misrepresented that he obtained a $100,000 investment from a third party in order to qualify for federal matching funds
- Owner converted grant funds to personal use

Outcome:

- Owner convicted at trial for wire fraud, mail fraud, falsification of records, and theft of government property
- Sentenced to 36 months in prison
- Ordered to pay $105,726 in restitution
- Owner debarred for 5 years

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FOR IMMEDIATE RELEASE Friday, August 29, 201

Morgan State University Professor Sentenced To 3 Years In Prison In Scheme To Defraud The National Science Foundation And For Obtaining Kickbacks From Student Stipends

Fraudulently Obtained $200,000 and Attempted to Obtain Another $500,000 through a National Science Foundation Small Business Program

Baltimore, Maryland - U.S. District Judge Ellen L. Hollander sentenced Manoj Kumar Jha, age 47, of Severn, Maryland, today to three years in prison followed by three years of supervised release for wire fraud, mail fraud, falsification of records, and theft of government property in connection with a scheme to fraudulently obtain research grants from the National Science Foundation (NSF) and kickbacks from students' stipends. Judge Hollander also entered an order requiring Jha to pay $105,726 in restitution.

The sentence was announced by United States Attorney for the District of Maryland Rod J. Rosenstein and Allison Lerner, Inspector General of the National Science Foundation.

According to trial testimony, from January 2008 through July 2009, Jha fraudulently obtained $200,000 in grant funds from the National Science Foundation's (NSF) Small Business Technology Transfer (STTR) program to fund a highway project, and attempted to obtain another $500,000 through the same program. Jha converted the funds to his personal use. For example, Jha made payments on his mortgage and personal credit card and syphoned approximately $11,000 in salary payments to his wife, who performed no NSF-related work.

Jha, a full time professor at Morgan State University, incorporated Amar Transportation Research and Consulting, Inc. (ATRC), and was its president and only director. Trial evidence showed that Jha submitted funding proposals on behalf of ATRC to the STTR. The stated purpose of Jha's proposed

COMPLIANCE REQUIREMENTS

Mandatory Disclosure of Fraud

2 CFR § 200.113 - Mandatory disclosures

The non-Federal entity or applicant for a Federal award **must disclose**, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Failure to disclose could result in the remedies detailed in 2 CFR § 200.339 (slide 16 of this presentation).

CONSEQUENCES OF COMMITTING FRAUD

Criminal Prosecution

Lying to obtain a grant, or lying about the work performed may violate several criminal laws:

- 18 U.S.C. § 1001, False Statements (up to 5 years in prison, forfeiture and $250K fine)
- 18 U.S.C. § 641, Theft of Federal Property (up to 10 years in prison, forfeiture and $250K fine)
- 18 U.S.C. § 1343, Wire Fraud (up to 20 years in prison, forfeiture and $250K fine)
- 18 U.S.C. § 666, Theft or bribery concerning programs receiving Federal funds (up to 10 years in prison, forfeiture and $250K fine)

Fines for organizations may be as high as $500K

Criminal forfeiture = full amount of the grant; personal assets can be seized to satisfy forfeiture or fine

CONSEQUENCES OF COMMITTING FRAUD (CONTINUED)

Civil Prosecution

In addition to or in lieu of criminal prosecution

Civil False Claims Act, 31 U.S.C. §§ 3729-3733

- Liability includes up to treble damages (3x actual damages) and a civil penalty of up to $23,607 for each false claim
- False claims liability may include payments received when the government relied upon false information in the award proposal, in a certification of current cost or pricing data, in a request for payment, or in progress reports
- Although the statute requires knowledge that the claim was false, knowledge includes "deliberate ignorance" or "reckless disregard of the truth"
- Whistleblowers can receive up to 30% of the recovery amount for reporting fraud via *qui tam* provisions of the False Claims Act

CONSEQUENCES OF COMMITTING FRAUD (CONTINUED)

Administrative Remedies

- Government can terminate contracts/grants tainted by fraud
- Government can suspend/debar the entity, owner, and/or employees
  - Results in prohibition from receiving any federal grants or contracts, or working as a sub-grantee on federal grants or a sub-contractor on federal contracts
  - Debarment is typically for three years, but can be for a longer period
- Administrative remedies are in addition to or in lieu of criminal and civil liability

RECOMMENDATIONS

The government retains the right to examine the status of an EDA Assistance award at any time.

Status checks include:

- Site visits
- Requests for records including financial documents and timesheets

Good recordkeeping will help ensure successful status checks and eliminate potential issues.

RECOMMENDATIONS

Good Records: Key to Protecting Yourself

Documentation

- Timesheets for hours worked by ALL involved employees
- All financial receipts, invoices and statements for expenses related to the project

Updates on the project status, including successes/failures

- Keep regular records at the business-level so you have all facts on hand if needed/requested by the government
- Documentation to support performance metrics

Records Retention Time Frames and other Requirements

- See 2 CFR § 200.334

IMPORTANT TO REMEMBER!

:ecord Retention and Access

200.334 Retention requirements for records.

inancial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a perio f three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the ubmission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a ubrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The nly exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) ***If submitted for negotiation.*** If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(2) ***If not submitted for negotiation.*** If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

IMPORTANT TO REMEMBER!

If you are unsure about any of the requirements relating to the award of an EDA Assistance grant/cooperative agreement:

- Contact the appropriate EDA POC and provide all relevant facts
- Request written guidance from the EDA POC, and
- **Follow it!**

ADDITIONAL RESOURCES

13 CFR Chapter III – Economic Development Administration (Parts 300-315)
https://www.ecfr.gov/current/title-13/chapter-III

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II

Grant Fraud & Scams – Grants.gov
https://www.grants.gov/learn-grants/grant-fraud.html

Department of Commerce – Grants and Cooperative Agreement Manual
https://www.commerce.gov/oam/files/grants-and-cooperative-agreements-grants-manual-april-20-2021

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For more information please visit our website
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CERTIFICATE OF TRAINING COMPLETION

- **All EDA grantees must successfully complete this training and submit the signed completion certificate(s) to the EDA Project Officer listed in the Specific Award Conditions or via the EDGE website within 60 days of grant award.**

Failure to comply with this requirement may result in a finding of non-compliance with the terms and conditions of your award.

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 et seq.; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate One**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Two**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 et seq.; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Three**

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 entity[1] 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.

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

not required to submit an audit(s) for that year, but must make their award-related records available to DOC or other designated officials for review and audit.

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

e. In accordance with 2 C.F.R. § 200.332(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.

l. 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).

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate One**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Two**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Three**

ATTACHMENT B

SCOPE OF WORK

The Board or Commissioners is directing up to $25,000 to be disbursed to the Subrecipient to support the Development of Workforce Training Program in preparation for the Distressed Area Recompete Pilot Plan Phase 2 application and implementation. The Subrecipient will use funding to hire a consultant to perform these tasks outlined below:

Consultant scope of work:

Purpose

- Convene Tribal and non-Tribal representatives from education and industry across Clallam and Jefferson County to prioritize training opportunities that meet business demand. Assure the region's workforce solution offers focused job training using industry standards combined with innovative incentives and prospects to jobs that pay $26 or more (Good Jobs).

Strategies

- Interview representatives from Clallam/Jefferson County education (Peninsula College and NW Wooden Boat School) and industry to **prioritize training opportunities** and **educational delivery modes** that meet business demands. Industries to be researched include Marine Technology, Offshore Maritime, Natural Resources, Water & Wastewater Operations, Dental Hygiene. In addition, the consultant will interview a broad range of Tribal and non-Tribal industry leaders other than these identified industries to recommend additional viable workforce career opportunities leading to Good Jobs across the two-county region.
- Interview and/or conduct focus groups with community-based organizations and their clients, Tribes and Tribal Members to determine what barriers Prime Age Employment Group (PAEG) members will need to overcome to access and complete those training opportunities.

Areas of industry research:

- *Marine Technology* (Note: PC has significant work done in this area not to be duplicated)
    - Areas of focus: Marine Electrical, Systems, Propulsion, Fabrication, Finishing and Spill Response
    - Employers: Brix Marine, Westside marine, Platypus, Westport yachts, Marine Spill Response, StabiCraft, Hoh, Quileute, Makah, Port Gamble S'Klallam, Jamestown S'Klallam, and Lower Elwha Klallam, Yamaha Motor Corp, and Washington State Ferries
- *Offshore Maritime*

- Areas of focus: Boat Captain, Captain, Ferry Boat Captain, First Mate, Harbor Pilot, Mate, River Pilot, Ship Pilot, Tugboat Captain, Vessel Master, Sailor, Marine Oiler

- Employers: Marine Spill Response, Northwest Maritime Center, Arrow Marine, Tradesmen International, American Cruise Lines, Aramark, Pacific Northwest National Laboratories, Puget Sound Express, Hoh, Quileute, Makah, Port Gamble S'Klallam, Jamestown S'Klallam, and Lower Elwha Klallam. *Natural Resources*
  - Areas of focus: Forester, Natural Resource Specialist, others TBD
  - Employers: Department of Natural Resources, Hoh, Quileute, Makah, Port Gamble S'Klallam, Jamestown S'Klallam, and Lower Elwha Klallam., Natural Resources Innovation Center, others TBD
- *Water & Wastewater Operator*
  - Areas of focus: Water quality testing, others TBD
  - Employers: Hoh, Quileute, Makah, Port Gamble S'Klallam, Jamestown S'Klallam, and Lower Elwha Klallam., cities, private water system companies
- *Dental Hygiene* (Note: PC has significant work done in this area not to be duplicated)
  - Area of focus: Licensed dental hygienist
  - Employers: Local dentists, Hoh, Quileute, Makah, Port Gamble S'Klallam, Jamestown S'Klallam, and Lower Elwha Klallam.

Target population: Industry, Tribal and Non-Tribal representatives

- *Key Question*: What are the regional business demands that lead to good jobs? What training opportunities/skills are needed to prepare a workforce for these jobs?
- *Key industries*: Forest products, marine trades, manufacturing, construction, healthcare AND being open to other business demands that emerge as priorities through the research project
- *The goal of this part of the study is to answer the question*: Based on demand, what are the training priorities? What skills, format and wraparound supports are needed? (from industry-perspective)
- *Sample industry questions could include*:
  - What job titles and corresponding salaries do you expect to need in the next 5 years? 10 years?
  - What levels of education/training are required?
  - What kinds of hybrid programs could your organization support, such as students learning in class and on the job site?
  - What kind of support structure do you need, such as money for paid internships, an internship coordinator, etc.?
  - What kinds of equipment do students need to gain proficiency?
  - What challenges do you encounter related to workforce development?
  - What are the top three training needs you have related to workforce?

- What barriers do your employees/potential employees face in being successful in their jobs and/or completing training programs?

Target population: CBOs, Clients, Hoh, Quileute, Makah, Port Gamble S'Klallam, Jamestown S'Klallam, and Lower Elwha Klallam Tribes & Tribal Members

- *Key Question*: What incentives, structures, and supports are needed to move PAEG into training programs?
- *Key CBOs*: Department of Social and Health Services, area food banks, YMCA, others
- *Tribes*: Hoh, Quileute, Makah, Port Gamble S'Klallam, Jamestown S'Klallam, and Lower Elwha Klallam.
- *The goal of this part of the study is to answer the question*: What would allow people in the PAEG to access and complete training opportunities that lead to good jobs?
- *Sample CBO/Tribes questions could include*:
  - What learning environment would work allow the individual to start college? (In-person, weekend, evening, online, hyflex, hybrid, etc.)
  - What technology is needed to allow the individual to start college? (Laptop, hotspot, etc.)
  - What types of childcare is needed to allow the individual to start college? (Infant, toddler, after school, evenings)
  - What level of education is the individual starting at? (No high school diploma, English language learner, college-ready)
  - What keeps you from entering the workforce?
  - What do you need to be able to attend college/training program?
  - What challenges do you face when thinking of entering the workforce?

Target population: PC Workforce Development/NWSWBB Leaders

- *Key Question*: Based on industry priorities and feedback from CBOs/Clients on barriers to college/training, what innovative formats are feasible to deliver training in the most efficient way? What resources are needed?
- *The goal of this part of the study*: To identify innovative formats, incentives, and cost-effective delivery methods for training programs in priority industries.
- *Sample education questions could include*:
  - Based on industry feedback, what resources do you need to meet industry needs in these areas? Facilities, equipment, curriculum, student supports?
  - What challenges do you face when implementing new programs?
  - What resources do you need to implement industry-recommended programs?
  - Based on industry priorities and feedback from CBOs/Clients/Tribes/Tribal Members related to barriers to college/training, what innovative delivery formats might be feasible?

- How can you deliver training that meets industry standards in the most cost and time efficient way?

Budget: Not to exceed $25,000

Timeline:

- **Start date when Federal agency gives approval, likely end of January.**
- **End date: March 29, 2024**

8

AGENDA ITEM SUMMARY

FEB 20 2024

(Must be submitted NLT 3PM Wednesday for next week agenda)

21

Department: BOCC

WORK SESSION ☒ **Meeting Date: February 20, 2024**

REGULAR AGENDA ☒ **Meeting Date: February 20, 2024**

Required originals approved and attached? ☐
Will be provided on:

Item summary:

☐ Call for Hearing ☒ Contract/Agreement/MOU - Contract #

☐ Resolution ☐ Proclamation ☐ Budget Item

☐ Draft Ordinance ☐ Final Ordinance ☐ Other

Documents exempt from public disclosure attached: ☐

Executive summary:

Request Approval of Strategy Development Grant award contract by US Department of Commerce/Economic Development Administration (EDA) – SUBAWARD to Washington State University (WSU)

Clallam County, as the Lead Applicant for North Olympic Peninsula Recomplete Coalition (NOPRC) applied for the Distressed Area Recompete Pilot Program (Recompete) Phase 1 approval and the Strategy Development Grant in October 2023.

December 2023, NOPRC and Clallam County were announced as a Finalist for the Recompete Program and invited to compete in Phase 2 of the grant. Our Phase 1 plan was 1 of 22 selected from 235 nationwide applications, the largest applicant response to an EDA grant ever.

We were also awarded 1 or 24 Strategy Development Grants (SDG), from 339 applicants, to help our coalition with the further development of our Phase 2 projects. The SDG grant is for $498,729. These funds are to cover the following activities:

(1) PAEG Research - Hiring consultant Washinton State University (WSU) to perform needed research on the PAEG population using data from Employment Security Dept (ESD) and Dept of Social & Health Services (DSHS);
(2) Barrier Assessment & Development – Convene and coordinate multiple social services agencies to inventory resources available and barriers they deem need to be addressed. Develop guidance for how to effectively create navigator services to reduce barriers. Develop an PAEG outreach program;
(3) Development of Workforce Training Program – Convene Tribal and Non-Tribal representatives from education and industry to prioritize training opportunities that meet

business demand. Conduct a study of proposed programs focused on analyzing type of jobs that projects create and whether these Good Jobs are appropriately acce3ssible to people in the PAEG;

(4) Economic Impact & Feasibility Analyst – Conduct economic analysis and feasibility studies including the direct, indirect and induced job growth associated with project in NOPRC's Recompete Plan;

(5) Zoning Efforts – Update the Glen Cove Special Study from 1999 including Environmental Impact Statement. Planning work will include public outreach; and

(6) Hiring Recompete Plan Coordinator ("RPC") and staffing – Recruit RPC to facilitate the coordination of Phase 2 grant application process for NOPRC. Funding will cover salary for RPC and support staff.

WSU will be providing the PAEG Research and data sharing with ESD/DSHS in Item 1.

It has taken a long time to receive our contract from EDA and the timeline to complete this require this contract to movie forward right away and therefore we are bringing it with the others forward in this back-to-back meeting.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Budget supplemental will be brought to the BOCC for approval at prior date.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Staff recommendation is to approve the EDA Contract for the Strategy Development Grant.

County Official signature & print name: Todd Mielke Todd Mielke

Names of Relevant Departments/Employees/Stakeholders attending meeting:

Angi Klahn, Dee Boughton, NOPRC Task Force, WSU

Date submitted: February 14, 2024

RECOMPLETE – STRATEGY DEVELOPMENT GRANT
SUBRECIPIENT AGREEMENT

This Subrecipient Agreement ("Agreement") is dated as of the _____ day of _____, 2024, by and between Clallam County, a Washington political subdivision ("County"), and Washington State University, Social & Economic Sciences Research Center ("SESRC") (Federal Tax ID 91-6001108, UEI #XRJSGX384TD6), an institution of higher education and an agency of the state of Washington ("Subrecipient").

WHEREAS, the Economic Development Administration ("EDA"), U.S. Department of Commerce ("DOC") has allocated to the County $498,729.00 of federal grant funding from the Distressed Area Recompete Pilot Program ("Recompete") Phase 1 Strategy Development Grant ("SDG") as part of the authorized by the CHIPS and Science Act under ALN No. 11.040 ("SDG") under Section 29 of the Stevenson-Wydler Technology Innovation Act of 1980 as amended (15 U.S.C.& 3722b) effective June 29, 2023. FAIN #ED24OIE0G0085, identified as Attachment A,. Attachments A attached hereto and incorporated herein by this reference.

WHEREAS, the County as Lead Applicant for the North Olympic Peninsula Recompete Coalition ("NOPRC") has been applied for Phase 1 Recompete Plan Approval. EDA has selected NOPRC as one of 22 finalists from Phase 1 to compete in the Phase 2 application for Recompete Plan implementation funding. Funding if awarded would invest up to $50 million into the two-county region of Clallam and Jefferson County.

WHEREAS, the EDA authorizes the County to expend SDG Funds awarded to the County to assist in the planning and development of NOPRC's Phase 2 application. The eligible expenditures purposed as outlined in the Scope of Work are as follows:

(1) Barrier Assessment & Development – Hiring consultant to perform needed research on the Prime Age Employment Gap ("PAEG") population's barriers to employment and outreach strategies to inform design of the Recompete Plan Program;
(2) PAEG research – Hiring consultants Washington State University (WSU) to perform needed research on the PAEG population using data from Employment Security Department (ESD) and Department of Social and Health Services (DSHS);
(3) Development of Workforce Training Program – Convene Tribal and Non-Tribal representatives from education and industry to prioritize training opportunities that meet business demand. Conduct a study of proposed programs focused on analyzing type of jobs that projects create and whether these Good Jobs are appropriately acce3ssible to people in the PAEG;
(4) Economic Impact & Feasibility Analyst – Conduct economic analysis and feasibility studies including the direct, indirect and induced job growth associated with project in NOPRC's Recompete Plan;
(5) Zoning Efforts – Update the Glen Cove Special Study from 1999 including Environmental Impact Statement. Planning work will include public outreach; and

(6) Hiring Recompete Plan Coordinator ("RPC") and staffing – Recruit RPC to facilitate the coordination of Phase 2 grant application process for NOPRC. Funding will cover salary for RPC and support staff.

WHEREAS, the Subrecipient has been tasked by NOPRC with the PAEG research. The County and Subrecipient desire to enter into this Agreement so that the County may provide SDG Funds for appropriate and qualifying expenditures to the Subrecipient for PAEG research using data sets form ESD and DSHS in support of NOPRC Phase 2 application and for other reimbursement costs as specified in Attachment B.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and the terms and conditions set forth below, the parties agree as follows:

1. Effective Date and Term. This Agreement shall commence when last executed by all parties and remain in effect until April 30, 2024, unless terminated by the County in writing.

2. SDG Funds. The County agrees to provide the Subrecipient a total sum not to exceed $26,757 for the Prime Age Employment Gap (PAEG) research using ESD and DSHS data sets as specified based on eligibility criteria outlined in Attachment A ("Service Agreement") and the Scope of Work provided in Attachment B.

3. Subrecipient's Use of SDG Funds. The Subrecipient shall ensure that the SDG Funds requests are necessary Eligible Uses under one of the following cost categories:

4. Reimbursement Request & Reporting Requirements. To facilitate the release of SDG Funds by the County to the Subrecipient and the County's compliance with reporting requirements for usage of SDG funding per Attachment A, the Subrecipient may submit one A-19 equivalent request schedule per month to the County on or before the 10th day following the end of each calendar month during the term of the Agreement, detailing the expenditures disbursed by the Subrecipient based on eligible criteria, outlined in Attachment B. The County shall then distribute SDG Funds, as requested by the Subrecipient. Such schedule may be modified with the prior approval of the County. Failure to provide any of the required documentation may result in the withholding and/or nonpayment of all or a portion of the request, and termination of the Agreement.

5. Termination. The County may terminate this Agreement, for convenience or otherwise and for no consideration or damages, upon prior notice to the Subrecipient.

6. Independent Contractor. Each party under the Agreement shall be for all purposes an Independent Contractor. Nothing contained herein will be deemed to create an association,

a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties. The Subrecipient shall not be, or be deemed to be, or act or purport to act, as an employee, agent, or representative of the County for any purpose.

7. Indemnification. The Subrecipient agrees to defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers harmless from and against any and all claims, injuries, damages, losses or expenses including without limitation personal injury, bodily injury, sickness, disease, or death, or damage to or destruction of property, which are alleged or proven to be caused in whole or in part by an act or omission of the Subrecipient, its officers, directors, employees, and/or agents relating to the Subrecipient's performance or failure to perform under this Agreement. The section shall survive the expiration or termination of this Agreement.

8. Compliance with Laws, Guidelines. The Subrecipient shall comply with all federal, state, and local laws and all requirements (including debarment and other required certifications and audits) of the Uniform Administrative Requirements, Cost Principles and Auditor Requirements for Federal Awards as set forth in 2 C.F.R. part 200 and Attachment A.

9. Maintenance and Audit of Records. The Subrecipient shall maintain records, books, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review and audit by the County or its designee, the Washington State Auditor's Office and as required by the Uniform Guidance for five (5) years following termination of this Agreement. If it is determined during the course of the audit that the Subrecipient was reimbursed for unallowable costs under this Agreement, the Subrecipient agrees to promptly reimburse the County for such payments upon request.

10. Notices. Any notice desired or required to be given hereunder shall be in writing, and shall be deemed received three (3) days after deposit with the U.S. Postal Service, postage fully prepaid, certified mail, return receipt requested, and addressed to the party to which it is intended at its last known address, or to such other person or address as either party shall designate to the other from time to time in writing forwarded in like manner:

Subrecipient
Washington State University
Social & Economic Sciences Research Center
Attn: Mary Boyd, Director of Administrative Services
PO Box 644014
Pullman, WA 99163-4014

Clallam County
Attn: RPC and Angi Klahn, BOCC Analyst
223 E 4th St, Suite 4
Port Angeles, WA 98362-3015

11. Improper Influence. Each party warrants that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.

12. Conflict of Interest. The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

13. Time. Time is of the essence in this Agreement.

14. Survival. The provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive. Those provisions include without limitation Indemnification and Maintenance and Audit of Records.

15. Amendment. No amendment or modification to the Agreement will be effective without the prior written consent of the authorized representatives of the parties.

16. Governing Law; Venue. The Agreement will be governed in all respects by the laws of the Washington State, both as to interpretation and performance, without regard to conflicts of law or choice of law provisions. Any action arising out of or in connection with the Agreement may be instituted and maintained only in a court of competent jurisdiction in Clallam County, Washington or as provided by RCW 36.01.050.

17. Non-Waiver. No failure on the part of the County to exercise, and no delay in exercising, any right hereunder shall operate as a wavier thereof; nor shall any single or partial exercise by the County of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to the County at law or in equity.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

19. Assignment. The Subrecipient shall not assign or transfer any of its interests in or obligations under this Agreement without the prior written consent of the County.

20. Entire Agreement. This Agreement constitutes the entire agreement between the County and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the parties with respect to this Agreement.

21. No Third Party Beneficiaries. Nothing herein shall or be deemed to create or confer any right, action, or benefit in, to, or on the part of any person or entity that is not a party to this Agreement. This provision shall not limit any obligation which either Party has to Treasury

in connection with the use of SDG Funds, including the obligations to provide access to records and cooperate with audits as provided in this Agreement.

22. Severability. In the event that one or more provisions of this Agreement shall be determined to be invalid by any court of competent jurisdiction or agency having jurisdiction thereof, the remainder of the Agreement shall remain in full force and effect and the invalid provisions shall be deemed deleted.

23. Counterparts. This Agreement may be executed in one or more counterparts, any of which shall be deemed an original but all of which together shall constitute one and the same instrument.

24. Authorization. Each party signing below warrants to the other party, that they have the full power and authority to execute this Agreement on behalf of the party for whom they sign.

IN WITNESS WHEREOF, this Agreement is executed and shall become effective as of the last date signed below.

DATED this _____ day of _____, 2024.

SUBRECIPIENT

By: _____

Print Name: Mary Boyd

Its: Director of Administrative Services – Office of Research

DATED this _____ day of _____ _____, 2024.

BOARD OF COUNTY COMMISSIONERS
CLALLAM COUNTY, WASHINGTON

_____
MIKE FRENCH, Chair

RANDY JOHNSON, Commissioner

MARK OZIAS, Commissioner

ATTEST:

L. Gores, Clerk of the Board

APPROVED AS TO FORM by DPA Boughton

ATTACHMENT A

INTERAGENCY GRANT AGREEMENT BETWEEN
EDA AND CLALLAM COUNTY

Department of Commerce
Economic Development Administration

Notice of Award (NoA)
ED24OIE0G0085

RECIPIENT INFORMATION

1. **Recipient Name(s)**
   Clallam County
   223 E 4th St, Suite 4 Port Angeles, WA 98362-3000 US
2. **Congressional District of Recipient**
   WA-06
3. **Employer Identification Number (EIN)**
   916001298
4. **UEI**
   JV6JJNELRBS5
5. **Recipient POC**
   Angi Klahn
   angi.klahn@clallamcountywa.gov
6. **Authorized Official**
   Todd Mielke
   todd.mielke@clallamcountywa.gov

FEDERAL AGENCY CONTACT INFORMATION

7. **Grant Specialist**
   Michael Jones
   mjones3@eda.gov
8. **Program Officer**
   Asia King
   aking2@eda.gov
9. **Grant Officer**
   Scott Andes
   sandes@eda.gov

FEDERAL AWARD INFORMATION

10. **Award Number / FAIN**
    ED24OIE0G0085
11. **Award Type**
    Grant
12. **Period of performance Start Date & End Date**
    02/01/2024 - 01/31/2027
13. **Federal Share of Cost**
    $498,729
14. **Recipient Share of Cost**
    $0
15. **Total Federal and Recipient Cost**
    $498,729

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16. **Statutory Authority**
    Distressed Area Recompete Pilot Program (Recompete Pilot Program), as authorized by section 29 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. § 3722b)
17. **NOFO/RFA #**
    EDA-RECOMPETEPHASE1-2023
18. **Project Title**
    North Olympic Peninsula Recompete Plan
19. **Assistance Listing Number and Name**
    11.040 - Distressed Area Recompete Pilot Program
20. **Award Action Type**
    New Competing
21. **Multiyear Award?**
    No
22. **R&D Award?**
    No
23. **Construction Award?**
    No
24. **Grants Officer – Signature and Date**
    – Scott Andes 2/12/24
25. **Recipient – Signature and Date**
    –

Approved as to form only by:
Bert Dee Boughton
Civil Deputy Prosecuting Attorney
Clallam County

BY ACCEPTING THIS AWARD, THE RECIPIENT IS AFFIRMING THAT IT WILL COMPLY WITH ALL THE TERMS AND CONDITIONS OF THE AWARD. THE AWARD MUST BE ACCEPTED BY THE APPLICANT'S AUTHORIZED OFFICIAL.

RECIPIENT NAME: Clallam County
PROJECT TITLE: North Olympic Peninsula Recompete Plan
AWARD NUMBER: ED24OIE0G0085

This Notice of Award includes the following sections and incorporates all regulations, documents and authorities referenced therein.

I. BUDGET INFORMATION
II. STANDARD TERMS AND CONDITIONS
III. SPECIFIC AWARD CONDITIONS
IV. OTHER

Should there be a discrepancy among these documents, the Specific Award Conditions, including any references, shall control.

SECTION I – BUDGET INFORMATION

The following is the Authorized Budget for this award. Reference Section III – Specific Award Conditions for conditions related to the Authorized Budget.

Authorized Budget

Estimated Funding ($)	Proposed	Approved
Federal Share (EDA Amount)	$ 498,729.00	$ 498,729.00
Non-Federal Matching Share	$ 0.00	$ 0.00
Total Project Costs	**$ 498,729.00**	**$ 498,729.00**

Non-Construction

Cost Classification	Proposed	Approved
Personnel	$ 98,537.93	$ 98,537.93
Fringe Benefit	$ 34,488.28	$ 34,488.28
Travel	$ 2,620.00	$ 2,620.00
Equipment	$ 0.00	$ 0.00
Supplies	$ 2,800.00	$ 2,800.00
Contractual	$ 360,282.79	$ 360,282.79
Construction	$ 0.00	$ 0.00
Other	$ 0.00	$ 0.00
Indirect Charges	$ 0.00	$ 0.00
Total Project Costs	**$ 498,729.00**	**$ 498,729.00**

SECTION II – STANDARD TERMS AND CONDITIONS

The following regulations and standard terms and conditions apply to this award:

□ 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements, as Adopted Pursuant to 2 CFR § 1327.101 for Federal Awards
□ Department of Commerce Financial Assistance Standard Terms and Conditions
□ Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements
□ 13 CFR Chapter III Economic Development Administration, Department of Commerce Regulations
□ Other:

SECTION III – SPECIFIC AWARD CONDITIONS

The following Specific Award Conditions apply to this award:
See attached.

SECTION IV – OTHER

ATTACHMENT 1

Authorized Scope of Work

Recipient: **Clallam County**
Award Number: **ED24OIE0G0085**
Recompete Pilot Program – Strategy Development Grant

Executive Summary:

North Olympic Peninsula Recompete Coalition (NOPRC) will use the Strategy Development Funding to research the Prime Age Employment Gap (PAEG) in our two underserved and distressed counties to determine the barriers they face preventing their participation in the workforce and how they may be alleviated. The research will guide the design of an innovative and effective navigator and outreach program to bring people in the PAEG back into the workforce. This PAEG study will also tie into research being done through Peninsula College to design programs that meet both the low barrier needs of the PAEG and the current and future workforce training needs of industry employers. NOPRC will use funds to convene Tribal, industry, and workforce training representatives to guide the development of these programs. Funding will also be used to perform economic analysis and feasibility studies for the job creation projects in our Recompete Plan. These studies will seek to determine their direct, indirect, and induced job growth capabilities, their impact on the PAEG populations we are trying to reach with this program, and that jobs created will meet the criteria of "Good Jobs."

Funding will also support the salary for the Recompete Plan Coordinator (RPC) position and support staff. The RPC will be an integral leadership position to manage, develop, and coordinate the multiple projects within our Recompete Plan.

Summary of Activities:

Activity Title	Short Description of Activity	Output(s) / Deliverable(s)	Responsible Organization(s) / Individual(s)	Approximate Start / End Date
PAEG research	Hiring consultant Washinton State University (WSU) to perform needed research on the PAEG population using data from Employment Security Dept (ESD) and Dept of Social & Health Services (DSHS).	Preliminary Findings Report to be used to design navigator and outreach program for Phase 2 application. Plan for continued monitoring to	Clallam County	2/1/2024 to 6/30/2024

		measure plan progress.		
Barrier Assessment, Development Navigator Program & Outreach	Convene and coordinate multiple social services agencies to inventory resources available and barriers they deem need to be addressed. Develop guidance for how to effectively create navigator services to reduce barriers. Develop an PAEG outreach program.	Comprehensive inventory of programs and resources available to use. Development of navigator program.	Clallam County, EDC Team Jefferson, Jefferson County	2/1/2024 to 6/30/2024
Development of Workforce Training Program	Convene Tribal and Non-Tribal representatives from education and industry to prioritize training opportunities that meet business demand. Conduct a study of proposed programs focused on analyzing types of jobs these projects create and whether these Good Jobs are appropriately accessible to people in the PAEG.	An actionable report to guide higher education institutions (Peninsula College and NW School of Wooden Boatbuilding) to customize their job training programs to support local economic development.	Peninsula College	2/1/2024 to 6/30/2024
Economic Impact & Feasibility Analyst.	Conduct economic analysis and feasibility studies including the direct, indirect, and induced job growth associated with projects in NOPRC's Recompete Plan.	Preliminary Economic Analysis Reports to guide programs to be included in Recompete Plan moving forward. Finalized report to follow on project moving forward.	Clallam County Economic Development Council	2/1/2024 to 5/31/2024
Zoning Efforts	Update the Glen Cove Special Study from 1999 including Environmental	Preliminary Updated Special Study Report for	Jefferson County	2/1/2024 to 6/30/2025

	Impact Statement. Planning work will include public outreach.	Glen Cove UGA boundary adjustment. Documentation of engagement results. Finalized report to follow to inform the Comprehensive Plan Periodic Update.		
Hiring Recompete Plan Coordinator and staffing	Recruit Recompete Plan Coordinator.	Successfully retaining qualified candidate.	Clallam County	2/1/2024 to 12/31/2024
Recompete Plan Development, Coordination and Management	Development overall Recompete Plan and projects, coordinate projects and manage the overall process for NOPRC. Funding will cover salary for RPC and support staff for grant/subaward management.	Strategically developed and coordinated Recompete Plan.	Clallam County	2/1/2024 to 12/31/2024

Lead Applicant Name:	Clallam County
Application ID ("EDA-APP# ..." from EDGE):	EDA-APP#00002863

Authorized Staffing Plan

Staffing Plan - Budget						Year 1	Year 2	Year 3	Checkpoint
Name	Annual Salary/Rate	% of Annual Hours for project	Annual $ from Award	Number of Years	Total Cost by Employee				Does breakdown match your total? (Column G)
Recompete Plan Coordinator - TBD	$110,688	100%	$110,688	0.75	$83,016	$83,016		$0	$ 83,016.00
BOCC Lead Analyst	$84,358	20%	$16,872	0.92	$15,522	$15,522		$0	$ 15,521.93
Employee 3	$0	0%	$0	0.00	$0	$0	$0	$0	$ -
Employee 4	$0	0%	$0	0.00	$0	$0	$0	$0	$ -
Employee 5	$0	0%	$0	0.00	$0	$0	$0	$0	$ -
Employee 6	$0	0%	$0	0.00	$0	$0	$0	$0	
Total Personnel Costs					**$98,538**	**$ 98,537.93**	$ -	$ -	$ 98,537.93
Total Fringe Costs (Please Provide the Basis for Fringe Calculations)				35.00%	**$34,488**	**$ 34,488.28**	$ -	$ -	$ 34,488.28

See Attached Schedule A

Staffing Plan - Narrative		
Name	Title	Project Responsibilities
Employee 1 - TBD	Recomplete Plan Coordinator	The Recompete Plan Coordinator will hold a pivotal role in our organization, tasked with facilitating an inclusive community process, strategically managing government contracts and coordination for the multiple projects being developed under the Recomplete Plan.
Employee 2 - Angi Klahn	BOCC Lead Analyst	Angi has 25+ years of accounting experience. She also has grant management, SEFA preparation, and subaward monitoring experience. She will handle the grant management, monitoring and fiscal responsibilities for the Strategy Development Grant.
Employee 3		
Employee 4		
Employee 5		
Employee 6		

SPECIFIC AWARD CONDITIONS
U.S. DEPARTMENT OF COMMERCE
Economic Development Administration (EDA)

NON-CONSTRUCTION PROJECTS: Distressed Area Recompete Pilot Program under Section 29 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended, 15 U.S.C. § 3722b.

Recipient: Clallam County
Award Number: ED24OIE0G0085
Project Name: North Olympic Peninsula Recompete Plan
Distressed Area Recompete Pilot Program (Recompete): Phase 1 Strategy Development Grants

1. **SCOPE OF WORK:** This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award as the *Authorized Scope of Work* (Attachment 1). All work on this project must be consistent with the *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work memorialized in writing through execution of an amendment to the Notice of Award.

2. **UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS:** Along with other controlling law, this Award is governed by the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) as set forth in 2 C.F.R. part 200.

3. **PROJECT CONTACT INFORMATION:** The Recipient agrees to notify EDA promptly of any changes to the Recipient's contact information as specified in the Notice of Award.

4. **ADDITIONAL INCLUDED DOCUMENTS (Non-construction):** In addition to the regulations, documents, or authorities incorporated by reference on the Notice of Award, the following additional documents are hereby incorporated by reference into this Award:

    i. The Recipient's application, including any attachments, Project descriptions, schedules, and subsequently submitted supplemental documentation

    ii. *Authorized Scope of Work* (Attachment 1)

    iii. *Authorized Staffing Plan* (Attachment 2)

    Should there be a discrepancy among these documents, these Specific Award Conditions shall control.

5. **PROJECT DEVELOPMENT TIME SCHEDULE (B2S/STEM):** The Recipient agrees to the following Project development time schedule:

   i. Return of executed Notice of Award (NoA) or Amendment due no later than (NLT) 30 calendar days after receipt of NoA/Amemdment

   ii. ii. Scheduling of Kick-Off Meeting must occur NLT 30 calendar days after receipt of NoA/Amendment

   iii. iii. Finalization of Work Schedule must occur NLT than the date of the Kick-Off Meeting

   iv. iv. Submission of Final Project Progress Report due NLT 120 calendar days from the Award End Date, i.e., the latest date set forth in the "period of performance" field on the NoA or as later memorialized through an Amendment

   v. v. Submission of Final Financial Documents (Form SF-425) due NLT 120 calendar days from the Award End Date.

   The Recipient shall diligently pursue the development and implementation of the Project upon receipt of the Award so as to ensure completion within this time schedule. Moreover, the Recipient shall promptly notify EDA in writing of any event that could substantially delay meeting any of the milestones or deadlines for the Project as set forth above. The Recipient further acknowledges that failure to meet the development time schedule may result in EDA imposing remedies for noncompliance, including termination of the Award, in accordance with the regulations set forth at 2 C.F.R. §§ 200.339 through 200.343.

6. **FINANCIAL DISBURSEMENT INSTRUCTIONS (B2S/STEM)**: EDA will make Award payments using the Department of the Treasury's Automated Standard Application for Payments (ASAP) system. The Recipient is required to furnish documentation as required by ASAP including but not limited to Recipient and Requestor Identification Numbers. Complete information concerning the ASAP system may be obtained by visiting www.fms.treas.gov/asap.

   In order to receive payments, the Recipient must submit Form SF-270 (Request for Advance or Reimbursement) for the applicable period electronically. The Project Officer will review and process the request.

   Prior to the initial disbursement, the Recipient must complete Form SF-3881 (ACH Vendor/Miscellaneous Payment Enrollment Form). The form must be completed by the respective parties (EDA, Recipient's Bank, and Recipient) at the start of the Award. EDA will provide instructions for submitting the form during the project kick-off meeting.

7. **REPORT SCHEDULE:** The Recipient agrees to report to EDA on the Project's performance and impacts as summarized as follows:

    i. During the Period of Performance:

        a. Progress Reports and Financial Status Reports – Semiannually, for the periods ending March 31 and September 30.

        b. Outputs Questionnaire (Form ED-916) – Semiannually, six months after the date the period of performance begins and every six months thereafter, or as otherwise directed by EDA.

        c. Outcomes Questionnaire (Form ED-918) -- Annually, one year after the date the period of performance begins and annually thereafter for a total of five years, or as otherwise directed by EDA (note that this obligation may extend beyond award closeout).

    ii. At the Expiration of the Period of Performance but Before Award Closeout: Progress Reports and Financial Status Reports – One time, within 120 calendar days after the Award End Date.

    iii. After Award Closeout: Report on the Outcomes Questionnaire annually, until the end of the fifth year after the date the period of performance begins, or as otherwise directed by EDA.

Timely submission of all above-described reports is a condition of this award. Per 2 CFR § 200.344, the Recipient must submit, no later than 120 calendar days after the end of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the award. If the Recipient fails to submit all required reports to EDA within one year of the period of performance end date, EDA will report the material failure to comply with the OMB-designated integrity and performance system (formerly FAPIIS) and/or pursue other enforcement actions per 2 CFR § 200.339.

8. **PROJECT PROGRESS REPORTS:** The Recipient agrees to provide the Project

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

Progress Reports must be submitted to EDA via EDA's Grants Management Portal in a concise, clear format that outlines the following information in three to six pages:

1. A clear, concise overview of the activities undertaken during the reporting period. For each activity, provide the name of the activity, the dates of the activity, a summary of the activity, and an explanation of outcomes the activity advances (e.g., preparing a competitive Phase 2 application, identifying other funding mechanisms to implement

Recompete strategy, building out a clear plan that increases prime age employment and per capita wages).

2. A description of anticipated activities for the next reporting period.
3. An outline of challenges that currently impact or could impact progress on the Project over the next reporting period and means of mitigating this risk. Please highlight any areas where EDA assistance is needed to support the project (e.g., connections to subject matter experts or other resources, amplifications of activities or impacts).
4. A description of at least one success story from the reporting period.
5. Any other key information that would be helpful to your EDA Project Officer.

9. **FINAL PROJECT PROGRESS REPORT (B2S/STEM):** The final Progress Report must be submitted to EDA no more than 120 calendar days after the Award End Date and these reports or any part of the information contained therein may be posted on EDA's website, used for promotional materials or policy reviews, or may be otherwise shared. Recipient must clearly identify any information that may constitute a trade secret or may be commercial or financial information that is confidential or privileged in these reports. There is no minimum or maximum page requirement for the **final Progress Report**; however, the final Progress Report should concisely yet completely communicate key Project information as follows:

    a. the specific regional need that the Project was designed to address and progress made during the period of performance and beyond that has mitigated or will mitigate that need and advance economic development;
    b. a high-level overview of the activities undertaken;
    c. details of lessons learned during the period of performance that may be of assistance to EDA or other communities undertaking similar efforts;
    d. the expected and actual economic benefits of the Project at the time that the Report is written; and
    e. any other key information from the period of performance.

10. **FINANCIAL REPORTS:** Financial Status Reports (SF-425) must be submitted to EDA on a semi-annual basis via EDA's Grants Management Portal for the reporting periods ending March 31 and September 30, or any portion thereof if applicable, for the period of performance set forth in the Notice of Award or as later memorialized through a mutually agreed-upon Amendment to the Award. Form SF-425 (and instructions for completing this form) is available at: https://www.grants.gov/forms/post-award-reporting-forms.html. Reports are due no later than 30 calendar days following the end of the reporting period.

11. **FINAL FINANCIAL REPORT (Non-construction):** A **final** Form SF-425 must be submitted to EDA no more than 120 calendar days after the Authorized Award End Date specified on the Notice of Award (or any subsequently executed Amendment to the Notice of

Award). Final Financial Reports should follow the instructions for submitting mid-term Financial Status Reports, but should also ensure that all fields accurately reflect the total outlays for the entire project period and that all matching funds and program income (if applicable) are fully reported. Determination of the **final grant rate and final balances owed to the government will be determined based on the information on the final Form SF-425, so it is imperative that it be submitted in a timely and accurate manner.**

12. **PERFORMANCE MEASURES:** The Recipient agrees to provide EDA with:

(1) Form ED-916 (Outputs Questionnaire) on a semiannual basis, and

(2) Form ED-918 (Outcomes Questionnaire) on an annual basis.

All Outputs Questionnaires and Outcomes Questionnaires should be submitted via a web-based information collection system to be provided by EDA

Outputs Questionnaires (Form ED-916) must be submitted to EDA on a semi-annual basis during the period of performance or as otherwise directed by EDA. The first Outputs Questionnaire must be submitted to EDA six months after the date the period of performance starts, as set forth in the Notice of Award or as later memorialized through an Amendment. The Outputs Questionnaire must be submitted to EDA every six months thereafter through the end of the Period Performance, or any portion thereof if applicable, or as otherwise directed by EDA.

Outcomes Questionnaires (Form ED-918) must be submitted to EDA on an annual basis for a total of five years after the date the period of performance starts, including after Award closeout. The first Outcomes Questionnaire must be submitted to EDA one year after the date the period of performance starts, as set forth in the Notice of Award or as later memorialized through an Amendment. The Outcomes Questionnaire must be submitted to EDA at the end of every year thereafter for a total of five years, or as otherwise directed by EDA.

Note that EDA may revise or replace the Outputs Questionnaire and/or the Outcomes Questionnaire at any time during or following the period of performance. The Recipient agrees to report on program performance measures and program outcomes in such form and at such intervals as may be prescribed by EDA.in compliance with the Government Performance and Results Act (GPRA) of 1993 and the Government Performance and Results Modernization Act of 2010 (collectively, GPRA Reports). Recipient must collect sufficient data and retain sufficient documentation to enable Recipient to submit these required GPRA Reports. **Failure to submit the required GPRA Reports can adversely impact the ability of the Recipient to secure future funding from EDA.** Recipient must retain sufficient data and records to comply with the above reporting requirements at least through the end of the fifth year after the date the period of performance starts, or longer if necessary to comply with the above reporting requirements.

13. **ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined after the final financial documents are submitted in accordance with the applicable authorities specified on the Notice of Award, including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. part 200, and the Authorized Budget. Except as otherwise expressly provided for within these Specific Award Conditions, the federal share of the allowable costs will be based on the Investment Rate for the Award, as established on the Notice of Award or any subsequent Amendment. In the event of an underrun in total allowable costs for this project, the federal share of allowable costs will be determined by the Investment Rate. The federal share of total allowable costs may not exceed the dollar amount specified on the original Award or any subsequent amendments.

14. **FEDERAL SHARE:** The EDA participation in total eligible project costs will be limited to the lesser of the EDA grant amount or the EDA share of total allowable project costs (as stated on the Notice of Award or the most recent Amendment).

15. **REFUNDS, INTEREST, OR UNUSED FUNDS:** If the Recipient needs to return money to EDA, it may use one of the following two methods:

    i. The first is the pay.gov website, which allows the Recipient to pay EDA online. The Recipient will have the option to make a one-time payment or to set up an account to make regular payments.

    ii. The second is paper check conversion. All checks must be made payable to "Department of Commerce, Economic Development Administration" and include the award number and a description of no more than two words identifying the reason for the payment. A copy of the check should be provided to the EDA Project Officer. The check should be mailed to NOAA's Accounting Office, which processes EDA's accounting functions, at the following address:

    NOAA OCFO

    Attn: Finance Office, Travel Dept.

    1315 East West Highway, SSMC3

    Silver Spring, MD 20910

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

16. **ADDITIONAL DOCUMENTATION REQUIRED FOR AWARD COMPLIANCE (Tech Hubs):** Recipient agrees to provide any additional documentation or information required by EDA to confirm compliance of this Award with applicable laws, regulations, and policies and to do so within reasonable deadlines set by EDA. In the event Recipient fails to provide the required documentation in a timely manner, EDA may exercise the remedies provided at 2 C.F.R. §§ 200.339–200.343, up to and including termination.

17. **PROJECT AND PROGRAM EVALUATION:** As part of the process of validating and monitoring the Award and the performance information provided by the Recipient, and as a general method of evaluating the Award and the Recompete Program, EDA reserves the right to conduct project and program evaluations through site visits and/or survey(s) during or after the period of performance. Such evaluations may be conducted by outside parties associated with EDA or by EDA staff. Recipient agrees to participate in the evaluation by answering the evaluator's questions and furnishing information as requested. Evaluators will maintain the confidentiality of business information as required and appropriate. Recipient agrees to provide data and client management system information to facilitate evaluations. For site visits, EDA will provide the Recipient at least two weeks of notice prior to a visit, unless exigent circumstances warrant otherwise. The site visit may include interviews with Recipient's staff or visits with Project clients.

18. **USE OF INFORMATION:** EDA reserves the right to use information contained in the Recipient's Application as well as all reports and performance data submitted by the Recipient to undertake an evaluation of the Program. The Recipient agrees to cooperate with such evaluations, including by sharing performance information that they have collected or will collect as part of their grant activities, including performance information for Project clients.

19. **PROCUREMENT:** The Recipient agrees that all procurement transactions shall be in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. §§ 200.317–200.327. Any noncompetitive procurement requires prior approval from EDA.

20. **SUBAWARDS (B2S/STEM/RLF):** Certain award activities funded under this Award may be accomplished through a subaward by the Recipient to a Subrecipient. Prior EDA permission is needed to include, add, or change a subrecipient. Prior to the award of any subaward or subrecipient performing any work funded through this Award, the Recipient must provide documentation satisfactory to EDA that the proposed subrecipient(s) and any additional or successor subrecipient(s)are eligible to receive EDA assistance. EDA will provide written notice regarding whether the documentation is satisfactory to EDA. No change may be made to the identity of the subrecipient or the scope of the proposed

subaward without prior EDA approval. Subaward are not permitted without EDA prior approval.

Before a subrecipient undertakes any work to be funded through this Award, the Recipient shall enter into a written subaward agreement with the Subrecipient that meets the requirements of 2 C.F.R. § 200.332(a) and includes a requirement that the subrecipient comply with all of the terms and conditions of this Award, including but not limited to the Standard and Specific Award conditions and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. part 200). EDA may disallow any costs incurred by the subrecipient prior to executing the subaward agreement. The Recipient shall be responsible for monitoring the Subrecipient's performance under the subaward in accordance with the requirements of 2 C.F.R. § 200.332. The Recipient is also responsible for ensuring that any subrecipient of a subaward exceeding $100,000 executes form CD-511, Certification Regarding Lobbying, and for retaining a copy of the executed certification. As required by form CD-511, subrecipients must report lobbying activities, if any, to the Recipient on Form SF-LLL. The Recipient is responsible for promptly providing EDA with a copy of any Form SF-LLL submitted by a subrecipient.

The Recipient is responsible for reporting the Federal Subaward Reporting System (FSRS) available at www.FSRS.gov on all subawards over $30,000. Please see the OMB guidance published at 2 C.F.R. part 170, which can be accessed at https://www.govinfo.gov/content/pkg/CFR-2022-title2-vol1/pdf/CFR-2022-title2-vol1-part170.pdf. Appendix A of 2 C.F.R. part 170 is incorporated by reference into these Specific Award Condition.

21. **NONRELOCATION (Non-Construction):** In signing this Award, the Recipient attests that EDA funding is not intended by the Recipient to assist efforts to induce the relocation of existing jobs within the U.S. that are located outside of its jurisdiction to within its jurisdiction in competition with other U.S. jurisdictions for those same jobs. In the event that EDA determines that its assistance was used for such purposes, EDA reserves the right to pursue appropriate enforcement actions in accord with 2 C.F.R. §§ 200.339 through 200.343 and the DOC STCs, including suspension of disbursements and termination of the Award which may include the establishment of a debt requiring the Recipient to reimburse EDA.

22. **REAFFIRMATION OF APPLICATION:** Recipient acknowledges that Recipient's application for this Award may have been submitted to EDA and signed by Recipient, or by an authorized representative of Recipient, electronically without providing an original "wet" signature. In addition, the Recipient or an authorized representative of Recipient may have accepted the Award electronically, which includes drawing down any funds under this Award. Regardless of who submitted the Application to EDA or the means by which Recipient submitted the Application or accepted the Award, Recipient hereby reaffirms and states that:

A. All data in the Application were true and correct when the Application was submitted and remain true and correct as of the date of this Award;

B. The Application was, as of the date of submission and the date of this Award, duly authorized as required by local law by the governing body of the Recipient; and

C. Recipient has read, understood, and will comply with all terms of this Award, including the Assurances and Certifications submitted with, or attached to, the Application and through the System for Award Management (SAM.gov).

The Recipient agrees to immediately notify the EDA of any material changes to the Application within 30 calendar days of the date the Recipient becomes aware of such changes. For purposes of this provisions, the term "Application" includes all documentation and any information provided to EDA as part of, and in furtherance to, the request for funding, including submissions made in response to information requested by EDA after submission of the initial Application.

23. **FREEDOM OF INFORMATION ACT (FOIA)**: EDA is responsible for meeting its Freedom of Information Act (FOIA) (5 U.S.C. § 552) responsibilities for its records. DOC regulations at 15 C.F.R. part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications and other information submitted by applicants and recipients may be released in response to a FOIA request. The Recipient should be aware that EDA may make certain application information publicly available. Accordingly, the Recipient should notify EDA if it believes any Application information to be confidential.

24. **WASTE, FRAUD AND ABUSE:** Consistent with 2 C.F.R. part 200, at EDA's direction, at any time(s) during the estimated useful life of the Project, Recipient's key personnel will take a training on preventing waste, fraud and abuse as provided by the Government. Key personnel include those responsible for managing the Recipient's finances and overseeing any contractors, sub-contractors or sub-grantees (for financial matters and/or general oversight related to this Project). EDA will provide instructions on when and how to take the training. Within 60 days of the date of Award, the Recipient shall provide to the Project Officer all Certificates of Completion for the Waste, Fraud, and Abuse training. In the event there are co-recipients of this Award, the obligations in the Specific Award Condition shall apply to all recipients whether or not designated in this Award as the Lead Recipient.

Further, Recipient will monitor award activities for common fraud schemes (hereinafter "Fraud Schemes"), such as but not limited to:

- false claims for materials and labor,
- bribes related to the acquisition of materials and labor,

- product substitution,
- mismarking or mislabeling on products and materials, and
- time and materials overcharging.

Should Recipient detect any Fraud Schemes or any other suspicious activity, Recipient will contact the EDA staff listed above and the Department of Commerce, Office of Inspector General, as indicated at https://www.oig.doc.gov/Pages/Contact-Us.aspx, as soon as possible.

25. **USE OF EDA'S RECOMPETE LOGO:** EDA has developed a logo for EDA programming under the Distressed Area Recompete Pilot Program ("Recompete Logo"). Recipient may use the Recompete Logo pursuant to the below terms and conditions for the following limited purposes:

    - Press releases, social media posts, and websites that build awareness of this Award (note that some advertising and marketing activities are not allowable costs under federal awards as provided at 2 CFR 200.421); and
    - Work products and deliverables developed under this Award (e.g., tools, publications, resource guides, brochures, PowerPoint presentations, technical assistance materials).
    - Recipient may not use the Recompete Logo for other purposes, including lobbying or issue advocacy, endorsing a product or organization, or communications to elected officials or federal agencies. Recipient may not use the Recompete Logo in a negative or defamatory manner. Recipient must request and obtain EDA permission prior to certain uses of the Recompete Logo (see paragraph B, below).

A. Grant of License: EDA hereby grants to Recipient a non-exclusive, royalty-free right to use the Recompete Logo for the limited purposes described above (the "License"). Recipient agrees that: (1) the Recompete Logo will not be used in a way that would suggest that it is the property of Recipient or any other third party, and (2) Recipient will include the following notice in conjunction with its use of the Recompete Logo, as appropriate: "The Recompete Logo is a trademark of the Economic Development Administration, used with permission." This License does not grant Recipient the right to use any seal, emblem, logo, or other symbol of the U.S. Department of Commerce or EDA that is not the Recompete Logo.

B. Required Approvals for Certain Uses of the Recompete Logo: Before Recipient uses the Recompete Logo for press releases and related materials, Recipient shall send a sample of each print, product, design, or other work to show the proposed use to the EDA Recompete Public Affairs Specialist (whose contact information may be obtained from the Project Officer for this Award). Recipient shall not use the Recompete Logo for the above uses until receiving written approval (including via email) from EDA of the proposed use.

C. Quality Control: EDA shall have the right, at all reasonable times, to inspect Recipient's goods, services, and promotional activities employing the Recompete Logo to ensure that such use is of proper quality and otherwise consistent with this License.

D. Duration and Termination: The License shall terminate on the Award End Date. Recipient may request a renewal of the License for an additional term subject to the express written consent of EDA. Such consent shall be in the form of a properly executed agreement signed by authorized signatories of EDA and Recipient. Upon termination of the License, all rights of Recipient to use the Recompete Logo shall immediately terminate. EDA may terminate the License unilaterally and without cause at any time, including if EDA determines that Recipient's use of the Recompete Logo is inconsistent with the License.

E. Validity and Ownership of Recompete Logo: Recipient acknowledges and agrees that EDA is the owner of all right, title, and interest in the Recompete Logo, and all such right, title, interest, and ownership shall remain with EDA. Recipient further acknowledges that Recipient shall not acquire any right, title, interest, or ownership in the Recompete Logo by virtue of the License or use other than the license granted hereunder and disclaims any such right, title, interest, or ownership. Recipient is prohibited from interfering with EDA's rights in the Recompete Logo, including challenging EDA's use, registration of, or application to register the Recompete Logo alone or in combination with other words or designs, as a U.S. or foreign trademark anywhere in the world. Recipient is further prohibited from attempting to register the Recompete Logo, any derivatives thereof, or any confusingly similar mark, whether or not registered by EDA, alone or in combination with other words or designs, as a U.S. or foreign trademark or as a part of a domain name.

F. Assignments and Sub-Licenses: The License is not assignable, and any attempt by Recipient to assign any portion of the License shall be deemed a breach of the License and will result in immediate termination of the License. Recipient may subcontract, thereby engaging in a limited sublicensing arrangement as applicable, for manufacturing and distribution activities under the License; Recipient shall provide notice to EDA—and must receive prior approval from EDA—of any such subcontract prior to manufacturing and distribution activities.

G. Governing Law: The License shall be interpreted and implemented in accordance with the Federal common law as interpreted by the U.S. District Court for the District of Columbia, without giving effect to any conflict of law principle that would result in the application of the substantive law of another jurisdiction.

H. Indemnification: Recipient agrees to indemnify and hold EDA harmless from any and all claims, damages, and attorneys' fees arising from the use of the Recompete Logo by the Recipient and its operations, except to the extent that any such claims, damages, or attorneys' fees arose in connection with any act or failure to act by the U.S. Department of Commerce or any agency, department, or subdivision thereof.

I. Obtaining the Recompete Logo: For an electronic version of the Recompete Logo, Recipient should contact the EDA Recompete Public Affairs Specialist (whose contact information may be obtained from the Project Officer for this Award).

26. STAFFING CHANGES: The Authorized Staffing Plan sets forth Recipient staff primarily responsible for administering this Award. In the event of a change in the professional staff positions primarily funded with the EDA grant, Recipient shall provide the name of the individual selected to fill the position to the Project Officer and a copy of their resume within 30 business days of the selection.

27. CONFLICT OF INTEREST: The Recipient must maintain a written and enforced conflict of interest policy. The policy should at a minimum address actual or potential personal (e.g., employees, agents, members of their immediate family) or organizational conflicts of interest in the performance or administration of the Award. Conflicts of interest may include, but are not limited to, any past, present or planned contractual, financial, or other relationships, obligations, commitments or responsibilities, which may bias the Recipient or affect the Recipient's ability to perform or administer the Award in an impartial and objective manner. The policy must include standards of conduct covering conflicts of interest and governing actions of Recipient employees engaged in the selection, award, or administration of contracts in accordance with 2 C.F.R. § 200.318(c). The Recipient shall ensure that all subrecipients and contractors under the Award: (1) have their own conflict of interest policy in place that meets the requirements of this Specific Award Condition; or (2) adopt the Recipient's conflict of interest policy. The Recipient's policy should provide procedures to disclose, mitigate, and resolve any such conflicts of interest. In accordance with 2 C.F.R. § 200.112, the Recipient must disclose in writing any potential or actual conflict of interest to EDA in a timely manner. EDA will evaluate the disclosure and inform the Recipient of any required remedial action beyond what the Recipient may have already implemented. Failure to comply with this condition, or the Recipient's own conflict of interest policy, may result in appropriate enforcement action pursuant to 2 C.F.R. §§ 200.339 through 200.343 and the DOC STCs, which are incorporated under the Award.

Fraud Awareness Training

E·D·A

U.S. ECONOMIC DEVELOPMENT ADMINISTRATION

EDA's grantees must successfully complete this training and submit the signed completion certificate(s) to the EDA Project Officer listed in the Specific Award Conditions within 60 days of grant award.

Failure to comply with this requirement may result in a finding of non-compliance with the terms and conditions of your award.

OVERVIEW

- Overview of EDA's Programs
- The Department of Commerce (DOC) Office of Inspector General (OIG)
- Fraud in EDA Programs
- Additional Items
- Certificate

INTRODUCTION

Role of EDA: Facilitate the timely and effective delivery of Federal economic development assistance to support long-term community economic recovery planning and project implementation, redevelopment, and resiliency

EDA's Programs

- EDA's Programs enable EDA to make awards that support a wide range of activities.
- Eligible applicants and project types for each program is set forth in the respective Notices of Funding Opportunity.
- You must read and understand the requirements applicable to the program under which your award is funded, including the applicable Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions.

The U.S. Department of Commerce (DOC) Office of Inspector General (OIG)

DOC – OFFICE OF INSPECTOR GENERAL

- Created by IG Act of 1978 to:
  - Combat fraud, waste, and abuse within the DOC
  - Conduct audits and investigations of DOC operations
  - Keep the DOC and Congress informed
- Mission
  - To improve the programs and operations of the Department of Commerce through independent and objective oversight

This includes oversight of EDA Assistance Programs

DOC – OFFICE OF INSPECTOR GENERAL

- Office of Audit and Evaluation
- Office of Investigations
  - Criminal
  - Civil
  - Administrative
  - Employee misconduct
  - Public corruption

WHISTLEBLOWER PROTECTIONS

Federal employees, applicants, and employees of federal contractors **and grantees** who make certain disclosures—to OIG or elsewhere—are protected under the law from suffering retaliation because of those disclosures.

Basic elements of whistleblower protection law: (1) you make a protected disclosure; (2) you are subject to certain retaliatory acts; and (3) there is a causal connection between your protected disclosure and the retaliatory act.

OIG receives, reviews, and where appropriate, investigates allegations of whistleblower reprisal.

Whistleblower complaints may be submitted to the OIG via the hotline:
https://www.oig.doc.gov/Pages/Hotline.aspx#complainthotline

Whistleblower complaints may also be submitted to the Office of Special Counsel via their website: https://osc.gov/pages/file-complaint.aspx

DOC-OIG Whistleblower Protection Coordinator contact information:

Email: wpo@oig.doc.gov Phone: 202-482-1099

FRAUD IN EDA ASSISTANCE PROGRAMS

- **Fraud Defined**
- **Compliance Requirements**
  - **Eligibility**
  - **Duplicate Funding**
  - **Matching Funds**
  - **Mandatory Reporting of Fraud**
- **Consequences of Fraud**
- **Recommendations/Best Practices**

FRAUD IN EDA ASSISTANCE PROGRAMS

Although it can take many forms, fraud, at its core, is **deception** through the **misrepresentation** or **omission** of **material facts** for the purpose of **illegitimate gain**.

FRAUD IN EDA ASSISTANCE PROGRAMS

Examples of fraud within EDA Assistance Programs include, but are not limited to:

- Accepting federal funding in multiple assistance awards for the same work
- Misrepresentations regarding the eligibility of the project or recipient
- Misrepresentations or omissions about the recipient's facilities, ownership/control, or the work to be performed by the recipient
- Providing falsified letters of support
- Misrepresentations concerning the use of funds expended, work performed, results achieved, or compliance with program requirements under the award
- Inflated labor costs

FRAUD IN EDA ASSISTANCE PROGRAMS (CONTINUED)

- Misuse or conversion of assistance award funds (e.g. using funds for personal expenses)
- Theft of government owned property (18 U.S.C. § 666)
- Embezzlement (18 U.S.C. § 666)
- Fabrication or falsification of data, in applying for, carrying out, or reporting results from an assistance award
- Intentional noncompliance with applicable federal cost principles governing grants / cooperative agreements
- Undisclosed self-dealing, such as a sub-award to an entity in which an awardee, executive, or key employee (or family members of the aforementioned individuals) has a financial interest
- "Buying Expenses", or reporting expenses incurred by another entity for work unrelated to the assistance award

COMPLIANCE REQUIREMENTS

RECIPIENTS MUST COMPLY WITH:

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- Department of Commerce Financial Assistance Standard Terms and Conditions
- EDA Standard Award Conditions for Construction Projects **or** EDA Revolving Loan Fund Standard Award Conditions (as applicable)
- Specific Award Conditions (unique to each award)

COMPLIANCE REQUIREMENTS

2 CFR § 200.339 – REMEDIES FOR NONCOMPLIANCE

If a non-Federal entity fails to comply with **the U.S. Constitution, Federal statutes, regulations or the terms and conditions of a Federal award**, the Federal awarding agency or pass-through entity may impose additional conditions; or, in certain circumstances, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- Temporary withholding of cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity
- Disallowance of (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance
- Whole or partial suspension or termination of the Federal award
- Initiation of suspension or debarment proceedings (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency)
- Withholding of further Federal awards for the project or program
- Other remedies that may be legally available

COMPLIANCE REQUIREMENTS

Eligibility

Within their EDA Assistance Award Proposal, applicants make numerous certifications or recertifications as to their eligibility to receive a federal award, among other certifications.

Falsely certifying to any material fact or representation contained in a certification is fraud.

CASE EXAMPLE

Eligibility

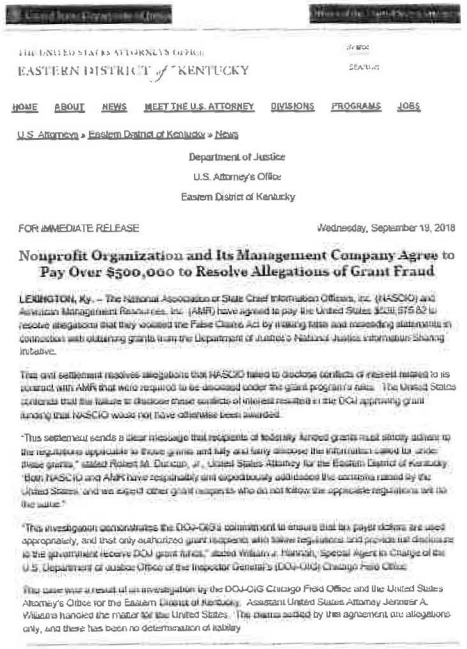
Allegations Included:

- Nonprofit organization made false and misleading statements to obtain federal grant funding
- Failure to disclose conflicts of interest that were required to be disclosed

Outcome:

- Nonprofit agreed to pay $528,575.82 to resolve allegations they violated the False Claims Act

Double-click below for more information



THE UNITED STATES ATTORNEY'S OFFICE
EASTERN DISTRICT of KENTUCKY

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U.S. Attorneys » Eastern District of Kentucky » News

Department of Justice
U.S. Attorney's Office
Eastern District of Kentucky

FOR IMMEDIATE RELEASE Wednesday, September 19, 2018

Nonprofit Organization and Its Management Company Agree to Pay Over $500,000 to Resolve Allegations of Grant Fraud

LEXINGTON, Ky. – The National Association of State Chief Information Officers, Inc. (NASCIO) and American Management Resources, Inc. (AMR) have agreed to pay the United States $528,575.82 to resolve allegations that they violated the False Claims Act by making false and misleading statements in connection with obtaining grants from the Department of Justice's National Justice Information Sharing Initiative.

The civil settlement resolves allegations that NASCIO failed to disclose conflicts of interest related to its contract with AMR that were required to be disclosed under the grant program's rules. The United States contends that the failure to disclose these conflicts of interest resulted in the DOJ approving grant funds to that NASCIO would not have otherwise been awarded.

"This settlement sends a clear message that recipients of federally funded grants must strictly adhere to the regulations applicable to those grants and fully and fairly disclose the information called for under these grants," stated Robert M. Duncan, Jr., United States Attorney for the Eastern District of Kentucky. "Both NASCIO and AMR have cooperated and expeditiously addressed the concerns raised by the United States, and we expect other grant recipients who do not follow the applicable regulations will do the same."

"This investigation demonstrates the DOJ-OIG's commitment to ensure that tax payer dollars are used appropriately, and that only authorized grant recipients who follow regulations and provide full disclosure to the government receive DOJ grant funds," stated William J. Hannah, Special Agent in Charge of the U.S. Department of Justice Office of the Inspector General's (DOJ-OIG) Chicago Field Office.

This case was a result of an investigation by the DOJ-OIG Chicago Field Office and the United States Attorney's Office for the Eastern District of Kentucky. Assistant United States Attorney Jennifer A. Williams handled the matter for the United States. The claims settled by this agreement are allegations only, and there has been no determination of liability.

COMPLIANCE REQUIREMENTS

Duplication of Benefits is Prohibited

2 CFR § 200.1 – Improper Payment

Improper payment means any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. This includes overpayments or underpayments to eligible recipients (including inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for an incorrect amount, and **duplicate payments**). It also includes any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments authorized by law).

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." *EDA Standard Terms and Conditions for Construction Projects, March 22, 2021*

CASE EXAMPLE

Duplication of Benefits

Allegations Included:

- Not-for-profit owner applied for funding for similar services
- Owner converted the duplicate funding for his personal and business use

Outcome:

- Owner pleaded guilty to mail fraud and money laundering
- Sentenced to 24 months in prison
- Ordered to pay $480,901 in restitution

Double-click below for more information



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FOR IMMEDIATE RELEASE — Friday, September 23, 2016

Chicago Businessman Sentenced to Two Years in Prison for Grant Fraud Scheme

Springfield, Ill. – A Chicago businessman has been ordered to serve 24 months in prison for a fraud scheme that resulted in two state agencies awarding separate, but nearly identical, grants to his not-for-profit entity in September 2008. U.S. District Court Judge Sue E. Myerscough sentenced George E. Smith, 66, and ordered that Smith pay restitution of nearly $500,000 to the state. Judge Myerscough allowed Smith to self-report as directed by the federal Bureau of Prisons to begin serving his prison sentence. Smith waived indictment and pled guilty in March 2016 to two counts of mail fraud and one count of money laundering.

In rendering today's sentence, Judge Myerscough noted that Smith exploited his personal relationship with a former director of the Illinois Department of Children and Family Services related to a grant in the amount of $450,000 awarded by the agency on Sept. 2, 2008, under the Students at Risk Program. On Sept. 9, 2008, the Illinois Board of Education awarded Smith's not-for-profit a similar grant in the amount of $242,000. According to the terms of the grants, both provided for similar services to be provided to the same at-risk population in the Chicago area during fiscal year 2009. The populations served, sources of referral, services to be provided, and the goals for each grant were essentially identical. Neither DCFS nor ISBE were aware of the existence of an identical grant by the other state agency. Smith then converted the duplicate funding to his personal and business use.

Both grants were awarded to Dedicated Behavioral Comprehensive Care, a not-for-profit entity owned and operated by Smith. In addition, Smith owned and operated three for-profit entities: Dedicated Behavioral Services, Inc., Management Planning Institute, Inc., and the Institute for Positive Child and Family Development. From 2005 through 2011, Smith, through both his not-for-profit and for-profit entities, received millions of dollars in funding from agencies of the state of Illinois, including DCFS, ISBE, and the Illinois Department of Human Services.

COMPLIANCE REQUIREMENTS

Matching Funds

- The non-Federal share of the approved project budget (aka the "matching share" or "local share") must be borne by the recipient or provided to the recipient by a third party as a contribution for the purposes of and subject to the terms of the award.

- The applicant must document that the matching share **will**:
  - Be committed to the project for the period of performance
  - Be available as needed
  - Not be conditioned or encumbered in any way that may preclude its use consistent with the requirements of EDA investment assistance

- Applicants must submit, for each source of matching share, a commitment letter or equivalent document signed by an authorized representative of the organization providing the matching funds. *Additional documentation may be requested by EDA in order to substantiate the availability of the matching funds.*

CASE EXAMPLE

Matching Funds

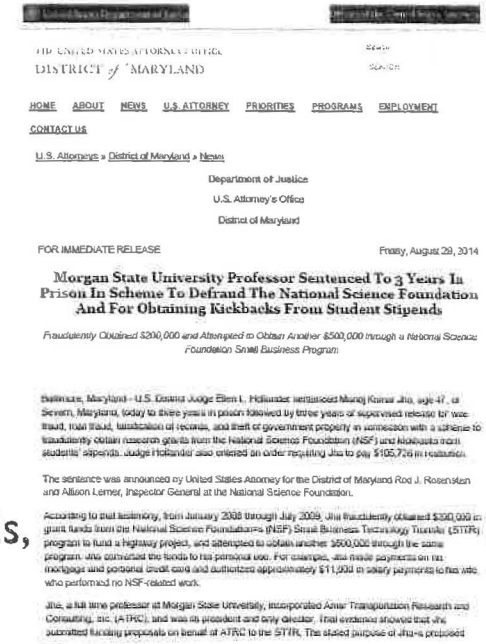
Double-click below for more information

Allegations Included:

- Small business owner made several false statements and misrepresentations to obtain federal grant funding
- Owner misrepresented that he obtained a $100,000 investment from a third party in order to qualify for federal matching funds
- Owner converted grant funds to personal use

Outcome:

- Owner convicted at trial for wire fraud, mail fraud, falsification of records, and theft of government property
- Sentenced to 36 months in prison
- Ordered to pay $105,726 in restitution
- Owner debarred for 5 years



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FOR IMMEDIATE RELEASE

Friday, August 29, 2014

Morgan State University Professor Sentenced To 3 Years In Prison In Scheme To Defraud The National Science Foundation And For Obtaining Kickbacks From Student Stipends

Fraudulently Obtained $200,000 and Attempted to Obtain Another $500,000 through a National Science Foundation Small Business Program

Baltimore, Maryland – U.S. District Judge Ellen L. Hollander sentenced Manoj Kumar Jha, age 47, of Severn, Maryland, today to three years in prison followed by three years of supervised release for wire fraud, mail fraud, falsification of records, and theft of government property in connection with a scheme to fraudulently obtain research grants from the National Science Foundation (NSF) and kickbacks from students' stipends. Judge Hollander also entered an order requiring Jha to pay $105,726 in restitution.

The sentence was announced by United States Attorney for the District of Maryland Rod J. Rosenstein and Allison Lerner, Inspector General at the National Science Foundation.

According to trial testimony, from January 2008 through July 2009, Jha fraudulently obtained $200,000 in grant funds from the National Science Foundation's (NSF) Small Business Technology Transfer (STTR) program to fund a highway project, and attempted to obtain another $500,000 through the same program. Jha converted the funds to his personal use. For example, Jha made payments on his mortgage and personal credit card and authorized approximately $11,000 in salary payments to his wife, who performed no NSF-related work.

Jha, a full time professor at Morgan State University, incorporated Amar Transportation Research and Consulting, Inc. (ATRC), and was its president and only director. Trial evidence showed that Jha submitted funding proposals on behalf of ATRC to the STTR. The stated purpose of Jha's proposed

COMPLIANCE REQUIREMENTS

Mandatory Disclosure of Fraud

2 CFR § 200.113 - Mandatory disclosures

The non-Federal entity or applicant for a Federal award **must disclose**, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Failure to disclose could result in the remedies detailed in 2 CFR § 200.339 (slide 16 of this presentation).

CONSEQUENCES OF COMMITTING FRAUD

Criminal Prosecution

Lying to obtain a grant, or lying about the work performed may violate several criminal laws:

- 18 U.S.C. § 1001, False Statements (up to 5 years in prison, forfeiture and $250K fine)
- 18 U.S.C. § 641, Theft of Federal Property (up to 10 years in prison, forfeiture and $250K fine)
- 18 U.S.C. § 1343, Wire Fraud (up to 20 years in prison, forfeiture and $250K fine)
- 18 U.S.C. § 666, Theft or bribery concerning programs receiving Federal funds (up to 10 years in prison, forfeiture and $250K fine)

Fines for organizations may be as high as $500K

Criminal forfeiture = full amount of the grant; personal assets can be seized to satisfy forfeiture or fine

CONSEQUENCES OF COMMITTING FRAUD (CONTINUED)

Civil Prosecution

In addition to or in lieu of criminal prosecution

Civil False Claims Act, 31 U.S.C. §§ 3729-3733

- Liability includes up to treble damages (3x actual damages) and a civil penalty of up to $23,607 for each false claim
- False claims liability may include payments received when the government relied upon false information in the award proposal, in a certification of current cost or pricing data, in a request for payment, or in progress reports
- Although the statute requires knowledge that the claim was false, knowledge includes "deliberate ignorance" or "reckless disregard of the truth"
- Whistleblowers can receive up to 30% of the recovery amount for reporting fraud via *qui tam* provisions of the False Claims Act

CONSEQUENCES OF COMMITTING FRAUD (CONTINUED)

Administrative Remedies

- Government can terminate contracts/grants tainted by fraud
- Government can suspend/debar the entity, owner, and/or employees
  - Results in prohibition from receiving any federal grants or contracts, or working as a sub-grantee on federal grants or a sub-contractor on federal contracts
  - Debarment is typically for three years, but can be for a longer period
- Administrative remedies are in addition to or in lieu of criminal and civil liability

RECOMMENDATIONS

The government retains the right to examine the status of an EDA Assistance award at any time.

Status checks include:

- Site visits
- Requests for records including financial documents and timesheets

Good recordkeeping will help ensure successful status checks and eliminate potential issues.

RECOMMENDATIONS

Good Records: Key to Protecting Yourself

Documentation

- Timesheets for hours worked by ALL involved employees
- All financial receipts, invoices and statements for expenses related to the project

Updates on the project status, including successes/failures

- Keep regular records at the business-level so you have all facts on hand if needed/requested by the government
- Documentation to support performance metrics

Records Retention Time Frames and other Requirements

- See 2 CFR § 200.334

IMPORTANT TO REMEMBER!

:ecord Retention and Access

200.334 Retention requirements for records.

inancial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a perioc f three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the ubmission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a ubrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The nly exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) ***If submitted for negotiation.*** If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(2) ***If not submitted for negotiation.*** If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

IMPORTANT TO REMEMBER!

If you are unsure about any of the requirements relating to the award of an EDA Assistance grant/cooperative agreement:

- Contact the appropriate EDA POC and provide all relevant facts
- Request written guidance from the EDA POC, and
- **Follow it!**

ADDITIONAL RESOURCES

13 CFR Chapter III – Economic Development Administration (Parts 300-315)
https://www.ecfr.gov/current/title-13/chapter-III

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II

Grant Fraud & Scams – Grants.gov
https://www.grants.gov/learn-grants/grant-fraud.html

Department of Commerce – Grants and Cooperative Agreement Manual
https://www.commerce.gov/oam/files/grants-and-cooperative-agreements-grants-manual-april-20-2021

REPORT FRAUD, WASTE, AND ABUSE

U.S. Department of Commerce
Office of Inspector General

Office of Investigations

OIG HOTLINE

Phone: (800) 424-5197

Online Complaint Form:
https://www.oig.doc.gov/Pages/Hotline.aspx#complainthotline

For more information please visit our website
www.oig.doc.gov

CERTIFICATE OF TRAINING COMPLETION

- **All EDA grantees must successfully complete this training and submit the signed completion certificate(s) to the EDA Project Officer listed in the Specific Award Conditions or via the EDGE website within 60 days of grant award.**

Failure to comply with this requirement may result in a finding of non-compliance with the terms and conditions of your award.

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate One**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 et seq.; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Two**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 et seq.; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Three**

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 entity[1] 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 $750,000 or more in DOC funds during their fiscal year (including both as a recipient and a subrecipient) must submit to the Grants Officer either: (i) a financial related audit of each DOC award or subaward in accordance with Generally Accepted Government Auditing Standards (GAGAS); or (ii) a project specific audit for each award or subaward in accordance with the requirements contained in 2 C.F.R. § 200.507. Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted to the Grants Officer. In accordance with 2 C.F.R. § 200.425, the recipient may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer. Entities that are not subject to Subpart F of 2 C.F.R. Part 200 and that expend less than $750,000 in DOC funds in a given fiscal year are

not required to submit an audit(s) for that year, but must make their award-related records available to DOC or other designated officials for review and audit.

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

e. In accordance with 2 C.F.R. § 200.332(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.

l. 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).

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate One**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number _____ **Certificate Two**

CERTIFICATE OF TRAINING COMPLETION

The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

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EDA Award Number _____ **Certificate Three**

WASHINGTON STATE UNIVERSITY

Social and Economic Sciences Research Center

January 9, 2024

TO: Angi Klahn
Lead Analyst – Clallam County Commissioners' Office
223 E 4th St, Suite 4, Port Angeles WA 98362
Phone: 360.417.2235
angi.klahn@clallamcountywa.gov

FROM: Lena Le, Ph.D.
Social & Economic Sciences Research Center
Washington State University
PO Box 644014, Wilson-Short Hall # 133
Pullman, WA 99164-4014
509-335-1511/Fax 509-335-4688
http://www.sesrc.wsu.edu

Subject: SESRC Scope of Work for assisting North Olympic Peninsula Recompete Coalition with data analysis to develop Phase 2 proposal of Recompete Grant

Background

The objective of the Recompete program is to reduce persistent poverty, a primary cause of which is the result of a labor force participation rate below the national average. The support legislation was written by Representative Kilmer, 6th District of Washington, who continues to take an active interest in the outcome. The North Olympic Peninsula Recompete Coalition was awarded a Strategic Development Grant and invited to participate in Phase 2, one of 22 regions and the only one in Washington.

Critical to a successful application is a careful analysis of barriers that prevent people for successfully participating in the labor force. That analysis can inform directed intervention programs, workforce training opportunities, and long-term economic development. Each element of the proposed strategy should be carefully monitored, assessed, and modified from "learning by doing." Essential to success in these regards is access to appropriate data. Two important sources are Employment Security Department and the Department of Social and Human Services data sets.

The North Olympic Peninsula Recompete Coalition is requesting the SESRC to assist with compiling data from various sources in an effort to provide information about people ages 25 to 54, who have recently exited the labor force. The congregated dataset may include information about work history (sector employed, length of employment, income, etc.), demographic information (age, race, gender, education, family structure, etc.), and geographic location of residency with a special focus on the North Olympic Peninsula regions (Clallam and Jefferson counties).

Collaborative partners

North Olympic Peninsula Recompete Coalition (NOPRC)
Clallam Economic Development Council
Social & Economic Sciences Research Center (SESRC) at Washington State University
Employment Security Department (ESD)

Department of Social and Human Services (Port Angeles)

SESRC Tasks

1- The SESRC is acting as a coordinator to pull information from different sources such as ESD and DSHS to facilitate analysis and understanding of barriers to labor force participation in Clallam and Jefferson counties. Specific information that will assist with Recompete Phase 2 include:
   - Construction of an ESD data set containing data fields including industry, occupation, income, length of employment, etc., for those out of work or who have exhausted benefits. The data should contain individual values without identification numbers, and be organized using geographic indicators, ideally CENSUS tract, otherwise zip code.
   - Construction of a DSHS data set containing fields including work history, benefits received, income, etc. The data should contain individual values without identification numbers, and be organized using geographic indicators, ideally CENSUS tract, otherwise zip code.
   - The data sets should be constructed so that in the future they can be merged for more detailed analysis, especially with regard to individuals exiting the labor force.
   - Explore and examine other available data sources that may help further strengthen NOPRC's Phase 2 application such as WTB or other agencies.

2- The SESRC shall enter a data share agreement with appropriate agencies and shall act as an information depository. Currently, the SESRC is using a content collaboration platform with multi-factor authentication (MFA) to securely transfer information among related parties. Depending upon terms and conditions of data share agreements, we may utilize the SESRC's platform or other required system such as secured file transfer (SFT) by WaTech.

3- Assist NOPRC with phase 2 proposal as needed.

Estimated costs

The SESRC labor cost is charged at $107.89 per hour. We estimate 248 hours needed for this project. The total estimated cost is $26,757. The SESRC will issue a monthly invoice of the total hour worked. Estimated period of performance is January 01st to April 30th, 2024. We will notify the Sponsor in advance if the amount may exceed the estimated total. Additional works can be accommodated via amendments that specified the tasks.

WASHINGTON STATE UNIVERSITY

Social and Economic Sciences Research Center

January 9, 2024

TO: Angi Klahn
Lead Analyst – Clallam County Commissioners' Office
223 E 4th St, Suite 4, Port Angeles WA 98362
Phone: 360.417.2235
angi.klahn@clallamcountywa.gov

FROM: Lena Le, Ph.D.
Social & Economic Sciences Research Center
Washington State University
PO Box 644014, Wilson-Short Hall # 133
Pullman, WA 99164-4014
509-335-1511/Fax 509-335-4688
http://www.sesrc.wsu.edu

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9

FEB 20 2024

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: Department of Community Development

WORK SESSION ☒ **Meeting Date: February 20, 2024**

REGULAR AGENDA ☒ **Meeting Date: TBD**

Required originals approved and attached? ☐
Will be provided on:

Item summary:

☐ Call for Hearing
☐ Contract/Agreement/MOU - Contract #
☐ Resolution
☐ Proclamation
☐ Budget Item
☐ Draft Ordinance
☐ Final Ordinance
☒ RFP/Q Publication

Executive summary: At the February 6, 2024, BOCC Regular Meeting, the Board of County Commissioners received two proposals to perform work related to its mandatory comprehensive plan update. One proposal was received from LDC, Inc. for $290,695, and the other was received by DCG Watershed & Kimley Horn for $293,817.

Staff reviewed the proposals (both attached) and recommend that the Board of County Commissioners allow staff to enter negotiations with LDC, Inc. and prepare a contract for services described for signature by County Commissioners.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☒ Work associated with this project will cost $290,695. Costs associated with this project will be reimbursed by a forthcoming agreement with the Washington State Department of Commerce.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?) Allow staff to prepare a contract with LDC, Inc. to perform professional services in line with the proposed scope of work as a part of the County's comprehensive plan update.

County Official signature & print name: Bruce Emery Bruce W. Emery

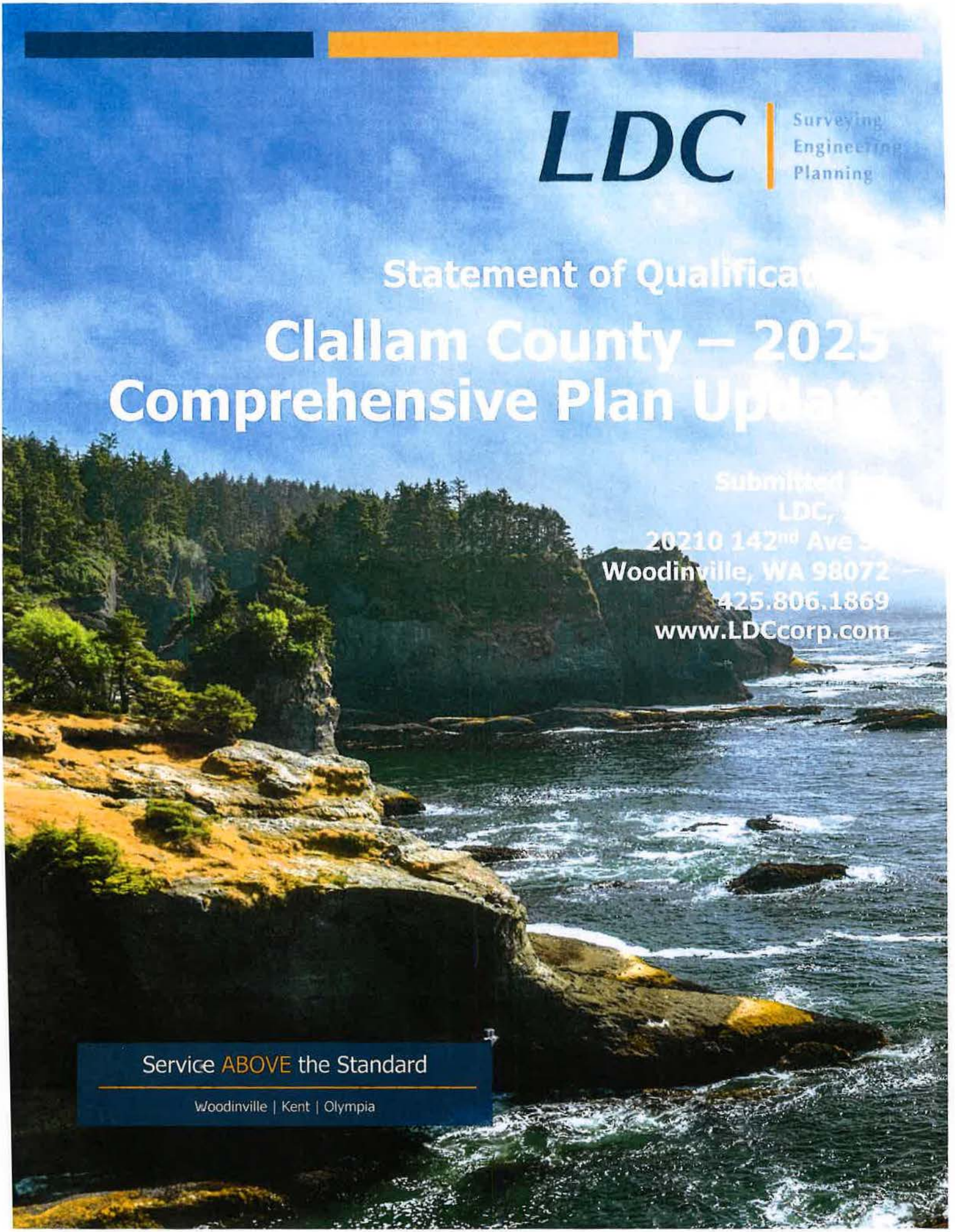
Name of Employee/Stakeholder attending meeting: Holden A. Fleming

Relevant Departments: Department of Community Development

Date submitted: February 14, 2024

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Questions? Call Loni Gores, Clerk of the Board, ext 2256


LDC
Surveying
Engineering
Planning
Statement of Qualifica
Clallam County – 2025
Comprehensive Plan Up
Submitted
LDC,
20210 142nd Ave
Woodinville, WA 98072
425.806.1869
www.LDCcorp.com
Service ABOVE the Standard
Woodinville | Kent | Olympia

LDC Surveying Engineering Planning

February 6, 2024

Clallam County
223 E. 4th Street
Suite 4
Port Angeles, WA 98362

Contact Information
Kim Mahoney
kmahoney@ldccorp.com
425.949.0164

RE: RFP – Consultant Services for 2025 Comprehensive Plan Update

Dear County Review Committee:

The LDC and PRR teams are pleased to offer our proposal to support Clallam County in updating its Comprehensive Plan. Our firm brings a breadth of experience garnered from both the private and public sectors in a full range of current and long-range planning practices throughout Washington that will ensure exemplary service to the Clallam County staff and community. We are a team of practiced consultants who have been trusted by numerous cities throughout the greater Puget Sound and Strait of Juan de Fuca regions to represent the values and goals of their communities while updating their Comprehensive Plans to incorporate state legislation and regional policies. We are experienced in the preparation and adoption of local long-range plans and policies, and bring a perspective to drafting policies that are implementable by staff, understandable by developers, and desired by the community. To the Clallam County Comprehensive Plan Update, we bring the partnered support of PRR, a communications-specialized firm who shares a strong teaming history on Comprehensive Plan updates with LDC. Here are some key advantages of hiring our team:

- **Local planning experience:** We bring nearly 20 years of local professional planning experience to this project. This experience includes Comprehensive Plan updates, missing middle housing analysis and ordinance preparation, building permit and design review, zoning compliance and consistency review, drafting and administering code updates and policy documents, presenting before Hearing Examiners and Planning Commissions and Councils, collaborating closely with City staff, engaging meaningfully with stakeholders and the community, and facilitating public and administrative processes for the implementation of legislative requirements.
- **Plans that work:** We understand the key balance between promoting community vision and applying development standards fairly and consistently. Clallam County's principles would guide our revisions to its Comprehensive Plan in a way that combines community goals with statute and policy compliance. We are comfortable presenting draft updates to Clallam County's elected officials and facilitating this project through its adoption process.
- **Experience:** Hire the LDC team for its extensive local knowledge and Comprehensive Planning experience. Our team carries out other planning contracts in the Olympic Peninsula, arming us with recent and relevant understanding of the regional context in Clallam County. We are also practiced in implementing the state laws and codes with which updated Comprehensive Plans must demonstrate consistency, and we have a strong partnering history with PRR that has led to the development of a holistic and focused approach to community engagement, ensuring that the Clallam County community's voice will carry into a Plan that guides its City through the next decade.

The LDC Planning Team delivers the responsive, creative, and informed service that cities need to serve their communities well. Our approach to this project is simple and practiced – to provide you with action on our living motto: "Service Above the Standard." We hope to have the opportunity to earn your trust, assist your team, and serve the citizens of Clallam County on this exciting and important project. Thank you again for this opportunity, and please let me know if you have any questions.

Sincerely,

Kim Mahoney, Principal Planner
LDC, Inc.
20210 142nd Ave NE
Woodinville, WA 98072

COMPANY PROFILE



LDC HISTORY

LDC is a 70-person, multi-disciplinary, minority-owned (DBE/MBE Certified) firm founded in 2003 that provides planning, permitting, civil engineering, surveying, telecommunications services, and EV charging stations. Beginning as an engineering firm serving the Puget Sound community, we now provide a variety of services to both public and private sector clients across the state. Over the past 20 years, LDC, Inc. has been fortunate enough to be recognized by clients and our greater community for the quality of our work and responsiveness. Founded with one core value in mind - Service Above the Standard - we have held ourselves to high expectations from the start. Quality and service are our passion; LDC considers its clients' needs the top priority. We not only meet, but we exceed our clients' expectations for every project – large or small. LDC has an impeccable track record of bringing deep experience, sound judgement, and strong character and integrity to every project and delivering work efficiently, on budget, and on time. Our approach to working with communities and other clients has served us well, and we pride ourselves on providing accurate, complete, and sound analysis and recommendations. LDC has built and maintains a large and diverse client base across the Northwest region. LDC staff are particularly skilled at designing stormwater facilities, pavement and street improvements, cost estimation, surveying, water/sanitary sewer infrastructure, construction management, ADA compliant ramps, and sidewalks. We have three offices strategically located to serve our clients throughout Washington and beyond.

HQ Office
20210 142nd Ave NE
Woodinville, WA 98072

Kent Office
1851 Central Pl S, Ste 101
Kent, WA 98030

Olympia Office
321 Cleveland Ave SE, Ste 209
Tumwater, WA 98051

Contact Information
Phone: (425) 806-1869
Fax: (425) 482-2893

PLANNING TEAM'S CAPABILITIES

The LDC planning team provides a diverse range of services to public and private clients throughout the Pacific Northwest. This includes on-call permitting and planning for cities and counties, code development, complex development permitting, and long-range planning services. Our team's specialty is utilizing our keen understanding of land use regulations and community value to assist our clients with a careful and consistent application of development regulations, incorporation of a code's intent and purpose in application reviews, and an informed and involved participation in public engagement and procedures. This unique and important perspective is ingrained in our approach, borne by our experience writing codes and policies that we have also had to implement in communities.

Each of our team members brings a variety of professional experiences to the table – from public and private sector work experience to policy writing, policy gap analysis, development application review, and community engagement. Together, we provide a wide range of planning services for our valued clients and are led by our ethical, responsible, and responsive approach needed to effectively serve as stewards to each city's community.

LDC TEAM EXPERIENCE WITH LOCAL, STATE, AND FEDERAL GOVERNMENT

The LDC team has plentiful experience at the local, state, and federal levels conducting planning and analysis work. Our team has assisted dozens of local jurisdictions with planning efforts ranging from Comprehensive Plans, countywide planning policies, and growth targets to Housing Action Plans and plan implementation, development code updates, and on-call planning and permitting assistance. Our strength is a deep understanding of how plans are implemented and how policies and plans can help directly improve communities.

Furthermore, we have worked extensively with developing and updating state law and programs, including the Growth Management Act and State Environmental Policy Act. This includes translating state law through regional planning to help jurisdictions demonstrate compliance with state, federal, and regional policies and requirements that shape what the Comprehensive Plan can do.

SERVICES PROVIDED TO MEET GOALS AND OBJECTIVES

Clallam County is seeking to hire a qualified consultant to assist with the 2025 update of its Comprehensive Plan, subplans, and development regulations. Clallam County is required to update its Comprehensive Plan by June 30, 2025. For this project, LDC and PRR would:

- Establish a work program ("Project Charter") addressing the mandatory and optional elements of the Growth Management Act.
- Complete the Washington Department of Commerce's Periodic Review and Update Checklist for both the Comprehensive Plan and Development Regulations to identify needed revisions in Clallam County and guide the work program.
- Coordinate all revisions with the Clallam County staff and lead frequent and routine presentations of related content to the Clallam County Planning Commission and Board of County Commissioners for collaboration and incorporation of Commission feedback into the adopted documents.
- Develop and facilitate a community engagement program throughout the periodic review process; this program would invite the involvement of Clallam County residents, stakeholders, tribes, and state agencies.
- Participate in a kick-off engagement joint meeting with the Clallam County Planning Commission and Board of County Commissioners focused on the Comprehensive Plan amendment and update process.
- Conduct a review of all Comprehensive Plan provisions and development regulations using the Washington Department of Commerce's Comprehensive Plan Checklist, and if needed, revise the mandatory and optional elements of Clallam County's Comprehensive Plan. This could include revising the Future Land Use Map (FLUM); developing a Supplemental Environmental Impact Statement that addresses an updated FLUM; creating a Development Plan for sewer and water that includes current inventory data; updating the Capital Facilities Plan; undertaking a housing gap analysis; updating the rural lands component of the Clallam County Comprehensive Plan; reviewing and updating subarea plans, as necessary, and; updating all impacted development regulations.
- Comply with all statutory procedural requirements for submitting amendments to the Washington Department of Commerce's Growth Management Services office.
- Create a new implementation matrix with project feasibility dates and priority listings.
- Incorporate suggested edits to the Comprehensive Plan's policies, as offered by the Planning Commission.

Our team has reviewed the Scope of Work from the County's Request for Proposals and is wholly adept in each of the listed duties. Of particular noteworthiness, **LDC and PRR have partnered on Comprehensive Planning and long-range policy projects numerous times in the greater Puget Sound area** and are poised and excited to apply a trusted working relationship to serve the Clallam County community. We are well-versed in presenting in-depth technical information in a digestible format to Commissions, and we enjoy working collaboratively, creatively, and promptly with County staff.

Our success is built upon a firm understanding of the laws, policies, and codes that guide development, along with project management skills focused on saving time and money for our clients. We provide a perspective to long-range planning that balances innovation with practicality. With our years of experience working for local government, our team is committed to understanding the needs of each community we serve. We take pride in blending visioning and community engagement with a deep-rooted understanding of planning policy to create tangible, implementable solutions. This understanding allows us to provide a holistic, tailored, and creative approach to our clients.

Our team is available to begin fulfilling this role immediately and would proudly serve the County and represent its values through the term of the contract. The team would be led by Kim Mahoney, Principal Planner; resumes for each member of the LDC Planning team and PRR Communications team are included on pages 11-18.



PROJECTED COSTS AND PROPOSED SERVICES

LDC Planning has prepared a preliminary budget to complete Clallam County's Periodic Comprehensive Plan Update. The budget has been prepared to mind Clallam County's grant funding for this project. This budget has also been prepared with the understanding that Clallam County has already hired another consulting firm to perform the needed Hazard Mitigation Plan and Climate Resiliency Planning tasks in the scope of work.

COST PROPOSAL | CLALLAM COUNTY COMPREHENSIVE PLAN PERIODIC UPDATE		Task Budget	Consultant Hours and Billing Rates		
		Dollars	*Kim Mahoney* Principal Planner $300	*Joel Farias, Thomas Carter, Dane Jepsen* LDC Planners $158*	*Brett Houghton, Michelle Auster* PRR (Subconsultant) $186*
Phase 1	Project Initiation				
Task 1.1	Review background information	$3,208	4	8	4
Task 1.2	Project Charter and Kickoff meeting	$6,052	4	26	4
Task 1.3	Prepare updated policy gap analysis	$4,960	6	20	0
Task 1.4	Prepare Commerce checklist and reviews	$4,044	4	18	0
Task 1.5	Land capacity analysis	$13,776	8	72	0
Task 1.6	County Commission and Council meetings	$7,904	8	16	16
Task 1.7	Regular collaboration meetings	$11,856	12	24	24
Phase 1 Total		$53,139 **	$13,800	$29,072	$8,928
Phase 2	Public Engagement and Outreach				
Task 2.1	Prepare priority list of organizations, agencies, jurisdictions, and communities	$2,976	0	0	16
Task 2.2	Assist DCD staff with developing a community engagement program	$6,296	4	4	24
Task 2.3	Prepare outreach materials	$9,304	2	8	40
Task 2.4	Public meetings and hearings	$13,308	12	12	42
Phase 2 Total		$35,288 **	$5,400	$3,792	$22,692
Phase 3	Update Comprehensive Plan, Subarea Plans, and Development Regulations				
Task 3.1	Update Future Land Use Map	$13,300	18	50	
Task 3.2	Create a Development Plan for Sewer and Water	$12,952	20	44	
Task 3.3	Update Capital Facilities Plan	$18,640	20	80	
Task 3.4	Housing Gap analysis	$8,088	8	36	
Task 3.5	Update Rural Land component	$10,552	12	44	
Task 3.6	Review and update sub-area plans as necessary	$10,488	16	36	
Task 3.7	Update all impacted development regulation	$14,088	28	36	
Task 3.8	Prepare draft comprehensive plan	$21,420	24	90	
Task 3.9	Prepare final comprehensive plan	$9,856	16	32	
Phase 3 Total		$119,384	$48,600	$70,784	$0
Phase 4	Supplemental Environmental Impact Statement (EIS)				
Task 4.1	EIS Scoping and comment period	$11,120	16	40	
Task 4.2	Mapping for Supplemental EIS	$12,448	12	56	
Task 4.3	Draft Supplemental EIS	$31,752	30	144	
Task 4.4	Final Supplemental EIS	$13,980	15	60	
Phase 4 Total		$69,300	$21,900	$47,400	$0
Phase 5	Implementation and Adoption				
Task 5.1	Submit amendments to WA Department of Commerce using State statutory procedural requirements	$1,832	4	4	0
Task 5.2	Creation of a new Implementation Matrix	$7,392	12	24	0
Task 5.3	Incorporate suggested edits to Comprehensive Plan by Planning Comission	$4,360	4	20	0
Phase 5 Total		$13,584	$6,000	$7,584	$0
Project Totals		**$290,695**	**319**	**1,004**	**170**

*Billing rates represent an average of applicable staff rates

**Budget includes standard 15% prime markup of subconsultant billed time

SCHEDULE AND MANAGEMENT

LDC is committed to delivering quality products. We require little supervision and prefer you to be as involved as you would like. We will perform quality control checks of each major deliverable before it is transmitted. Standardized QC checklists will be utilized along with systematic back checks to ensure review and agency comments have been fully addressed. There are four keys to quality control:

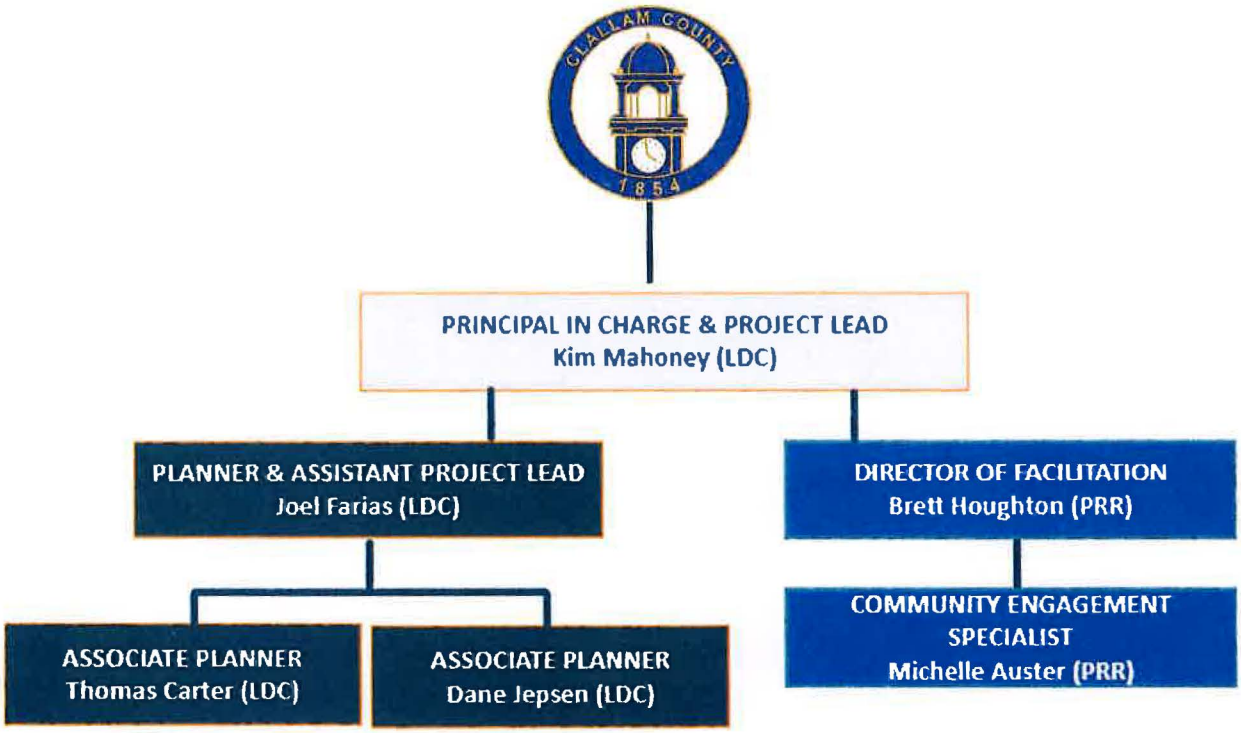
- Firm Commitment to Quality
- Scheduled time for the Quality Control Review
- Written Quality Control Procedures
- Systematic Back Check Process and Documentation

A key reason that quality controls fail is due to the need to produce the final products too quickly. Our team has seen this firsthand and has experience mitigating this risk. Our proposed major deliverables tracking process builds in time for review and assigns review responsibility. LDC is committed to preparing quality products and providing exceptional client service.

CAPACITY TO PERFORM WORK WITHIN SCHEDULE AND BUDGET

Based on the scope of services, we have assembled a succinct team of individuals with the depth and breadth required to fulfill Clallam County's project needs. We bring a team of highly qualified Planners with years of experience providing current and long-range services to clients throughout Washington; our planning team is also supported by in-house land surveyors, civil engineers, telecom and EV charging station project managers. At LDC, we are a team and are committed to creating a successful project and a long-lasting relationship with Clallam County.

- Kim Mahoney, LDC's Principal Planner, will be the Project Lead and main point of contact.
- Joel Farias, LDC's Planner, will be the Assistant Project Lead.
- Brett Houghton, Director of Facilitation with PRR, will lead all Public Participation and Community Engagement activities, with support from Michelle Auster.
- Thomas Carter and Dane Jepsen, LDC's Associate Planners, will provide as-needed technical, analytical, and GIS support to the project.



RELATED LDC EXPERIENCE AND REFERENCES

KITSAP COUNTY COMPREHENSIVE PLAN
Client Contact: Colin Poff| p: 360.337.5777 | E: Cpoff@kitsap.gov

LDC Planning is currently aiding Kitsap County with their 2024 Comprehensive Plan update. LDC's main responsibility has been to update all sections of the Capital Facilities Plan, including capital improvements, capital provider coordination, mapping, and final document drafting. LDC also had roles in the creation of the draft Environmental Impact Statement, draft growth alternatives, and the policy gap analysis. A critical part of this project has been the development and management of the project schedule as well as completing the land capacity analysis and developing policy and code changes for consistency with changes to the Growth Management Act. We are also assisting with updating the Capital Facilities and Utilities Comprehensive Plan Elements.

kitsap 2044
Growing for a Better Tomorrow

UNIVERSITY PLACE COMPREHENSIVE PLAN UPDATE
Client Contact: Kennith George | p: 253.460.2522 | E: KGeorge@CityUP.com

LDC Planning was hired to assist the City of University Place with their 2024 Comprehensive Plan Update, a grant-funded project. Tasks for this project included preparing the project charter, conducting a policy gap analysis relative to state law and regional policies, preparing the land capacity analysis, and leading the following element updates: Land Use, Housing, Transportation, Utilities, Capital Facilities, and Environmental Management. We are also responsible for culminating the Comprehensive Plan while incorporating public feedback into the finished product. LDC's expertise in local, regional, and state planning allows our team to provide the City with useful and implementable policies geared toward assisting City leaders in achieving both short-term and long-term planning goals for the community.

BONNEY LAKE COMPREHENSIVE PLAN UPDATE
Client Contact: Jason Sullivan| p: 253.447.4355 | E: sullivanj@ci.bonney-lake.wa.us

LDC Planning was hired to assist the City of Bonney Lake with their 2024 Comprehensive Plan Update. Tasks for this project included: preparation of a project charter, review of the City's current plans to analyze policy gaps between current adopted policy and new state law and regional policies, drafting the Environmental Stewardship and Community Development elements of the Comprehensive Plan, analysis of its land capacity for future development, growth alternative analysis, and updating Comprehensive Plan maps. LDC will continue to assist the City with its SEPA Environmental Impact Statement alternative mapping and adoption, too.

CITY OF SNOHOMISH MISSING MIDDLE HOUSING ANALYSIS, SNOHOMISH, WA
Client Contact: Brooke Eidem| p: 425.892.9574 | E: eidem@snohomishwa.gov

LDC Planning was hired to assist the City of Snohomish with the development of a Middle Housing analysis in 2023. Our involvement included developing a public engagement plan and conducting public participation through various means, including in-person open houses, online and paper surveys, and interviews with community-based-organizations to obtain feedback on middle housing. Our efforts culminated in a racial equity and displacement risk report, a housing policy analysis, and policy recommendations to quell displacement and disparate housing impacts.

RELATED PRR EXPERIENCE

City of Edmonds Comprehensive Plan Visioning

As part of the City of Edmonds' Comprehensive Plan 2024 update, the City wanted to develop a vision statement to communicate city goals during community engagement and intentionally reach people who have historically been left out of Edmonds planning processes.

PRR's creative studio worked as an integrated part of the vision statement development process while developing to the project logo and branding guide, connecting the visual and written aspects. Designers of the team participated in client meetings and provided direct feedback to make sure that PRR delivered a product in line with their direction.

PRR also developed a community engagement plan, evaluated previous City outreach efforts, and created a community conversations guide, which includes messaging, guidelines, and a script for City staff to use when speaking with people about the comprehensive planning process. The script aligns closely with the survey questions so that city staff have consistent talking points and responses that mirror the online process. The guide also includes a workplan outline. PRR's in-house language services specialists reviewed the community conversations guide for cultural relevance and translated project materials.

PRR drafted and analyzed six separate community surveys, and prepared material in three languages other than English. We categorized more than 4,200 survey responses and used the information to inform the vision statement by identifying the most commonly referenced likes, concerns, and aspirations for the future of the city.

The project team categorized over 4,200 survey responses. These responses were used to inform the Vision Statement by identifying the most commonly referred to likes, concerns, and aspirations for the future of the city.

City of Kenmore 2024 Comprehensive Plan Community Forum

The City of Kenmore held a virtual public forum on Zoom which included members of the public, Kenmore City Councilmembers and planning commissioners, three city staff members, and three staff from PRR as serving as the engagement consultant. The forum was structured like an open house, with individual "rooms" focused on different topics. In the rooms, facilitators provided periodic presentations and moderated open conversation with participants. Participants were able and encouraged to move freely between rooms to engage in all topics of conversation, ask questions, and give feedback. Three of the rooms hosted presentations and conversations in English on housing data and definitions, "Missing Middle" housing, and the City's Vision Statement. There was a fourth breakout room for people who use Spanish to discuss all the topics. These breakout room topics were decided on by City staff after narrowing them down from a larger vision.

In the breakout rooms, participants were actively contributing their thoughts, opinions, and concerns. In the "Missing Middle" housing room, participants were concerned about potential impacts that building more "Missing Middle" housing would create, but no one voiced any strong opposition. Participants also encouraged the City to focus on housing for households with lower incomes, out of concern that even "Missing Middle" housing was unaffordable. Feedback on the Vision Statement was varied, but overall focused on infrastructure improvements that could contribute to better public health, like a public pool and bike lanes. Attendance from city officials proved to be an invaluable resource as they engaged in conversation with other participants from the general public. Conversations in breakout rooms were recorded and chat transcripts were saved as documents.

The reality of hosting a complex event in this virtual space meant that staff spent a lot of time on technical preparation. PRR and City staff had several technical run-through and troubleshooting meetings ahead of the forum to ensure things ran smoothly. And having a staff person "stationed" in the main Zoom welcome room to provide technical support proved to be necessary, as a number of participants had difficulty navigating themselves to and from breakout rooms on their own. PRR and City staff wanted to focus on establishing a warm and inviting atmosphere, and the extra time and care put into that goal shone through in the final product.

RELATED PRR PROJECTS

King County Department of Local Services Snoqualmie Valley/NE King County Subarea Plan

King County Department of Local Services undertook its first subarea plan as part of a new countywide planning process. County staff needed support to effectively engage diverse communities across a broad subarea, analyze input, and finalize the subarea plan. PRR came on board in February 2023 to develop engagement during the Public Review Draft period, analyze public feedback, and provide technical editing support for the Public Review Draft and final draft of the plan.

Right away, PRR provided strategic communications support and technical editing for the in-progress draft of the Subarea Plan. The team reviewed hundreds of pages of plan document for voice, style, consistency, and technical accuracy. PRR developed an easy-to-understand reader's guide to help audiences using English and Spanish understand how to navigate the Public Review Draft and how to provide their feedback.

PRR used the review as an opportunity to understand engagement strategies previously used by the County, and to analyze what worked well, and where there was room for improvement. The PRR team then worked alongside the County to update the project's community engagement plan and build out a work-plan for the important last phase of community engagement, the public review period for the draft plan.

To increase awareness of the public review draft, PRR created a suite of materials including a poster, a content calendar, email content, social media posts, a PowerPoint presentation geared towards youth, video concepts, and a FAQ. When the County realized they had limited bandwidth for engagement, PRR staff jumped in with just days to help plan a hybrid public kickoff meeting, including coordinating catering from a local business, working with a local balloon vendor to provide decorations, and supporting logistics for both in-person and virtual participants. PRR provided day-of event support including setup and meeting facilitation. PRR supported two additional in-person public meetings as well as eight focus groups and a senior center visit. PRR also developed a strategy to engage the Hmong farmer community in the subarea and developed a compensation protocol for interview subjects.

When the public review period was over, PRR synthesized feedback collected from an online survey, focus groups, public meetings, community presentations, emails, letters, and interviews into one easy-to-understand report that summarized the key themes and community priorities. PRR then incorporated the report content into the Subarea Plan, making key edits to policies and other areas of the plan. PRR also reorganized and updated the full appendix, including the Subarea Plan's Equity Impact Review section and the Community Engagement and Tribal Relations sections.

Finally, PRR provided a second round of technical editing and review for voice, style, consistency, and accuracy before County staff submitted the final document for leadership review.

Overall, PRR provided key communications and engagement support that allowed King County staff to reach a larger number of community members with diverse experiences and backgrounds, including members of the Hmong farming community which had not been successfully reached during earlier phases of engagement. PRR also expedited the editing and review processes for the Public Review Draft and the final draft, supporting the client in crafting a reader-friendly, actionable plan, while still meeting tight deadlines and delivering a clean and well written document.

SUPPLEMENTAL EXPERIENCE

Supplementary to preparing Clallam County's Comprehensive Plan Update, the LDC Planning team brings a wealth of experience in the review and management of land use and development permits, SEPA processing, long-range planning processes, and critical area and shoreline development. Our expertise affords a thorough understanding of the interconnectedness between adopted ordinances and their implementation with the development community, allowing our team to identify a full breadth of Code provisions deserving of collaborative thought to align with newly adopted ordinances and provide strategic recommendations on updates to Clallam County's Code.

Land Use, Shoreline, Critical Area, Design, Building, and SEPA Review:

- City of Sequim On-Call Planning Services, 2023. Charisse Deschenes | cdeschenes@sequimwa.gov
- City of Gig Harbor Canterwood Commercial Center, 2021. Katrina Knutson | KKnutson@gigharborwa.gov
- City of Gig Harbor Metropolitan Market, 2019-2020. Katrina Knutson | KKnutson@gigharborwa.gov
- Royal Ann Critical Area Feasibility Analysis, 2021. Daniel Wick | horizonviewhomes@gmail.com
- Pritchard Building Rehab and Expansion, 2023. Erica Ceder | eceder@DLRGROUP.com
- Terminal 5 Gatehouse Improvements, 2022-2023. Erik Nielsen | Erik.nielsen@kpff.com
- City of Gig Harbor 7 Seas, 2021. Bret and Matt van den Heuvel | bretv@gensco.com
- Argosy Cruises Pier 54 Float Replacement, 2021. Brock Gilman | bgilman@argosycruises.com
- Seattle Public Utilities Cedar River Upper Royal Arch Habitat Enhancement, Maple Valley, WA, 2022. Clay Antieau | clayton.antieau@seattle.gov
- Seattle Public Utilities Bitter Lake Reservoir Covering Project, Seattle, WA, 2023. Lael Alderman | lael.alderman@consoreng.com
- City of Gig Harbor, Harborview Marina Office Remodel, 2021. Katrina Knutson | KKnutson@gigharborwa.gov
- Snohomish County, 2022. Trees and Quiet Subdivision | antondstetner@gmail.com

Planning Services:

- Comprehensive Plan and Regulatory Policy Gap Analysis
    - City of Enumclaw, 2023. Katie Cote | Katie.Cote@bhcconsultants.com
    - City of University Place, 2023. Kennith George | kgeorge@cityofup.com
    - Kitsap County, 2022. Colin Poff | CPoff@kitsap.gov
    - City of Mill Creek, 2023. Al Torrico | al.torrico@millcreekwa.gov
- Land Capacity Analysis and Buildable Lands
    - City of Snoqualmie, 2023. Emily Arteche | EArteche@snoqualmiewa.gov
    - City of North Bend, 2023. Rebecca Deming | RDeming@northbendwa.gov
    - City of Normandy Park, 2023. Nicholas Matz | nmatz@normandyparkwa.gov
    - City of University Place, 2023. Kennith George | kgeorge@cityofup.com
    - City of Bonney Lake, 2023. Jason Sullivan | SullivanJ@ci.bonney-lake.wa.us
    - City of Prosser, February - March 2023. Toni Yost | TYost@ci.prosser.wa.us

GIS Services:

- City of University Place Comp Plan GIS, 2023. Kennith George | kgeorge@cityofup.com
- City of Mill Creek School Safe Walk Maps and Field Data Collection, 2023. Al Torrico | al.torrico@millcreekwa.gov
- Kitsap County Building Permit Analysis Mapping and Creek Multi-Criteria Analysis Mapping, 2022. Colin Poff | CPoff@kitsap.gov
- Snoqualmie Critical Area Mapping, 2023. Emily Arteche | EArteche@snoqualmiewa.gov
- City of Normandy Park Compliance GIS, 2023. Nicholas Matz | nmatz@normandyparkwa.gov





EDUCATION:

- MA, Environmental Studies with a focus in Sustainable Development and Policy, University of Illinois
- BA, Administrative Leadership, University of Oklahoma

PROFESSIONAL CERTIFICATIONS & AFFILIATIONS: APA Member

EXPERIENCE: 8 years

EXPERTISE

- On-Call Planning Services
- Interim Planning Director
- Policy and Code Updates
- Presentations before Elected Officials, Appointed Officials, and the Public
- Shoreline and Discretionary Permit Acquisition and Land Use Entitlement
- Strategic Project Management
- Public Process Management
- Comprehensive Plan Amendment
- State Environmental Policy Act (SEPA)

KIM MAHONEY

PRINCIPAL PLANNER, PROJECT LEAD

Kim Mahoney is a Principal Planner and Project Manager with LDC. Kim has a strong background in local land use and development review, environmental and shoreline permitting, public process facilitation, and policy drafting. She responsively attends to the scheduled and on-call permitting needs for numerous contracted Washington cities, and she manages the permitting for many complex and contentious development projects. She has also held meaningful roles in the implementation of legislative requirements and code amendments in numerous growing communities throughout the region. Previously, Kim was a consulting Environmental Planner and a municipal Senior and Shoreline Planner; she keenly understands the administration of public processes with public agencies and is exceptionally experienced in implementing City regulations in current planning. This experience informs her preparation of actionable policy language that is consistent with governing regulations, representative of community values and culture, and implementable by City staff. In an increasingly challenging regulatory climate, Kim's skills in current, long-range, and environmental planning honed from senior roles in both the public and private sectors affords a disciplined ethic and informed perspective necessary for representing a City's rigorous planning needs.

RELEVANT EXPERIENCE

- On-Call Permitting Services, including Municipal Code Consistency Analysis, Sequim, WA
- Comprehensive Plan Update, Kitsap County, WA
- Comprehensive Plan Update, Snoqualmie, WA
- Comprehensive Plan Update, University Place, WA
- SMP Periodic Review and Update, Gig Harbor, WA
- Lewis County Public Utility District (PUD) Cowlitz Falls Dam Maintenance, Lewis County, WA
- 7 Seas Taproom and Marina, Gig Harbor, WA
- Canterwood Commercial Center, Gig Harbor, WA
- Argosy Cruises Pier 54 Float Replacement, Seattle, WA
- Kitsap Transit Ferry Maintenance Facility Planning Study, Kitsap County, WA
- Seattle Public Utilities South Fork Tolt Reservoir Debris Boom Replacement, King County, WA
- Seattle Public Utilities Bitter Lake Reservoir Covering Project, Seattle, WA
- Klamath Falls U.S. Fish and Wildlife Service Hatchery Expansion Permitting, Klamath Falls, OR
- Austin Estuary Park Honoring Project, Project, Gig Harbor, WA



EDUCATION:

- BS, Environmental Science, University of Washington

EXPERIENCE: 1 year

EXPERTISE

- Local Permitting
- Land Use Planning
- Municipal Codes
- Geographic Information Systems (GIS)
- SEPA Documentation
- Community Engagement
- Feasibility Research
- Bilingual/Language Translation
- Project Support
- Document Design

JOEL FARIAS

PLANNER, ASSISTANT PROJECT LEAD

Joel Farias is a Planner with LDC. In his role, Joel has meaningfully led Comprehensive Plan updates in communities throughout the greater Puget Sound. Joel drafts revisions of Comprehensive Plan goals, policies, and implementing language, and he leads the research and analysis efforts to ensure long-range planning projects align with the most up-to-date state statutes and regional needs, including those governing middle housing and affordable housing in Washington state. Joel's involvement in revisions to local plans and ordinances has involved considerable public engagement, thorough policy gap analysis, routine coordination with jurisdictions and clients, and informed presentations before publicly elected or appointed officials throughout the region. Joel understands that meaningful communication of complex planning principles to large, diverse public groups is aided by the preparation of graphic material; he is proficient in the design of GIS base maps and project story maps to accommodate public outreach efforts, and he is instrumental in providing bi-lingual language translation for document distribution on many of community engagement documents.

Joel has a strong aptitude for understanding Code and the permitting process. He works on a variety of LDC's permitting projects including short plats, subdivisions, multifamily projects, rezones, variances, boundary line adjustments, and conditional use permits. In his role, he prepares feasibility layouts, detailed project narratives, code compliance analysis, permit applications, SEPA checklists, and updates policy language to comply with new regional, state, and local regulations. Joel's attention to detail and strong critical thinking skills are an excellent addition to the LDC team, where Service Above the Standard is our focus.

RELEVANT EXPERIENCE

- Comprehensive Plan Update, Capital Facilities and Utilities Elements, University Place, WA
- Comprehensive Plan Update and Capital Facilities Plan, Kitsap County, WA
- Community Engagement for Middle Housing and Comprehensive Planning, cities of Mill Creek, Snohomish, Snoqualmie, and University Place, WA
- Local Code Update, SEPA Chapter, Walla Walla, WA
- Water and Sewer Extension Utility Permitting, Snohomish County, WA
- SEPA Environmental Impact Statement, Kitsap County, WA
- Cost Study, Washington Department of Commerce
- Planning Commission and City Council presentations to City of Snoqualmie and City of University Place



THOMAS CARTER
ASSOCIATE PLANNER

Thomas is an Associate Planner with LDC, with over four years of progressively responsible experience planning in both the private and municipal sectors. Thomas is responsible for conducting project support, zoning and permitting research, permitting assistance and coordination, document preparation, and GIS mapping. Thomas has assisted in the drafting of multiple Comprehensive Plan updates for various jurisdictions within the state of Washington. His contributions extend to drafting policies and narrative documents that form integral elements of a cities' Comprehensive Plans. Thomas also coordinates with project teams to address agency comments and facilitate proposed development towards final approval in an efficient and streamlined manner.

Previously, Thomas has held planning roles with the City of Tempe, AZ and with other consulting firms, uniquely poising him to understand City permitting processes and the expectations cities have of consultant deliverables to support application reviews. In his previous roles, Thomas's responsibilities included preparing and presenting projects to the Hearing Examiner, processing permit applications, conducting thorough site plan reviews, performing preliminary permitting assessments, and offering valuable assistance at city permitting counters. His apt and diverse experience arm him with the skills needed to support a wide breadth of current and long-range planning needs as a City's on-call planner.

EDUCATION:
- BS, Urban Planning, Arizona State University

EXPERIENCE: 4 years

EXPERTISE
- Land Use Planning
- Municipal Code Research
- Permitting Assistance and Coordination
- Community Engagement
- Feasibility Research
- Project Support
- GIS Mapping
- SEPA Documentation
- Document Design
- Comprehensive Plan Updates, including Policy Drafting and Policy Gap Analysis

RELEVANT EXPERIENCE

- Housing Action Plan and Middle Housing, Snoqualmie, WA
- Middle Housing, cities of Mill Creek and Snohomish, WA
- On-Call Planning Service Assistance, Sequim, WA
- Presentations at Public Hearings, Snoqualmie, WA and Tempe, AZ
- Site Plan Review and Permitting Intake Review, Tempe, AZ
- Smokey Point Rezone, Marysville, WA
- Sumner HAPI Code Changes, Sumner, WA
- Land Use Feasibility, Moses Lake, WA
- Comprehensive Plan Update, cities of Normandy Park and Stanwood, WA
- Comprehensive Plan Update, Kitsap County, WA



DANE JEPSEN
ASSOCIATE PLANNER

EDUCATION:
- BA, Geography, Central Washington University
- GIS Certificate, Central Washington University

EXPERIENCE: 1 year

EXPERTISE
- Local Permitting
- Land Use Planning
- Municipal Codes
- GIS Mapping
- SEPA Documentation
- Community Engagement
- Feasibility Research
- Project Support
- Document Design

Dane Jepsen is an Associate Planner with LDC, who has taken part in a wide variety of projects in both long-range and current planning roles. In current planning, he has prepared, submitted, and managed many municipal and county permit applications, ensuring that projects are aligned with clients' goals and collaborating with reviewers to ensure the project is meeting applicable code requirements. Dane also manages detailed analyses for a variety of City and County long-range studies and data and is always looking for ways to improve the efficiency and the quality of deliverables to our clients.

Before joining LDC, Dane graduated from Central Washington University with a BA in Geography and a GIS certificate. In his studies, he focused on natural resource management, adding to his experience in land management from 6 years of working seasonally with the US Forest Service. His GIS certificate involved detailed technical training in ESRI products as well as experience with open-source-software such as QGIS and Post-GIS.

Previously, Dane worked for Central Washington Land Restoration as a GIS Technician collecting field data and producing technical reports, maps, and documentation to support restoration work performed for the Bureau of Reclamation.

RELEVANT EXPERIENCE

- Housing Action Plan and Middle Housing, Snoqualmie, WA
- Middle Housing, cities of Snohomish and Middle Creek, WA
- SEPA Checklist Preparation, cities of Bellevue, Sammamish, Clallam County, and Buckley, WA
- NPDES Permitting, cities of Clallam County, Issaquah, and Kent, WA
- Discretionary Permit Application Preparation, including Variance, Conditional Use, and Rezone, cities of Marysville and Sammamish, WA
- Forest Practices Permitting, Clallam County, WA
- GIS Mapping for Critical Areas, Land Capacity Analysis, and Comprehensive Planning, cities of Normandy Park, University Place, Mill Creek, Snoqualmie, North Bend, and Bonney Lake, WA
- Land Use Feasibility Analysis, Moses Lake, WA
- Smokey Point Rezone, Marysville, WA
- Comprehensive Plan Update, cities of Bonney Lake, Stanwood, Mill Creek, University Place, and Normandy Park, WA
- Racial Equity Analysis Reporting, cities of Mill Creek, Snohomish, and Snoqualmie, WA
- Housing Action Plan Implementation Code Changes, Sumner, WA



BRETT HOUGHTON
DIRECTOR OF FACILITATION

Brett approaches all his work through the lens of racial and social equity. For 30 years, he has been facilitating groups and processes, planning and implementing community engagement and outreach, and leading strategic planning efforts. He ensures meaningful inclusion of all appropriate community members and stakeholders in decision making processes, including families, leaders, elected officials, social service providers, and advocacy groups. Brett is skilled at creating and implementing processes, plans, and agendas that effectively engage multi-lingual communities. He specializes in engaging low-income, limited-English proficient, immigrant, refugee, or other historically underrepresented communities and creating strategic, organizational, and outreach plans to address seemingly disparate needs. Brett organizes and facilitates coalitions, collaboration, and one-on-one engagement, and ensures everyone has a meaningful opportunity to participate, especially those least likely to speak up without support. Brett has worked across PRR's sectors in the Pacific Northwest and in the mid-Atlantic.

Education

- B.A. Communications and Women's Studies, George Mason University, 1995

Special training

- Forty hours of mediation training with the King County Alternative Dispute Resolution Center
- Forty hours of restorative circles training through the City of Seattle
- Train the Trainer: Strategies for Facilitating Courageous Conversations on Race led by Cultures Connecting
- People's Institute Undoing Institutional Racism

RELEVANT EXPERIENCE

Bonney Lake Comprehensive Plan Engagement and Racial Equity Analysis, Bonney Lake, WA
City of Bonney Lake | February 2023-present

Person in charge. The City of Bonney Lake is updating its Comprehensive Plan consistent with the Washington State Growth Management Act (GMA). PRR is developing a community engagement program and supporting the City in implementing the program to gather feedback from the community during the Comprehensive Plan update process. The program will emphasize engaging people in historically underrepresented communities within Bonney Lake. PRR produced a racial equity analysis report to assess the City's existing housing and land use policies and offer recommendations for the Comprehensive Plan update. The plan analyzed the City's existing housing and land use policies using an intersectional and racially equitable approach and provided recommendations for the comprehensive plan update. PRR will lead community engagement for the comprehensive plan, including the supplement EIS process.

Bonney Lake Parks, Recreation, Trails, and Open Space Plan, Bonney Lake, WA
City of Bonney Lake | October 2022-October 2023

Person in charge. PRR led community engagement to reach out to a broad spectrum of residents and groups to inform the City's 2023 PRTO Plan. PRR developed a public involvement plan. Brett oversaw the PRR team.

Missing Middle Housing: Analysis, Public Involvement, and Code Development, Kenmore WA
City of Kenmore | December 2022-June 2023

Person in charge. PRR supported the City of Kenmore in their work to identify and implement Middle Housing policy revisions. PRR developed an engagement plan for the and then implemented it in concert with City staff. This included reviewing prior public comments on Middle Housing, developing messaging informed by public sentiment, hosting small group meetings—including one in Spanish—with Kenmore residents, and hosting a large public event to educate community members on Middle Housing. PRR drafted a Racial Equity Analysis report consistent with Department of Commerce grant guidelines to support the City to implement more equitable housing policy and comprehensive planning. PRR staff presented the findings from the report to the City Council. PRR's team included LDC, Inc, who reviewed existing policy and code and made recommendations for revisions to include more Middle Housing. Brett oversaw the work of the PRR team and managed the contract to deliver the work on time and on budget.

BRETT HOUGHTON
DIRECTOR OF FACILITATION

RELEVANT EXPERIENCE

Comprehensive Plan Update, Kenmore, WA
City of Kenmore | April 2021-May 2022

Project manager and community engagement lead. PRR developed an engagement plan for the City of Kenmore's 2024 comprehensive plan update and then implemented it in concert with City staff. This included developing a comprehensive plan update mini brand, conducting a statistically valid survey in English and Spanish on planning priorities, developing templates for public materials, drafting and refining the public participation plan, coordinating materials with the language services and creative teams, managing the relationship with the City, planning events and presentations to the Planning Commission, staffing a virtual community forum on land use and housing, and specific outreach to organizations who serve people who use Spanish. Brett oversaw the work of the PRR team and managed the contract to deliver the work on time and on budget.

Collaborative Roadmap Phase III Recommendations, Washington state
Washington State Department of Commerce | September 2021-May 2023

Facilitator and principal in charge. Brett oversees PRR's work to lead engagement for a legislative proviso-funded project to convene a task force and collect input from affected and interested parties on Washington's land use framework, including the growth management act. PRR is convening working groups of people from historically marginalized communities to inform the task force's recommendations. Brett is facilitating the task force and guiding the recommendations process.

Housing Action Plan, Woodinville, WA
City of Woodinville | April 2022-May 2023

Person in charge. The City of Woodinville hired the LDC/PRR team to develop a housing action plan. PRR developed the community engagement approach and drafted the community engagement plan. PRR led early implementation, which included community interviews, outreach to CBOs, a presentation to City Council, drafting content for the project webpage, and community events. PRR supported the City to implement the remaining community engagement. Brett oversaw the PRR team.



Education

- B.A. International Studies (focus in development), minor Global Health, University of Washington, 2014
- Sociology, Politics, and International Studies, University of Bristol, 2013

MICHELLE AUSTER (they/she)
COMMUNITY ENGAGEMENT SPECIALIST

Michelle brings more than six years of experience in community-based engagement, including bringing extensive experience in managing fundraising efforts for non-profit organizations to PRR's community engagement practice, as well as a highly organized style for successful project management. They are a strategic communications professional with a fierce dedication to equity and inclusion. They have advanced racial justice efforts in their most recent role at United Way of King County where they worked with senior staff to develop and implement successful approaches to fundraise equitably with community stakeholders. Michelle holds a Bachelor of Arts in from the Henry M. Jackson School of International Studies, with a focus in development, and a minor in Global Health from the University of Washington

RELEVANT EXPERIENCE

Missing Middle Housing, Kenmore, WA

City of Kenmore | December 2022–June 2023

Project manager. Michelle supported the City of Kenmore to engage the surrounding its housing future. They oversaw PRR's subcontractor, the creation of a racial equity report, customized engagement to fit unique community needs, designed and conducted five small group meetings, and created an interactive public event. They coordinated materials translation into Spanish and supported engagement with the Spanish-using community and advocated for better inclusivity and accessibility.

Emotional Support Human, Howard County, MD

Horizon Foundation | December 2022-present

Content writer. Michelle supports the Horizon Foundation's Emotional Support Human campaign by writing creative and educational blog posts. They support the campaign's goal to improve mental health outcomes in Howard County and beyond through creating posts that are topical, challenging, approachable, and which generate greater awareness and accessibility for this public health need. In addition to breaking up content into approachable bite-size topics, Michelle has helped this project to pivot from its original concept by providing contemporary information which keeps the messaging relevant as the years go on.

Comprehensive Plan Visioning, Edmonds, WA

City of Edmonds | May 2022–November 2022

Community engagement. As part of the City of Edmonds' Comprehensive Plan 2024 update, the City developed a vision statement to communicate city goals during community engagement and intentionally reach people who have historically been left out of Edmonds planning processes. PRR was hired to assist the City in creating a clear, inclusive vision statement and project logo that communicates the vision to communities throughout the city. Michelle developed the workplan for the deliverables and advised in equitable community engagement at every level of work. They maintained hundreds of community survey responses and designed from the ground up a system of categorization to best suit the client's future goals. Using input from over 4,200 survey responses, the PRR team drafted a Vision Statement that reflects the values of the growing and changing city.

MICHELLE AUSTER (they/she)
COMMUNITY ENGAGEMENT SPECIALIST

RELEVANT EXPERIENCE

Housing Action Plan, Woodinville, WA

City of Woodinville | April 2022-February 2023

Project manager. Michelle leads the PRR team supporting community engagement for the development of a housing action plan. They developed a public engagement plan and led implementation, which included community interviews, outreach to CBOs, a presentation to City Council, project webpage, and community events. Michelle acted as the point of contact for the prime consultant and client and managed progress reporting on PRR's schedule and budget.

Pierce County Sprinker Recreation Center Master Plan, Pierce County, WA

Pierce County Parks and Recreation Services | December 2021-Janaury 2022

Project support. Michelle helped to create the online engagement platform for community members to learn about proposed updates to the Sprinker Recreation Center and weigh in.

Salem Transit Center - Site Selection Services, Salem, OR

Salem Area Mass Transit District | October 2021-May 2022

Project manager. Michelle supported execution of public input for the City of Salem in siting and designing a new transit center. Michelle helped keep the team on track and in budget.

U District Transit-Oriented Development, Seattle, WA

Sound Transit | October 2021-November 2021

Community engagement. Michelle provides feedback on the project website and the project social media plan.

Collaborative Roadmap Phase III Rec, Washington

Washington State Department of Commerce | October 2021-January 2022

Inclusive engagement counsel. The Washington State Legislature directed the Department of Commerce convene a task force and collect input from affected and interested parties on Washington's land use framework, including the Growth Management Act. Michelle helped plan, coordinate, and facilitate working groups of people from historically marginalized communities to inform the task force's recommendations.

Comprehensive Plan Update, Kenmore, WA

City of Kenmore | October 2021 – December 2021

Community forum lead. Michelle supported the City of Kenmore to engage the public in the 2024 Comprehensive Plan update. They planned, staffed, and summarized the City's first ever a virtual community forum on housing and land use which was attended by over 60 community members. They coordinated materials translation into Spanish and crafted a survey for forum attendees with special focus on inclusivity and accessibility.

LDC | Surveying Engineering Planning

LDC 2024 RATE SHEET | STANDARD FEE SCHEDULE

STAFF TYPE	RATE
Principal/Director	$255
Senior Project Manager	$230
Project Manager	$209
Senior Project Engineer	$200
Project Engineer	$190
Site Acquisition II	$187
Design Engineer	$167
Associate Project Manager	$155
E.I.T.	$144
Principal Policy Planner	$300
Planning Manager	$219
Senior Planner	$193
Planner	$169
Associate Planner	$147
Permit Technician	$123
Senior Land Surveyor	$212
Professional Land Surveyor	$195
Survey Field Manager	$193
Project Surveyor	$171
Senior Survey Technician	$161
Chief of Parties	$184
Survey Technician	$144
Survey Crew Chief II	$173
Survey Crew Chief I	$144
Survey Assistant	$102
Senior Designer	$190
Site Acquisition II	$187
Senior CAD Technician	$163
CAD Technician III	$150
CAD Technician II	$139
CAD Technician I	$126
Expert Witness	$530
Project Administrator	$123
Clerical / Intern	$91

REIMBURSABLES	RATE
Outside Services	Cost + 15%
Mileage	IRS Standard +15%
Plotting Color (24" x 36")	$17.00 each
Plotting Black and White (24" x 36")	$3.00 each
Color (11" x 17")	$3.00 each

PRR 2024 FEE SCHEDULE

Name	Title	2024 Billing Rate
Brett Houghton	Director	$256.72
Michelle Auster	Consultant II	$113.76

CLALLAM COUNTY PERIODIC COMPREHENSIVE PLAN UPDATE

FEBRUARY 6, 2024

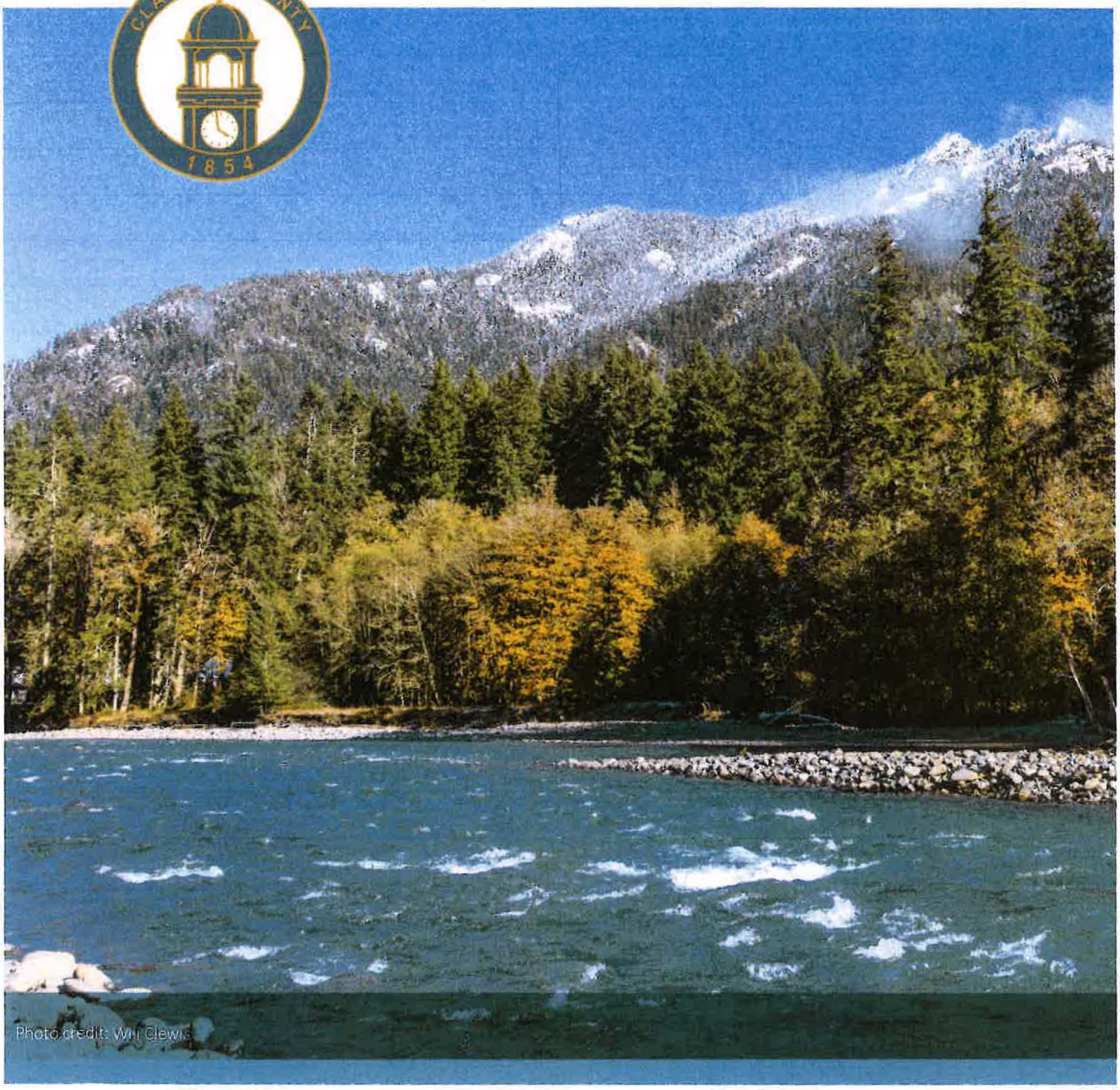


Photo credit: Will Clewis

DCG WATERSHED

Kimley»Horn

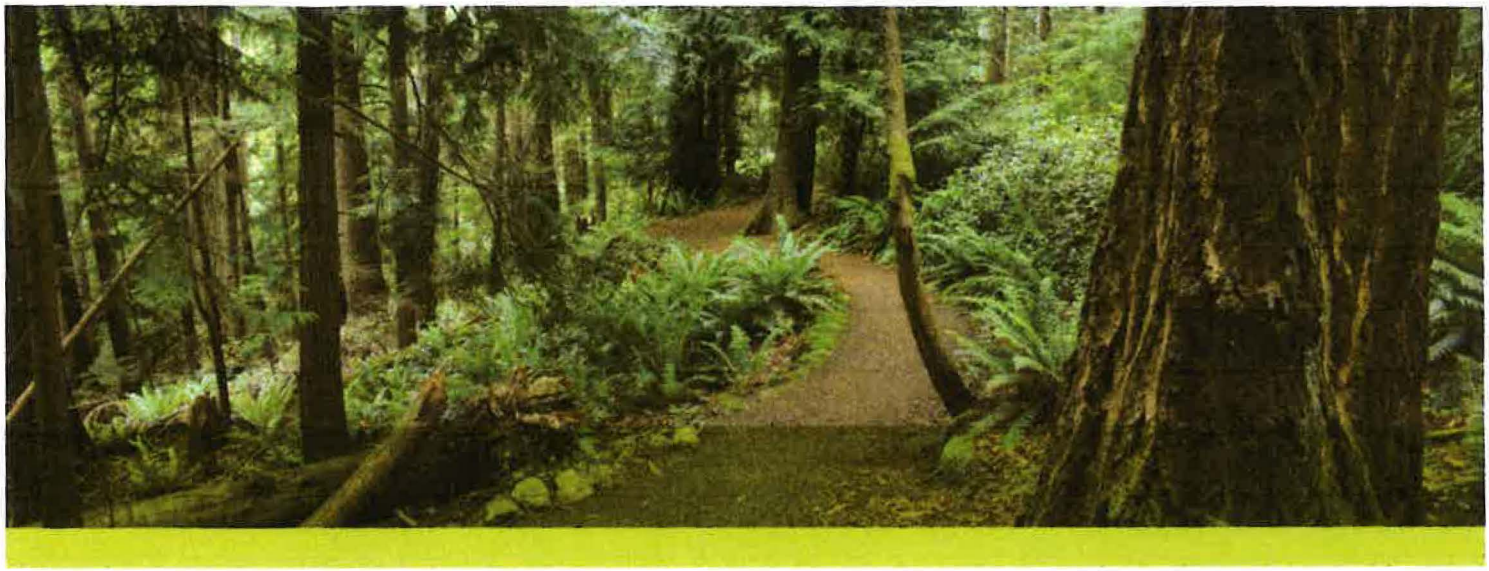


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February 6, 2024

Office of the Board of County Commissioners
223 E. 4th Street, Suite 4
Port Angeles, WA 98362

Re: Clallam County Periodic Comprehensive Plan Update

Dear Reviewers,

For over 20 years, DCG/Watershed's planners, scientists, engineers, and designers have worked to assist cities and counties throughout Washington to advance their planning efforts and improve the balance between population growth and the preservation of local land uses and environmental resources. Our guidance and knowledge of the recent Statewide legislation and the forthcoming needs to address these pressing issues through policies and regulations, positions our team to help develop cost-effective solutions for the County in an effort to serve its residents.

DCG/Watershed is excited to bring together a well-rounded team of experts to help complete the Comprehensive Plan update for Clallam County. Our team will be led by Matt Covert, Senior Planner at DCG/Watershed, who is also managing the 2024 update of Kitsap County's Comprehensive Plan. Joining our team is Kimley-Horn, led by Clay White, with whom we have teamed on numerous similar planning efforts. Collectively, we offer a team that has the resources and expertise to navigate this complex task.

Our team's depth of experience, technical capabilities, and awareness of the issues at play in the County will enable us to work fluently with County staff and decision makers. We offer unparalleled experience in key focus areas, including housing studies; sub-area and land use plans; climate and sustainability plans; transportation, shoreline, and natural elements for Comprehensive Plans; and development regulations and critical areas regulations.

Our entire project team looks forward to helping the County with this latest effort. If there are any questions, please contact me at **(425) 650-1317** or by email at **dnickel@dcgwatershed.com**.

Sincerely,

Dan Nickel, Executive Vice President
Director of Planning
DCG/Watershed, Inc.



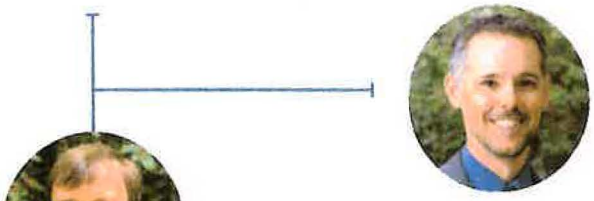
Firm Profiles

DCG/Watershed has been a leader in science-based planning and design for over 40 years. Our multi-disciplinary approach combines environmental and scientific expertise in natural systems with extensive land use planning, permitting, engineering and construction knowledge to help communities across Washington understand their environments and reach sustainable solutions. We have served public sector clients in the politically charged areas of Growth Management Act and Shoreline Management Act compliance since 2001. Our multidisciplinary staff is intimately familiar with local conditions, having worked throughout the County, including long-range planning projects for Port Angeles, Sequim and Forks. Our recent efforts ensured continued consistency with State laws and local plans, but also worked to improve permit processing and administrative understanding. In addition, DCG/Watershed has provided assistance to numerous residential, commercial, industrial, and public development projects throughout the County.

Founded in 1967, **Kimley-Horn** is a full-service community planning, design, and engineering consulting firm providing services to private- and public-sector clients throughout Washington and nationwide. With 7,400+ employees nationwide and over 80 in Washington, the Kimley-Horn team is well-equipped to handle requests efficiently and responsibly to meet a variety of needs. Their comprehensive plan team focuses on developing long range plans for counties and cities that work well when implemented. They are also connected at the State level as legislation is developed, allowing them to seamlessly assist jurisdictions during implementation. From plan, policy, and regulation development, to SEPA environmental review and community engagement, Kimley-Horn focuses on earning client trust and being an extension of their client's team.

Meet the Team

ORG CHART AND AVAILABILITY



PRINCIPAL-IN-CHARGE
Dan Nickel
40% AVAILABILITY



PROJECT MANAGER
Matt Covert
30% AVAILABILITY

DCG/Watershed Team



Alex Capron, AICP
Land Use, Development Regulations
40% AVAILABILITY



Alexandra Plumb
Project Understanding
45% AVAILABILITY



Laura Jones
Land Use, Housing
50% AVAILABILITY



Nell Lund, PWS
Critical Areas
40% AVAILABILITY



Dawn Spilsbury
Facilitation/Engagement/ GIS Analysis
45% AVAILABILITY



Donna Keeler
Housing, Land Use
40% AVAILABILITY

Kimley-Horn Team



Clay White
Rural Lands, Sub-Area Planning and Capital Facilities Plan Update
40% AVAILABILITY



Matt Palmer, P.E.
Transportation
40% AVAILABILITY



Sara Tannahill, P.E.
Sewer/Water
50% AVAILABILITY

Project Team

The organization chart below illustrates how our team is structured. Detailed resumes of key staff follow.

PRINCIPAL-IN-CHARGE
Dan Nickel
Director of Planning

PROJECT MANAGER
Matt Covert
Senior Planner

CLALLAM COUNTY COMPREHENSIVE PLAN
Project Organization Chart

Key Focus Areas	LEAD	SUPPORT
Comprehensive Plan Checklist	DCG/Watershed Matt Covert, Donna Keeler, Alexandra Plumb	Kimley-Horn
Comprehensive Plan Elements	DCG/Watershed Matt Covert, Donna Keeler, Alex Capron, Alexandra Plumb	Kimley-Horn
Future Land Use Map Update	DCG/Watershed Donna Keeler, Alex Capron, Dawn Spilsbury	Kimley-Horn
Supplemental EIS	DCG/Watershed Matt Covert, Alexandra Plumb, Dawn Spilsbury	Kimley-Horn
Sewer/Water Development Plan	Kimley-Horn Sara Tannahill, Clay White	DCG/Watershed
Capital Facilities Planning	Kimley-Horn Matt Palmer, Clay White	DCG/Watershed
Housing Gap Analysis	DCG/Watershed Matt Covert, Laura Jones, Dawn Spilsbury, Donna Keeler	Kimley-Horn
Rural Lands Component	Kimley-Horn Clay White	DCG/Watershed
Critical Areas Ordinance	DCG/Watershed Nell Lund, Dawn Spilsbury, Alexandra Plumb	Kimley-Horn
Development Regulations	DCG/Watershed Matt Covert, Donna Keeler, Alex Capron, Alexandra Plumb	Kimley-Horn
Outreach/ Engagement	DCG/Watershed Matt Covert, Dawn Spilsbury, Dan Nickel	Kimley-Horn

Project Experience

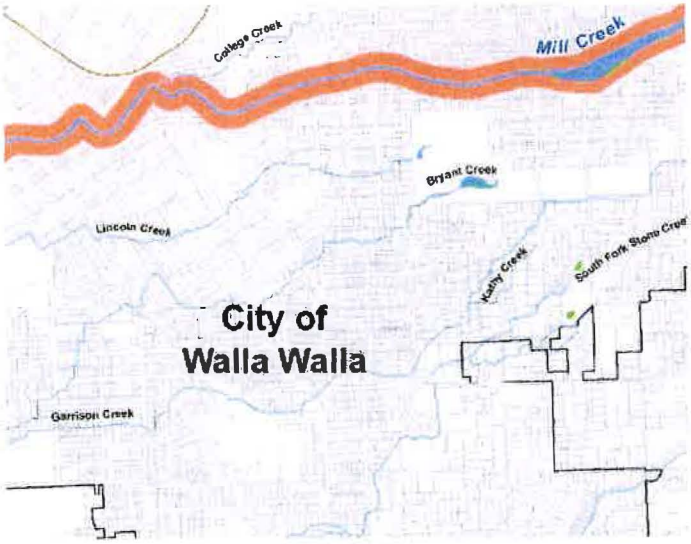
2024 Comprehensive Plan Update, Kitsap County

DCG/Watershed is currently leading the periodic update of Kitsap County's comprehensive plan, scheduled for completion by the end of 2024. Overall, key focus areas for the periodic review include housing, climate change, subarea planning, and preparing an Environmental Impact Statement (EIS). DCG/Watershed is working with a team of subconsultant firms and managing all aspects of workflow. In addition to the update of the comprehensive plan, the project includes amendments to development regulations, including the CAO. To inform the CAO update, DCG/Watershed prepared a Best Available Science Report, which included specific content related to the potential effects of climate change on critical areas. DCG/Watershed is working closely with the County on public/stakeholder outreach and will be assisting through the legislative process in 2024.



Comprehensive Plan Periodic Update, Walla Walla County

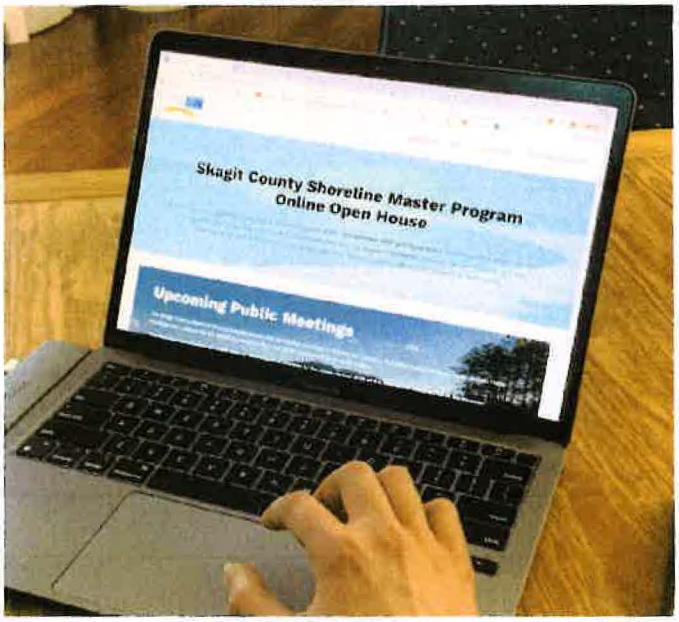
DCG/Watershed was the prime consultant for the most recent periodic update of Walla Walla County's comprehensive plan pursuant to the Growth Management Act. As an early step in the update process, DCG/Watershed conducted a gap analysis of the County's existing plan, which included an evaluation of the plan against Washington State Department of Commerce review checklist. DCG/Watershed subsequently assisted the County with the selection of its overall population projection, as well as the population growth targets for its component jurisdictions. DCG/Watershed also led the preparation of a GIS-based land capacity analysis that assessed the ability of component jurisdictions to accommodate their projected growth. During the update, DCG/Watershed participated in public, Planning Commission, and Board of County Commissioners' meetings, successfully completing the adopted Comprehensive Plan.



Shoreline Master Program and Critical Areas Ordinance Update, Skagit County

DCG/Watershed has assisted Skagit County with updates to both the Shoreline Master Program and Critical Areas Ordinance over the past decade. The Skagit County SMP covers a staggering number of shorelines: 228 miles of marine and estuarine shorelines, 598 miles of rivers and streams, and 53 lakes and reservoirs. A central part of the Skagit County SMP update process was the creation of a 17-member advisory committee by the Board

of County Commissioners to review draft materials and advise the County throughout the process. DCG/Watershed facilitated advisory committee meetings, and also put on a series of public visioning workshops and public open houses at multiple locations throughout the County. DCG/Watershed led the production of major technical deliverables including the shoreline inventory and characterization report, the cumulative impacts analysis, and restoration plan. Staff also provided significant input into policy and regulation development, facilitated 19 Shoreline Advisory Committee meetings and assisted with all aspects of public involvement, Planning Commission workshops and Board of County Commissioners hearings. Planning staff at DCG/Watershed continue to assist County staff with on-call planning needs, including all aspects of permit review.



Critical Areas Ordinance Update, Pierce County

DCG/Watershed is leading the effort to assist Pierce County with their required CAO update by completing a Best Available Science (BAS) review, amending the development regulations, and working with the County through the public review process and local adoption. The BAS review covered the five types of critical areas defined in RCW 36.70A, critical aquifer recharge areas (CARAs), frequently flooded areas, geologic hazard areas, wetlands, and fish and wildlife habitat conservation areas (FWHCA). The BAS review and regulatory Gap Analysis were completed and utilized to create recommended updates to the CAO. DCG/Watershed will work closely with the County through 2024, including associated amendments to the County's Shoreline Master Program to de-couple the CAO.



Shoreline Master Program Updates, Cities of Sequim, Port Angeles, and Forks

DCG/Watershed led Shoreline Master Program (SMP) updates for the cities of Sequim, Port Angeles, and Forks. The update for the City of Port Angeles was a comprehensive update and included an extensive public review process, technical advisory committee, and the completion of all required technical documentation to ensure Ecology's no net loss standard was met. SMP updates for the cities of Sequim and Forks were part of their periodic reviews. These efforts were focused on compliance with recent State legislative updates per Ecology's checklist, but also brought forward several key staff recommended changes to the SMP. DCG/Watershed staff worked closely with the Department of Ecology to ensure all required elements were met, resulting in a smooth local adoption process.



Countywide Planning Policies, Walla Walla County

DCG/Watershed, with Kimley-Horn as a subconsultant, is leading the update to Walla Walla County's Countywide Planning Policies. This project presents a wonderful opportunity to update the 1993 plan to recognize that Walla Walla County and the cities of Walla Walla, College Place, Waitsburg, and Prescott have changed over the past 30 years and will be changing in the future as growth occurs. This effort includes the facilitation of an 11-member Project Management Team made up city and county representatives, presentations at Board of County Commissioner meetings and public hearings. The 2023-2024 project is the building block for the County's upcoming Comprehensive Plan update in 2026.

Island County, Clinton Sub Area Plan and RAID Analysis – Island County, WA

Kimley-Horn is currently assisting Island County with the development of a Sub Area Plan for the Clinton Rural Areas of Intensive Development (RAID) and a density analysis and assessment of current zoning in mixed-use RAIDs. The team will provide policies for the Comprehensive Plan update that allows the County to meet new Housing Element requirements as well as public engagement opportunities that focus on engaging underserved populations in the community.

Staff Involved: Clay White



Relevant Project Experience

City of Snohomish, Sub Area – Feasibility Study – Snohomish, WA

Prior to joining their respective firms, Clay White and Matt Covert led a land use study for three subareas within the City of Snohomish. The project included a land use inventory to better understand how the sub areas are currently developed, buildable lands analysis to understand the development potential of each subarea after considering areas made unbuildable due to wetlands, other critical areas and easements, and a market analysis to understand the cost-benefit of making different land use and zoning changes within the city. The project findings are being considered by the city as part of the City's 2024 Comprehensive Plan update.

Staff Involved: Clay White, Matt Covert



Whitman County, Comprehensive Plan Update – Whitman County, WA

Prior to joining their respective firms, Clay White and Matt Covert assisted Whitman County with their Comprehensive Plan Update. This update presented a terrific opportunity to revisit, realign, and refocus the goals and aspirations of the County's leaders and residents and to ensure policies aligned with GMA requirements. The project included developing a work program and project schedule, updating policies, community outreach, producing new GIS maps, and completing a full redesign of the comprehensive plan document. In addition, scoping for development regulation changes to update the code and implement new and revised policy changes was completed. Creating policies that meet community needs and GMA requirements was key to this project's success.

Staff Involved: Clay White, Matt Covert

Project Understanding

Clallam County is a mostly rural community with nearly 100 miles of coastal shoreline and a vast amount of federal forest land, which together drive much of the local economy. Clallam County fully plans under Washington State's Growth Management Act (GMA). By June 30, 2025, Clallam County must complete and adopt a periodic update of its comprehensive plan that meets all the requirements of the GMA and the administrative code and guidance from the Department of Commerce. It must also be consistent with the County-wide Planning Policies.

Clallam County's last periodic update of its comprehensive plan was adopted in 2020. The county-wide portion of the plan (which is codified in the County Code as Title 31) addresses the following issues: resource lands (agriculture, forest, and mineral lands), urban growth areas, rural growth, land use, housing, public utilities, facilities, and services, environment, historic and cultural resources, transportation, economic development, and capital facilities. In addition to county-wide elements, the plan also contains four regional subarea plans: Sequim-Dungeness, Port Angeles, Straits, and Forks-West End.

For the 2025 comprehensive plan update, the County has emphasized the following focus areas:

- A work plan and schedule based on the Commerce periodic review checklist, a land capacity analysis, needs assessment, and priority list;
- A community engagement program involving residents, stakeholders, tribes, and state agencies to be carried out throughout the process;
- Updating and revision of the elements of the plan, including the future land use map, a supplemental environmental impact statement, a sewer/water development plan, the capital facilities plan update, a housing gap analysis, rural lands, and sub-area plans as necessary;
- Updating the Critical Areas Ordinance based on best available science and the Critical Areas Checklist;
- Updating other development regulations as required by state law and by changes to the comprehensive plan;
- Creation of an implementation matrix; and
- Coordination with Commerce to ensure that the plan and associated regulations comply with the substantive and procedural requirements of periodic update adoption.

The DCG/Watershed team is very well positioned to support Clallam County with this periodic update. We combine DCG/Watershed's expertise in comprehensive planning, environmental impact statements, and critical areas ordinances with Kimley-Horn's expertise in policy, transportation, rural lands, and capital facilities.

The County will be responsible for a variety of tasks related to the update, the consultant team responsible for several others, and jointly the County and the consultant team for others.

A. General Approach to Comprehensive Plan and Development Regulations Work Plan

A comprehensive plan is the foundation for local planning efforts, providing a broad statement of the community's vision for the future by outlining goals, objectives, policies, and actions that guide a jurisdiction in creating the physical, economic, and social character. Comprehensive plans are living documents, which look out 20 years and are implemented through community programs and development regulations.

Overview of major new state laws focused on housing and climate change since the 2015 update
HB 1337: Requires the city to allow at least two accessory dwelling units on all lots within residential zones.
HB 1220: Modified Housing Element requirements under the GMA. The city will be required to 1) plan for housing by income band, 2) provide housing capacity for emergency housing, emergency shelters, permanent supportive housing, and 3) implement policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion in housing caused by local policies, plans, and actions.
HB 1181: Requires the city to adopt a new climate change and resiliency element in the comprehensive plan that is designed to result in reductions in overall greenhouse gas emissions and that must enhance resiliency to and avoid the adverse impacts of climate change.

A comprehensive plan consists of different elements, all of which work together to ensure there is a cohesive plan for the community as it grows. This includes planning for people and jobs, housing, parks, transportation needs, economic development strategies, and utilities and capital facilities. Clallam County has emphasized an implementation matrix, which helps ensure goals, objectives, and policies can convert into actions. Comprehensive plans are proactive and forward looking!

Our approach and budget acknowledge that several of the anticipated completion dates provided in the RFP have already passed and the project is not yet under contract. We believe that with the team we bring to the table, the updated schedule shown in this proposal is realistic and will result in completion of key deliverables when needed.

The update of each element of the comprehensive plan is made easier when there is a firm foundation for making policy and plan changes. This includes setting upfront goals that could include items such as:

- Policy consistency with the Growth Management Act
- Consistency with the County-wide Planning Policies
- Add definitions of new key terms and review existing terms to ensure consistency
- Review policies that dictate action to determine whether they are still relevant or need to be removed or modified
- Criteria for an implementation matrix
- Plan and policy edits typically come in a few different buckets:
- To implement new or revised regional and countywide planning policies.
- Those in response to changes in state law or case law.
- Changes to remove or edit policies which may no longer be relevant or to update terms and language for consistency.
- Changes to include new language or policies or to remove or modify language or policies to reflect the community values and vision for the future.

The key is to document the project approach, goals, deliverables/schedule, and those responsible for delivering each task upfront. A project tracker tool will be used to monitor task development to ensure updates are completed within the project schedule.

At the beginning of the project, we will hold a kickoff meeting with County staff, participate in a joint Board of County Commissioners/Planning Commission meeting, and develop a detailed work plan and schedule. We anticipate having two regular collaboration meetings with County staff per month.

Deliverables

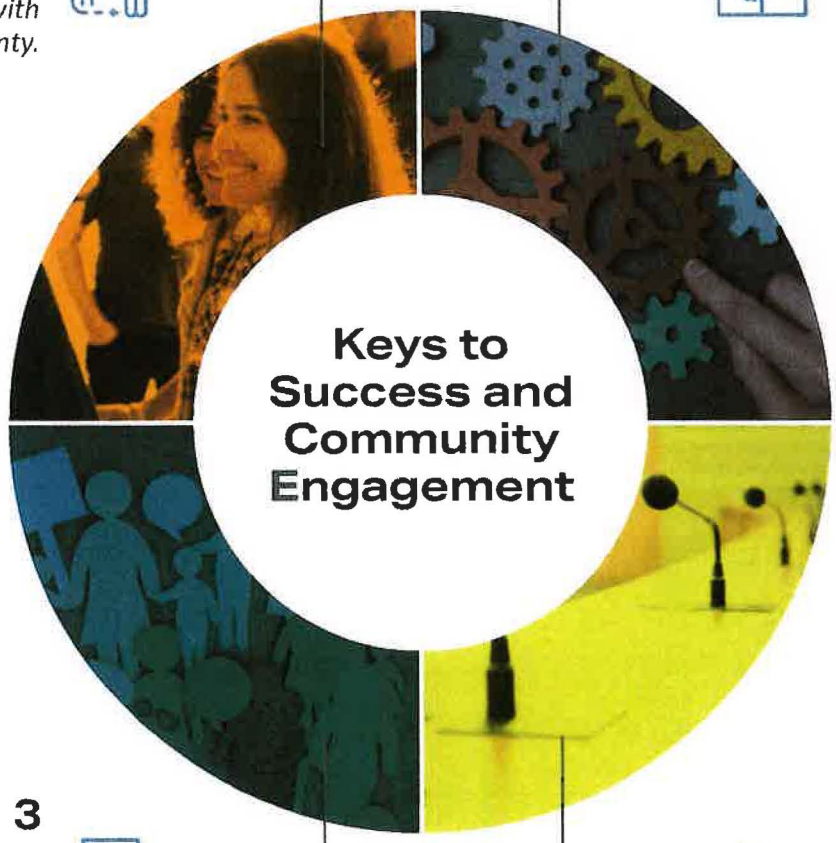
- Draft and final Periodic Update work plan and schedule (this will include a more detailed schedule of working with the Planning Commission and Board of County Commissioners throughout the drafting, review, and approval process)



B. Approach to engagement strategy

A Public Involvement Plan guides the community engagement efforts to inform the County's comprehensive plan update. By soliciting input from a broad cross section of communities across the County, the comprehensive plan can better reflect its residents' and workers' needs, priorities, and aspirations.

Identification of key areas that the community may have an interest in as the comprehensive plan is updated is key to making sure the engagement efforts are intentional. While people will have the opportunity to participate and engage throughout the process, some issues may be more critical than others. It is important to recognize that keying in on certain topics will also help ensure the Board of County Commissioners and the Planning Commission hear the community voices as they address and make decisions on important topics. Since the County last completed its comprehensive plan update in 2020, new laws especially focused on housing and climate change have passed. We will coordinate with the team selected to conduct the climate change work to ensure that communication on this topic is in sync.



1

Early and continuous opportunities for the public to engage with the county.

2

That community members understand the process, what is being proposed, and how they have a voice.

3

Offer engagement options that provide opportunities for those who may not always have a strong voice to engage.

4

Information and feedback from the engagement process provides strong value to the Planning Commission and County Commissioners.





We often create engaging, interactive project websites. Our team is creative and very skilled at developing outreach materials—such as informational posters, public notice postcards, and project brochures—for use at all types of public meetings, whether virtual or in-person open houses, Planning Commission, or Board of County Commissioners meetings. Our focus is to provide materials that convey substantive information to a general audience in a clear and concise manner and that are accessible to persons using screen-readers and other ADA-supported technologies.

The consultant team, in partnership with County staff, will complete a public participation plan for the periodic update that is based on the detailed schedule created in the work plan and includes systematic ways to engage different audiences through best practices that emphasize the involvement of communities who are typically underrepresented in planning efforts and are unevenly impacted by their outcomes, including renters, low-income households, and people of color.

Deliverables

- Public participation plan
- Public participation outreach summary report
- Outreach materials, as needed

C. Approach to Comprehensive Plan Analysis and Updates

Our approach to updating the comprehensive plan elements will be based on completion of the Commerce checklist and analysis of the existing plan and policies, a land capacity analysis, a housing needs assessment and gap analysis, and a supplementary environmental impact statement.

We will prepare draft revisions to the comprehensive plan in a manner that will allow for integration with the code-based format of the current comprehensive plan. We will make revisions responding to review of and comment on the plan as it goes through the public process. We will continue to make adjustments to the comprehensive plan as needed. Our budget and high-level schedule reflect time spent revising the draft comprehensive plan after Planning Commission and Board of County Commissioners review in early 2025

HOUSING

Housing availability and affordability is a key focus area for Clallam County and its communities. Housing affordability has been a focus at the state level in the last several years since the County last updated its comprehensive plan. New requirements for housing elements, in particular, were adopted into law in 2021 through the passage of House Bill 1220. Our approach to housing is based on meeting these requirements. Our team has extensive experience creating data-rich, easy to read Housing Needs Assessments and demonstrating compliance with housing allocations by income band to meet Department of Commerce guidance and code. We will conduct a detailed gap analysis of the currently adopted plan relative to new housing element law and administrative code. Additionally, we will prepare a housing needs assessment that satisfies Commerce guidance and demonstrates the extent of potential plan and map changes that might be needed to plan for and accommodate all income bands.

LAND USE

We anticipate potential updates to the Future Land Use Map based on feedback from the Planning Commission and through the public engagement process. Changes to the map may be needed based on accounting for growth targets and housing allocations we will develop through the land capacity analysis and housing needs assessment and gap analysis. Leading with an understanding that the land use element drives many other pieces of the comprehensive plan, changes to the element may be necessary so that the plan text and the map are consistent with each other.

SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT

Clallam County completed a draft and final environmental impact statement (EIS) for its comprehensive plan update in 2006. We anticipate using our extensive EIS experience to assist the County in preparation of a scoping notice. The consultant team will prepare maps and graphics as needed for the EIS and capital facilities plan. After scoping, we will prepare a preliminary supplemental environmental impact statement for review and comment by County staff. The preliminary draft SEIS will be in the format prescribed by WAC 197-11. The outline of the SEIS content is anticipated to be similar to the following:

- Cover memo
- Fact sheet
- Table of contents
- Summary
- Description of proposed alternatives
- Affected environment, potential impacts and mitigation measures
- References
- Distribution list
- Appendices as needed

TRANSPORTATION

We will assist the Public Works Department with the update to the Transportation Element. In addition to providing assistance with updates to the transportation inventory and goals and policies in CCC 31.02.415 and 420, we can provide assistance with meeting all requirements as provided for in WAC 365-196-430. Our team can work as an extension of the Clallam County team and provide services as necessary to ensure the Transportation Plan and Element are consistent with the Land Use Element.

SEWER/WATER AND CAPITAL FACILITIES PLAN

As part of the Capital Facility Plan (CFP) update, we will assess the capacity of existing sewer and water facilities within Urban Growth Areas based upon information provided by service providers. As new growth is proposed to be allocated to these areas through growth allocations and future land use map changes, an assessment of changes needed to accommodate new growth will be prepared. This is consistent with the GMA requirement to identify all capital facilities that are planned to be provided within the planning period, including general location and capacity and a six-year financing plan for improvements. This work will identify the improvements required to address existing deficiencies or preserve the ability to maintain both current capacity and the new capacity required for accommodating growth.

RURAL LANDS

We will update the Rural Land component of the comprehensive plan consistent with GMA requirements and the community vision for these areas. While the GMA has not significantly changed since the last Comprehensive Plan regarding planning for rural lands, we will ensure the Rural Land component addresses rural development and protects rural character. We will also focus on the definition of rural character and align that with the vision for these areas as defined by the community. SB 5275 provides additional options for areas designated as Limited Areas of More Intense Rural Development (LAMIRD). The bill provides flexibility for development and redevelopment within these areas where there are public facilities and services to serve additional uses and the rural character is maintained. Land use or zoning changes within these areas will be coordinated with the overall approach for meeting population, employment, and housing target goals.



Deliverables

- Draft comprehensive plan amendment, including but not limited to:
  - Element updates as needed (including land use, housing, rural lands, sub-area plans as needed)
  - Coordination with the consultant for the Climate Element to ensure internal plan consistency
  - Future Land Use Map
  - Supplemental EIS
  - Sewer/Water Development Plan
  - Housing Needs Assessment and Gap Analysis
- Notification email from Commerce that draft ordinance was submitted for 60-day review
- Complete new Implementation Matrix
- Adopted Comprehensive Plan
- Notification email from Commerce that adopted ordinance was received
- Resolution finding the periodic update required by RCW 36.70A.130(b) is complete
- Notification email from Commerce that adopted resolution was received

D. Approach to Critical Areas and Development Regulations Amendments

Critical areas regulations and development regulations are the primary mechanism by which Clallam County implements its comprehensive plan. Concurrently with the Periodic Update checklist completion, the consultant team will complete the development regulations checklist and an implementation gap analysis to identify specific provisions that need to be updated. The scope of code amendments may increase as early engagement and plan analysis occur and new goals or policies are identified.

Our environmental planning team is actively working on critical areas ordinance updates for several Puget Sound counties. This work includes active coordination with State agencies and local tribes to gather feedback and discuss meaningful implementation of recent State guidance that can be readily understood by applicants and county staff.

Our approach to this task is based on ensuring that development regulations implement the vision and policies established in the comprehensive plan.

In addition to Title 31 (the comprehensive plan), potential areas of the code that could be affected may include (but are not limited to) Chapter 27.12 (Critical Areas), Title 26 (Planning), Title 29 (Subdivisions), and Title 33 (Zoning).

Deliverables

- Critical Areas Checklist and Gap Analysis
- Review of Best Available Science
- Draft Critical Areas Ordinance
- Notification email from Commerce that draft ordinance was submitted for 60-day review
- Adopted Critical Areas Ordinance
- Notification email from Commerce that adopted ordinance was received
- Development Regulations Checklist
- Draft Development Regulations Ordinance
- Notification email from Commerce that draft ordinance was submitted for 60-day review
- Adopted Development Regulations Ordinance
- Notification email from Commerce that adopted ordinance was received

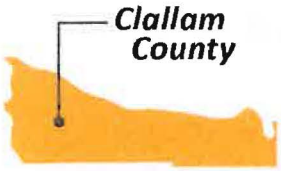
ASSURANCES ON PROJECT AVAILABILITY TO PERFORM THE WORK DURING THE PLANNING PERIOD

We attribute our success in completing our long-range planning projects on schedule and budget to our focus on systematic communication. We begin by establishing and agreeing upon a clear schedule of tasks with our clients. The schedule is continually reviewed throughout the project and adjusted as needed to ensure success. We use the VantagePoint software to assist in tracking budgets and project schedules. VantagePoint enables managers to set up project phases with staff hours, budgets and time frames assigned to them. Phases can be closed to entry of hours when work is completed or budget has been exhausted. Managers can track hours spent and project progress because staff members enter their hours continually throughout the day. They also enter what percentage of a task is complete to document progress against hours spent. Hours spent are continuously cross-checked with schedule and progress of work.

Matt, Dan, Clay and the rest of the DCG/Watershed and Kimley-Horn team are fully available to the County upon contract execution and are committed to completing the work by June 30, 2025.

Key Scope Assumptions

- Climate change element work is being performed under a separate contract.
- Clallam County will provide technical assistance in preparation of the transportation element and capital facilities plan.
- We anticipate refining this scope in collaboration with the County, if selected.
- Content of the updated Comprehensive Plan and Capital Facilities Plan will be generally comparable in breadth and depth to the existing documents.
- All tasks include routine coordination (i.e., email, phone, virtual meetings) with County staff needed to complete the task.
- Comments provided to the consultant team by County staff will be consolidated.
- Deliverables will typically have one round of review by County staff. If the revised deliverable still does not meet County satisfaction, additional minor revisions will be performed by the consultant team.





Matt Covert

PROJECT MANAGER

ROLE: Project Manager

EDUCATION: MS Environment and Resources, 2012, University of Wisconsin, Madison, WI

BS Political Science, 2009, Arizona State University, Tempe, AZ

Matt is a senior planner at DCG/Watershed with 11 years of professional experience in the planning field. Matt provides a variety of planning services for public-sector clients, including comprehensive planning, developing and implementing development regulations, developing and implementing middle housing projects and housing action plans, of land use and land capacity. He also has years of experience assisting private clients in navigating the land use and development permitting process in dozens of jurisdictions. Specifically, he has experience working with the City of Kenmore on planning for middle housing.

*Kenmore Middle Housing Project. From 2022 through June 2023, Matt served on the project team assisting the City of Kenmore with its Commerce grant-funded Middle Housing project. This project involved conducting analysis of racial equity, community engagement, study of existing comprehensive plan policies and development regulations, and developing policy and code recommendations for the City to increase the availability of middle housing. This became especially important when the state legislature passed HB 1110 during the final months of the project, and Matt worked on the project team to help City staff develop a strategy for implementing the requirements of the bill and specific policy and code recommendations emerging from that strategy.

Comprehensive Plan, Kitsap County. Matt has been a member of the large project team assisting Kitsap County with its comprehensive plan update since early 2022. Most recently, he has been serving as the overall project manager, leading the effort to deliver a draft comprehensive plan and draft environmental impact statement for public release in mid-December 2023. This involves extensive coordination with County staff and with the five consultant firms as well as invoicing and deliverable tracking responsibilities. Previously, Matt assisted County staff in developing a draft Planned Unit Development (PUD) code, led the housing element update from the consultant side, and conducted a plan and policy analysis for the County's designation of centers as well as gaps relative to countywide planning policies and multicounty planning policies.

***Housing Action Plan and HAP Implementation, City of Sumner.** Matt served as project manager for a multifaceted development code update for the City of Sumner. Having also worked extensively in a support role on the joint Housing Action Plan with Sumner and Bonney Lake, he followed up this planning work with plan implementation with the City of Sumner. The City identified three specific code projects to implement HAP actions in 2022, and Matt was on the winning bid to assist the city with this work. He worked closely with the City to create a zero lot line subdivision code, revise the standards for short subdivisions, and enable more residential infill using shared driveways and pipestem lots on some of Sumner's narrow but deep residential lots. These code changes received a thorough vetting and discussion by the City's Planning Commission and City Council, and Matt played a key role in drafting, revising, and presenting the code concepts to elected and appointed bodies. This included developing visuals of where the code changes would apply, what their impact might be at ground level, and what their level of impact on the city's housing issues could potentially be.

**Prior to DCG/Watershed*



Dan Nickel

DIRECTOR OF PLANNING

ROLE: Principal-in-Charge

EDUCATION: MS, Environmental Science, Department of Civil and Environmental Engineering, UW, Seattle, Washington

BS, Biology, Pacific Lutheran University, Tacoma, Washington

REGISTRATIONS & LICENSES: Certified Erosion and Sediment Control Lead (CESCL) Certification, 2008

Dan is an Executive Vice President at DCG/Watershed and Director of Planning with over two decades of experience helping public agencies develop projects and plans that balance environmental impacts and regulatory protection standards. Dan has been project manager for updates to more than 80 Shoreline Master Programs, 20 Critical Areas Ordinances, and assisted on numerous Comprehensive Plans, focusing on improving environmental and land use policies and regulations. His work for various cities and counties across Washington State has included extensive public and stakeholder involvement to ensure collaborative input and successful, positive outcomes.

SIMILAR PROJECT EXPERIENCE

Comprehensive Plan Periodic Update, Kitsap County. With DCG/Watershed as the prime consultant, Dan is currently the Principal-in-Charge for the Kitsap County Comprehensive Plan periodic update. Dan is overseeing all aspects of the update's deliverables, include topics on housing affordability, climate change mitigation and adaptation, regional centers, and critical areas. Dan's primary role is to manage the critical areas update portion of this effort, working directly with County staff and various advisory Working Groups. Dan is also working closely with the DCG/Watershed project manager to oversee preparation of an EIS on three alternatives.

Tree Code Updates and Street Tree Plan, City of Tumwater. As the principal-in-charge, Dan is currently working with the City of Tumwater and the DCG/Watershed team to update the City's urban forestry municipal codes with a focus on equity, sustainability, and climate resilience. These include TMC 16.08 Preservation of trees and vegetation, TMC 12.24 Street Trees, and an update to the 2010 Street Tree Plan.

Shoreline Master Program Update, Skagit County. As project manager, Dan assisted Skagit County, with both a comprehensive update and periodic review of the SMP, including full integration of updated critical areas regulations. The multi-year effort included facilitation of a 17-member Shoreline Advisory Committee, Planning Commission review of policy and regulatory amendments and Board of County Commissioners (BOCC) meetings. The BOCC adopted the final SMP and integrated critical areas regulations in 2023.

Additional key and relevant projects include:

- Redmond 2050 Comprehensive Plan, City of Redmond
- Comprehensive Plan Update, Walla Walla County Shoreline Master Program, City of Port Angeles
- Shoreline Master Program Periodic Review, City of Sequim
- Shoreline Master Program Comprehensive Update, Skagit County
- Critical Areas Ordinance Update, Pierce County



Alex Capron, AICP

SENIOR PLANNER / GIS ANALYST

ROLE: Lead Land Use Planner

EDUCATION: Geographic Information System (GIS) Certification, 2011, University of Washington
BA, Environmental Planning and Policy
Western Washington University

REGISTRATIONS & LICENSES: American Institute of Certified Planners (AICP),
American Planning Association, #34281

Alex is an environmental and land use planner who helps clients understand and meet regulatory requirements. His background in conveying land use principles and code-driven requirements to both clients and applicants allow for better understood outcomes. Further, his regulatory knowledge, relationships with agencies and attention to detail ensure compliance with local, state, and federal environmental requirements. He has worked on a variety of code development, planning review, stream, shoreline, wetland and GIS mapping projects for local jurisdictions, agencies, and utilities.

SIMILAR PROJECT EXPERIENCE

Critical Areas Ordinance, Shoreline Master Program and On-call Current Planning Support, City of White Salmon. Drawing from his diverse municipal and private experience working collaboratively with local and state agencies, Alex spearheaded the City's Shoreline Master Program Periodic Update and Critical Areas Ordinance in short succession. During this time, the City also engaged with DCG/Watershed as sole on-call current planning for all private development review, acting as chair for the development review team, consisting of the Planning Project Coordinator, Building Official/Fire Marshal, and Public Works Director. Reviews include numerous pre-application meetings, short term rental applications, critical area variances (reasonable use exceptions), boundary line adjustments, a short plat and a 33 lot plat. During this time, Alex engaged in reviewing and providing feedback regarding implementation for code amendments related the City's Housing Action Plan, to go into effect early 2024.

City Shops Permitting, City Sequim Public Works Department. Alex, as environmental permitting lead is navigating the public works department through critical area, mitigation, SEPA and conditional use permit requirements to permit a phased development, beginning with new utility infrastructure site-wide at the City's Public Works facility. Alex spearheaded a pre-application conference with City planning staff, advising the Public Works department of environmental constraints and permitted uses. The project is within both the Bell Creek riparian area and an off-site wetland buffer, complicating existing and proposed operations. The project is set to submit all documentation once decant facility design is complete, set for Q1 of 2024.

Shoreline Master Program Periodic Update, City of Sequim. Alex led all aspects of the periodic review, including review of necessary updates based upon state legislative amendments, advancements in best available science, comprehensive plan and zoning updates, and staff and DCG/Watershed identified issues. The SMP received quick Ecology approval and local adoption.

Alex has also managed the following projects:

- **Shoreline Master Program Periodic Review,** City of Forks
- **Shoreline Master Program Periodic Review,** City of Anacortes
- **Shoreline Users Guide,** Mason County
- **Integrated Shoreline Public Access & Trails Plan,** City Stevenson



Alexandra Plumb

ENVIRONMENTAL PLANNER

ROLE: Environmental Planner

EDUCATION: Oceanography (BS), Ocean Technology Track, Marine Biology Minor, University of Washington

REGISTRATIONS & LICENSES: PADI Open Water Diver, Rescue Diver, Advanced Open Water, Dry-Suit Certification

Certified Erosion & Sediment Control Lead

Alexandra Plumb, based out of our Freeland office, has extensive public sector and consulting experience in shoreline and critical areas regulations and policy development. She is a seasoned project manager with an extensive understanding of the SMA and GMA, including SMP and CAO updates, administering critical areas regulations, reviewing permit applications, amendment code, policy development and project implementation. These developed skills have led to a comprehensive understanding of permitting processes. Prior to joining DCG/Watershed, she worked for local government agencies as a Development Coordinator, Lead Entity Coordinator for Salmon Recovery and Current Use/Long Range Planner.

SIMILAR PROJECT EXPERIENCE

Comprehensive Plan Environmental Impact Statement (EIS), Kitsap County. Alex, as an Environmental Planner, supported DCG/Watershed's development of a supplemental EIS in support of the County's update to its comprehensive plan. The EIS included a summary of existing conditions and comparison to potential future conditions of different alternatives and urban growth area (UGA) boundaries. Alex also assisted in the update of the County's Critical Areas Ordinance to ensure compliance with the latest State requirements and Best Available Science (BAS), provide consistency in regulations, and find ways to improve usability for both applicants and staff.

City of Lake Stevens SMP User Guide. DCG/ Watershed assisted the city in developing a Shoreline Master Program user guide. The user guide provides clarification, illustrations, and figures to help guide applicants through the most common topics. Alex was instrumental in developing the guide and overall project coordination.

Pacific County SMP Periodic Review. Alex, as Environmental Planner, supported County staff with code amendments and technical memos, specifically providing rationale for retaining the existing prohibition on fixed structures in the Coastal Ocean shoreline environment designation. Alex provided presentations to members of the public, Planning Commissioners, and the Board of County Commissioners throughout the periodic review process, both virtually and in-person.

Grays Harbor County SMP Periodic Review. Alex, as Environmental Planner, supported County staff with code amendments for consistency with state legislative requirements and aided staff through adoption of the SMP. Alex provided presentations to members of the public, Planning Commissioners, and the Board of County Commissioners throughout the periodic review process, both virtually and in-person.

City of Langley Critical Areas Ordinance (CAO) Update. DCG/ Watershed is assisting the City of Langley with a periodic update of the City's CAO to help the City be compliant with the latest State requirements and Best Available Science (BAS), ensure consistency in regulations, and find ways to improve usability for both applicants and staff. Alex supported public engagement efforts and the development of draft updates to the CAO.



Nell Lund, PWS

SENIOR ECOLOGIST

ROLE: Lead Ecologist

EDUCATION: Certificate, Wetland Science and Management, University of Washington

BS, Biology, Arizona State University

REGISTRATIONS & LICENSES: Professional Wetland Scientist (PWS), Society of Wetland Scientists Certification, #2203, 2012, 2017, 2022

Pierce County PALS Wetland Specialist Roster

Nell is Senior Ecologist, Wetland Scientist, and Project Manager with over a decade of natural resource experience. She effectively conducts assessments and guides staff through project tasks, including wetland evaluation, delineation, mitigation planning, and environmental permitting. A background in research gives her outstanding writing and document production skills. She explains natural resource issues and potential solutions to project design teams, as well as non-technical staff and the public.

SIMILAR PROJECT EXPERIENCE

Redmond 2050 Comprehensive Plan, Periodic Review SEPA Analysis & Documentation, City of Redmond. DCG/Watershed was part of an interdisciplinary team of consultants working with the City of Redmond at the direction of Berk Consulting to support the City's Comprehensive Plan periodic review. Consistent with the Washington State Growth Management Act and the Endangered Species Act, DCG/Watershed prepared an Existing Conditions report and a Best Available Science (BAS) addendum to updated the City's previous BAS summary. To support the SEPA review, DCG/Watershed prepared Environmental Impact Statement (EIS) sections for plants and animals, water resources, and earth sections. DCG/Watershed also met with the project team to discuss and review climate change models as they were developed by Berk Consulting. DCG/Watershed contributed to the product of this analysis, the Redmond Climate Vulnerability Risk Assessment and Strategy Report.

Comprehensive Plan, City of Covington. Working as a subconsultant, Nell conducted a review of Best Available Science in support of the City's Comprehensive Plan. Through research of the City's existing conditions, GIS mapping, and contemporary scientific literature, Nell's final report provided the prime and City staff provided an updated understanding of the City's critical areas and fish and wildlife habitat to plan regulatory-compliant land use zoning and development activities.

Comprehensive Plan and Municipal Code Update, City of Newcastle. DCG/Watershed was contracted to assist with review and update of the City's critical areas regulations and related Comprehensive Plan policies. To date, we have completed a Best Available Science (BAS) report and gap analyses for their Land Use Element policies and the critical areas regulations. The gap analyses reports include BAS-supported recommendations. Nell presented a summary of the BAS review and Comprehensive Plan policy recommendations to the Newcastle Planning Commission.

Comprehensive Plan Update, City of Woodinville. Acting as part of an interdisciplinary team of consultants, DCG/Watershed worked with the City of Woodinville on a Comprehensive Plan and Municipal Code update. Consistent with the Washington State Growth Management Act and the Endangered Species Act, DCG/Watershed prepared an Existing Conditions report and a BAS report. The BAS report is tailored to reflect critical areas present within the Woodinville 2015 Comprehensive Plan Update Study Area. To further support planned municipal code updates, a Gap Analysis report identified code sections where current BAS can and should be incorporated into critical area regulations. Nell co-authored both the BAS and Gap Analysis reports and presented the report findings to the City Council. To facilitate consideration of likely environmental consequences associated with proposed changes, DCG/Watershed provided assistance with completion of the SEPA checklist.



Laura Jones

ENVIRONMENTAL PLANNER

ROLE: Environmental Planner

EDUCATION: MS, Natural Resources Management: Restoration Ecology and Habitat Management, University of Idaho

BS, Landscape Architecture, University of Idaho

REGISTRATIONS & LICENSES: Certified Floodplain Manager (CMF), 2018 – present

River City Leadership Academy 2021-2022

Stormwater & Erosion Education Program (SEEP & SEEP II)

Laura is an Environmental and Land Use Planner and a Certified Floodplain Manager (CFM) with over six years of planning experience. Her background in landscape architecture and education in restoration ecology give her a unique perspective on planning practices which results in a holistic approach to environmental planning. Her work as a CFM has given her hands-on experience with federal and state permitting processes and applying critical areas ordinance. She has an extensive understanding of reviewing permit applications, amending code, policy development, and project implementation. Prior to joining DCG/Watershed, Laura worked for government agencies in Idaho as an Urban Planner where she drafted reports, presented at public hearings, and assisted the public with land use development questions and applications.

SIMILAR PROJECT EXPERIENCE

Kitsap County Comprehensive Plan 2022. DCG/Watershed was contracted to work with Kitsap County to support the City's Comprehensive Plan periodic review. Consistent with the Washington State Growth Management Act DCG/Watershed prepared a Best Available Science (BAS) addendum to update the County's previous BAS summary. Laura conducted research of current BAS reports to assist in updating the County's Comprehensive Plan in addition to preparing the outline for the associated Environmental Impact Statement (EIS).

Lakewood Comprehensive Plan Update 2023. DCG/Watershed was hired as a subconsultant to conduct a Best Available Science (BAS)/regulatory audit of the Washington State Growth Management Act (GMA) as it pertains to the City's Critical Areas Ordinance (CAO). Laura was tasked with researching the existing ordinance, identifying necessary changes, and drafting the CAO gap analysis. Once completed this information will be utilized to revise the CAO and comprehensive plan.

***Cottage Home Performance Standards, City of Post Falls, Idaho.** While working as an Associate Planner for the City of Post Falls, Laura assisted in revising codes, drafting reports for land use applications, and represented the City at Public Hearings. During her tenure with the city, she drafted, led public outreach workshops and presented an ordinance for Cottage Home Performance Standards to help address the missing middle housing crisis.

***Post Falls Comprehensive Plan Update, City of Post Falls, Idaho.** While at the City of Post falls Laura also reviewed applications for comprehensive plan amendments as well as amendments to the city's associated master plans including an update to the City Center Master Plan, the Master Transportation Plan, and the Emergency Management Plan. She also participated in associated outreach, public participation, and public hearing elements of these plans.

**Prior to DCG/Watershed*



Dawn Spilsbury

FACILITATION / ENGAGEMENT / GIS ANALYSIS

ROLE: Facilitation/Engagement/GIS Analysis

EDUCATION: Bachelor of Science, Natural Resources Management/Wildlife Management, 2000, University of Florida

Master's Certificate, Geographic Information Systems, 2020, University of Denver

Master's Certificate, Database Management and Administration, 2010, University of Washington

Diploma, Fish, Wildlife and Recreation, 1996, British Columbia Institute of Technology

Dawn is a forest and fish ecologist and GIS analyst who supports the DCG/Watershed teams with GIS analyses and cartography services and data management, RPAS (remotely piloted aerial systems/drone) aerial imagery services, climate resiliency planning and habitat restoration and protection planning. In addition to being a FAA licensed RPAS pilot, she has a diverse set of skills and experiences including facilitation of citizen committees and technical work groups, management of restoration grant programs and scientific communications to policy and legislative decision makers. Prior to joining DCG/Watershed, she worked in the public sector and for a tribal government where she managed habitat restoration grant programs and was a member of several Puget Sound and State advisory committees and work groups pertaining to salmon recovery. Dawn also supports Puget Sound salmonid research and monitoring partners by coordinating and facilitating the Puget Sound Ecosystem Monitoring Program's Salmonid Work Group. Her goal is to advance ecosystem restoration and protection by connecting data to understanding, through sound science.

SIMILAR PROJECT EXPERIENCE

Puget Sound Ecosystem Monitoring Program (PSEMP) Salmonid Work Group Coordination. Dawn, as the Work Group coordinator, connects academic, federal and state agency, local jurisdiction and non-profit partners in an equitable and informative forum to advance collaboration, coordination and networking opportunities in service of advancing salmon management and recovery.

Pacific County Sea-Level Rise Risk Assessment, Pacific County, WA. Dawn managed Pacific County's Sea Level Rise (SLR) Vulnerability and Risk Assessment combining her GIS and ecological knowledge to identify potential impacts from SLR, characterize the risk of impact and identify areas of the community, resources, or assets considered most vulnerable. Along with Alex Plumb, she conducted public education and outreach, and provided guidance for future planning efforts and potential resilience projects.

Ecosystem Assessment for LEED Certification Application, City of Issaquah WA. Dawn created the maps and wrote the Ecosystem Assessment that addressed the Ecological and Natural Systems Category for the City's LEED certification application. The assessment documented and mapped how the City works with, and protects, their streams, floodplains, forests and open spaces.

GIS Data Management, Analyses, and Cartography. Dawn has supported teams on a several different projects for public jurisdictions, including City of Redmond's Wildlife Habitat Plan, Sammamish State Park Master Plan, City of Issaquah's Riparian Characterization Project, City of Langley's Critical Area Ordinance update, Kitsap County's Environmental Impact Assessment, Pierce County's Critical Area Ordinance riparian management zones.



Donna Keeler

SENIOR PLANNER

ROLE: Senior Planner

Bachelors in Environmental Studies, 1985, University of California, Santa Barbara, CA

EDUCATION: Masters in Environmental Planning (MEP), 1989, Arizona State University, Tempe, AZ

Bachelors in Environmental Studies, 1985, University of California, Santa Barbara, CA

REGISTRATIONS & LICENSES: Certificate of Low Impact Development (UW)

Other special courses include Climate Planning, Growth Management, Smart Growth, grant writing, project management, SEPA/NEPA, Active Transportation/ Complete Streets

Donna is an accomplished planner with over 25 years of experience in current, long range, rural, transportation and environmental planning. Prior to joining DCG/Watershed, Donna served as a Planning Director for the Town of Coupeville where she successfully led the update to the Comprehensive Plan and Shoreline Master Program while improving permitting review procedures and strengthening customer service in the Planning and Building Department. Donna has extensive experience in project management, team leadership, tribal coordination, public outreach, policy development, amending code, drafting ordinances, permit application review, historic preservation, design review, SEPA/NEPA review, shoreline administration, low impact development, grant writing, affordable housing, transportation and regional/rural planning. Fluent in Spanish, she has been effective in involving under-represented communities in planning efforts. As a former Town Council and Planning Commission member, Donna has a deep understanding of the complexities elected officials and planners face daily and enjoys collaborating on solutions.

SIMILAR PROJECT EXPERIENCE

Comprehensive Plan Update, Town of Coupeville. In her role as Planning Director, Donna led the effort to update and fully re-write the Town's Comprehensive Plan. With assistance from a consulting team, plan elements were significantly revised in compliance with the Growth Management Act, in addition to developing a new vision statement, updated land use and zoning maps, comprehensive land capacity analysis and review of existing development regulations. Donna directed an extensive public outreach effort, met regularly with the Planning Commission, and ran joint meetings with the Town Council.

Shoreline Master Program Periodic Review Update, Town of Coupeville. While working as the Planning Director for the Town of Coupeville, Donna contracted with DCG/ Watershed to conduct a comprehensive periodic review of the Town's SMP and related sections to the Critical Areas Ordinance. Donna guided the community and Planning Commission through the process, managed the consultant team, oversaw a robust public involvement effort, made various presentations and coordinated closely with Ecology to ensure compliance with all applicable local, state and federal regulations.

SPECIAL SKILLS:

- Comprehensive knowledge of long range and current planning, growth management, housing, environmental review, historic preservation, shoreline management, transportation, grant writing
- Extensive experience in public engagement and outreach plans
- Skilled in reviewing and writing technical reports, and coordinating and communicating with contractors, landowners, and consultants
- Experienced with administering land use, shoreline, and zoning permits, writing local codes and policies, and coordinating with local, state, tribal, and federal agencies
- Grant writing
- Experience with SEPA/CEQA/NEPA.
- Experience with shoreline management and Master Program updates
- Low Impact Development
- On-call Planning.
- Development regulation updates.
- Fluent in Spanish



Clay White

PRINCIPAL PLANNER

ROLE: Rural Lands, Sub-Area Planning, and Capital Facilities Plan Update

EDUCATION: B.A., Geography and Anthropology, 1996, Central Washington University, Washington State

Clay has 25 years of experience serving private-sector clients and cities and counties throughout Washington State as a land use planner. This includes nearly 16 years working as a planner and planning director for counties in Eastern, Central, and Western Washington. Throughout his career, Clay has focused his work on helping local government develop and implement sound policies that help further the jurisdiction's goals. This includes significant experience working on comprehensive plans and regulations to implement the Growth Management Act (GMA). Clay has a deep understanding of new state laws that will drive the update process. He has worked on several projects for the Department of Commerce developing legislation and guidance that provides a foundation for the update process.

SIMILAR PROJECT EXPERIENCE

***Comprehensive Plans, Snohomish County and Stevens County, WA – Project Planner**. Prior to joining Kimley-Horn, Clay led two significant Comprehensive Plan updates. As Land Services Director at Stevens County, Clay led the development of the first comprehensive plan and implementing regulations for Stevens County. This included the creation of the Rural Element, creating the Capital Facilities Plan and Element, and designating several sub-areas for focused growth outside of Urban Growth Areas. In addition, this project included significant community engagement and balancing between community desires for planning and GMA requirements. The project was adopted on time and schedule.

Clay also led the 2015 update of the Snohomish County Comprehensive Plan in his capacity as Planning and Development Services Director for Snohomish County. This project not only focused on updating the 20-year growth targets but also provided a comprehensive review and update to County policy and code to bring consistency between the adopted Comprehensive Plan and implementing development regulations. This included updated housing policies and significant land use changes to focus growth within urban growth areas. This nearly four-year project was completed on time and on budget.

Lewis County, 2025 Comprehensive Plan Periodic Update, Lewis County, WA – Project Manager

Skagit County, 2025 Comprehensive Plan Periodic Update, Skagit County, WA – Project Manager

Thurston County, 2025 Comprehensive Plan Periodic Update, Thurston County, WA – Built Environment- EIS

Walla Walla County, Countywide Planning Policy (CPP) Update, Walla Walla, WA – Co-Project Manager

***Whitman County,** Comprehensive Plan Update, Whitman County, WA – Principal-in-Charge

***City of Stanwood,** Comprehensive Plan Periodic Update, Stanwood, WA – Policy Gap Analysis

***City of University Place,** Housing Action Plan, University Place, WA – Project Manager

***City of Sumner,** Housing Action Plan and Implementation Plan, Sumner, WA – Project Manager

***Washington State Department of Commerce,** Buildable Lands Guidelines Update, Statewide, WA – Project Manager

***Washington State Department of Commerce, Collaborative Roadmap,** Phase III, Statewide, WA – Project Manager

***City of Mill Creek, Middle House Plan,** Mill Creek, WA – Project Manager

***City of Kenmore, Middle Housing Plan,** Kenmore, WA – Project Manager

**Project completed prior to joining Kimley-Horn*



Matt Palmer, P.E.

TRANSPORTATION PLANNER

ROLE: Transportation Planning

EDUCATION: B.A., Geography and Anthropology, 1996, Central Washington University, Washington State

REGISTRATION & LICENSES: P.E. in WA (#42322)

Matt is a professional engineer specializing in traffic and transportation projects in Washington and the surrounding areas. He operates with deep knowledge of Washington's transportation landscape and has built strong working relationships with key players in local jurisdictions in every corner of the state. Matt also previously worked within the Washington State Department of Transportation (WSDOT), where he led a range of traffic projects including a high-occupancy vehicle (HOV) analysis of the Puget Sound area and a wide variety of traffic studies.

SIMILAR PROJECT EXPERIENCE

Granite Falls, Comprehensive Plan Periodic Update – Transportation Planning. Matt conducted traffic counts at critical intersections and along arterial roadways. He determined the growth rate for the 20-year forecast, ran future analysis, conducted collision analysis, and provided analysis for bus routes and pedestrian improvements. This project helped bring their transportation element into compliance with the State of Washington's GMA.

Town of Darrington, Comprehensive Plan Periodic Update – Transportation Planning

***City of Oak Harbor,** Transportation Element, Oak Harbor, WA – Project Engineer

Port of Everett, Traffic and Parking Impact Study, Everett, WA – Project Manager

***Harborsmith Properties,** Penn Cove Park Traffic Impact Analysis, Whidbey Island, WA

***Island Property Management**, Miller-Balda Manufactured Housing Traffic Impact Analysis, Whidbey Island, WA – Project Manager

Low Income Housing Institute, New Hope Apartments, Seattle, WA – Engineer of Record (EOR)

Together, We Grow (TWG), Elements at Georgetown, Seattle, WA – EOR

House Design 4U, The Pho, Burien, WA – EOR

West Edge Development-Three LLC, Cedarside Commons, Stanwood, WA – EOR

**Project completed prior to joining Kimley-Horn*



Sara Tannahill, P.E.

UTILITIES PLANNER

ROLE: Sewer / Water Inventory

EDUCATION: B.S., Civil Engineering, 2011, University of Washington, Washington State

REGISTRATION & LICENSES: P.E. in WA (#53249)

Sara brings experience in the design and implementation of water and wastewater projects throughout the Pacific Northwest. She has experience in the management of design and construction phase services of new and replacement water distribution and transmission mains, gravity sewer and force mains, utility bridge crossings, distribution routing studies, rehabilitation of gravity sewer lines, trenchless installations, wastewater pump station, and drinking water reservoir site design. Sara also has experience leading local, state, and federal permitting and work with communities to ensure water and wastewater plans will meet future needs. She has a passion for connecting with her clients and project teams and is dedicated to providing high-quality solutions that support local water and wastewater infrastructure projects.

SIMILAR PROJECT EXPERIENCE

Thurston County, 2045 Comprehensive Plan Update, Thurston County, WA – Capital Facilities – Built Environment/EIS

Silver Lake Water and Sewer District, 10th Drive Southeast Water and Sewer Main Improvements, Everett, WA – Project Engineer. Kimley-Horn is working on a Public Works Trust Fund Loan project to upgrade 5,000 LF of existing undersized cast iron water main with 12-inch DI water main and 2,230 LF of new 8-inch gravity sewer mains, and minor storm drainage conveyance improvements.

Alderwood Water and Wastewater District (AWWD), Transmission Main 1 & 2 Large-Diameter Valve Replacement, Phase 1, Everett, WA – Project Engineer. Kimley-Horn is currently providing design services for this project, including plans, specifications, and estimates (PS&E), for the replacement of existing valves and air release vacuum valves at 29 locations along AWWD's 30- and 36-inch transmission water mains.

Alderwood Water and Wastewater District, Swamp Creek Bridge 503 Water Main Replacement, Snohomish County, WA – Project Manager

Woodinville Water District, Sammamish Slough Size on Size Replacement Woodinville, WA – Project Manager

***City of Edmonds,** Phase 8 Sewer Main Replacement Project, Edmonds, WA – Project Manager

**Project completed prior to joining Kimley-Horn*

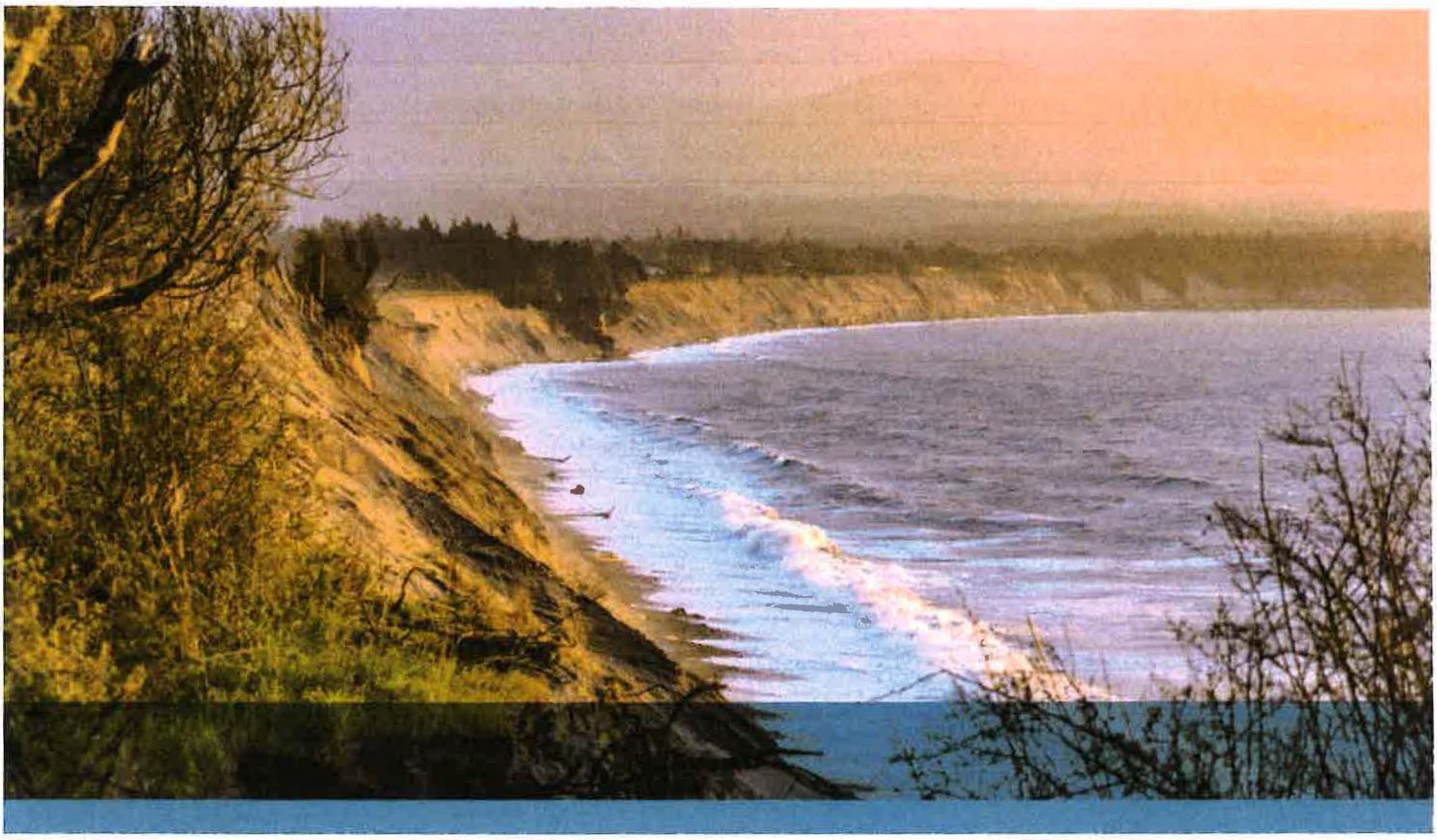
Schedule

Task	Subtask	2024 Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2025 Jan	Feb	Mar	Apr	May	Jun
1 - Project Initiation & Coordination																	
1.1	Kickoff Meeting																
1.2	Project Charter and Engagement Plan (periodic update work plan, public participation plan)																
1.3	Regular Collaboration Meetings (2 per month)																
1.4	Public Meeting Attendance, as Needed																
1.5	Assist with outreach materials, as Needed																
2 - Review & Update Comprehensive Plan (Including Subarea Plans)																	
2.1	Complete Commerce Checklist																
2.2	Update Comp Plan Elements per findings of checklist and policy analysis																
2.3	Update Future Land Use Map																
2.4	Prepare Supplemental EIS to address Future Land Use Map																
2.5	Sewer/Water Development Plan																
2.6	Update Capital Facilities Plan																
2.7	Prepare Housing Gap Analysis																
2.8	Update Rural Lands Component																
2.9	Review and update sub-area plans, as necessary																
3 - Critical Areas Ordinance																	
3.1	Critical Areas Checklist and Gap Analysis																
3.2	Review Best Available Science																
3.3	Prepare draft code amendments																
4 - Review & Update Development Regulations																	
4.1	Review & Update Development Regulations																
5 - Implementation Matrix and Public Review																	
5.1	Create new Implementation Matrix																
5.2	Planning Commission Review (led by County)																
5.3	Public Participation and Outreach Summary Report																
	BOCC Review and Adoption Hearing (led by County) - See Task 1.4																

Staff Hour Budget

		DCG/WATERSHED										KIMLEY-HORN								
Staff Title		Principal-in-Charge	Project Manager	Sr. Planner	Environ. Planner	Planner	Outreach Specialist	GIS Analyst	Total Hrs.	Total Cost	Task Subtotals	Principal Planner	Transportation Planner	Utilities/Water/Sewer Planner	Total Hrs.	Total Cost	Task Subtotals	Total Hours by Subtask	Total Cost by Subtask	Task Totals
Task	Subtask / Staff Billing Rate	250	174	183	170	142	198	152				330	275	225				122		
1 - Project Initiation & Coordination									136		$25,050				42		$18,610	196	$3,468	$43,660
1.1	Kickoff Meeting	2	8	2					12	$2,258		2	2		4	$1,210		16	$6,340	
1.2	Project Charter and Engagement Plan (periodic update work plan, public participation plan)	4	6	4			8		22	$4,360		6			6	$1,980		28	$16,804	
1.3	Regular Collaboration Meetings (2 per month)	8	30	8					46	$8,684		24	8		32	$10,120		78	$11,064	
1.4	Public Meeting Attendance, as Needed	4	16	4	4	4			32	$5,764		10	4	4	18	$5,300		50	$3,984	
1.5	Assist with outreach materials, as Needed		4			12	8		24	$3,984					0	$0		24		
2 - Review & Update Comprehensive Plan (including Subarea Plans)									472		$76,564				192		$61,280	696	$6,308	$137,844
2.1	Complete Commerce Checklist		8		8	8			24	$3,888		4	4		8	$2,420		32	$14,500	
2.2	Update Comp Plan Elements per findings of checklist and policy analysis		20	16	16	16			68	$11,400			8	4	12	$3,100		80	$19,040	
2.3	Update Future Land Use Map		20			20		40	80	$12,400		8	8	8	24	$6,640		104	$17,688	
2.4	Prepare Supplemental EIS to address Future Land Use Map	2	18		28	28			76	$12,368		4	8	8	20	$5,320		96	$12,684	
2.5	Sewer/Water Development Plan		6						6	$1,044		8		40	48	$11,640		54	$18,684	
2.6	Update Capital Facilities Plan		6						6	$1,044		8	30	30	68	$17,640		74	$26,660	
2.7	Prepare Housing Gap Analysis	2	60			40		40	142	$22,700		12			12	$3,960		154	$9,984	
2.8	Update Rural Lands Component		6	20					26	$4,704		16			16	$5,280		42	$12,296	
2.9	Review and update sub-area plans, as necessary		24			20			44	$7,016		16			16	$5,280		60		
3 - Critical Areas Ordinance									204		$31,608				0		$0	204	$10,208	$31,608
3.1	Critical Areas Checklist and Gap Analysis	2	2		30	30			64	$10,208					0	$0		64	$12,032	
3.2	Review Best Available Science	2	2		30	30		12	76	$12,032					0	$0		76	$9,368	
3.3	Prepare draft code amendments	2	2			60			64	$9,368					0	$0		64		
4 - Review & Update Development Regulations									218		$37,190				90		$26,500	308	$63,690	$63,690
4.1	Review & Update Development Regulations	8	60	50	50	50			218	$37,190		50	20	20	90	$26,500		308		
5 - Implementation Matrix and Public Review									72		$12,786				4		$1,320	76	$4,916	$14,106
5.1	Create new Implementation Matrix	2	8			12			22	$3,596		4			4	$1,320		26	$4,568	
5.2	Planning Commission Review (led by County)	2	12	4	4	4			26	$4,568					0	$0		26	$4,622	
5.3	Public Participation and Outreach Summary Report	2	6	6			10		24	$4,622					0	$0		24		
•	BOCC Review and Adoption Hearing (led by County) - See Task 1.4																			
	Project Expenses (< 1% of project budget)																$107,710		$2,909	
	TOTAL	42	324	114	170	334		92	952		$183,198	172	92	114	328		$107,710		$290,908	$290,908
																				$293,817

DCG WATERSHED Kimley»Horn



References

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** Prior reference for Matt Covert and Clay White*

DCG WATERSHED

Kimley»Horn