Exhibit L
Grant Agreements (Redacted)

Reserved for incorporation into the Contract Documents upon award and subsequent negotiations.

Organization: Cowlitz Indian Tribe
Project Name: Kwoneesum Dam Removal
Grant Amount: [redacted]
RLF Program: ORF
Grant Number: 15061

GRANT AGREEMENT

This Grant Agreement (Agreement) is entered into as of the Effective Date (defined below) by and between Resources Legacy Fund (RLF) and the federally-recognized Cowlitz Indian Tribe (Grantee). RLF and Grantee hereby agree as follows:

1. RLF makes this grant of [redacted] (Grant) to Grantee to support the removal of Kwoneesum Dam as described in Grantee's final proposal submitted to RLF on November 12, 2021 (Proposal), and as described in this Agreement. If the terms of this Agreement differ from the Proposal, this Agreement will control.

2. Upon receipt of this Agreement signed by Grantee, Grant funds will be disbursed according to the schedule in Attachment 1, subject to the provisions of this Agreement. The term of the Grant is from the date Grantee signs this Agreement (Effective Date) to the due date of the Final Grant Report, as specified in Attachment 1. Grantee will use the Grant solely for the purposes described in this Agreement and the Proposal, and will return to RLF any funds not expended or committed for the purposes of the Grant within the Grant period. **Grantee understands that the Grant is not a gift and agrees that RLF is granting funds to Grantee to pursue the purposes outlined in this Agreement.**

3. Grantee will deliver written Grant report(s) to RLF according to the schedule in Attachment 1 (Grant Report(s)). Unless provided otherwise in Attachment 1, the Grant Report(s) shall contain a narrative report and a financial report. The narrative report should describe what the Grant has accomplished as of the date of the Grant Report. The financial report should detail the following: (a) all Grant fund expenditures during the applicable reporting period, and (b) an analysis of budget (as set forth in the Proposal) compared to actual spending, and a narrative explanation of any differences between the two. If the schedule in Attachment 1 requires RLF approval of a Report, that approval does not constitute, and should not be relied on by Grantee as, any advice or assurance of Grantee's legal compliance. **Grantee must obtain pre-approval, and amendment of the Agreement, for any reallocation of the budget of 20 percent or more in any line item, or for creation of a new line item.**

4. RLF's funding of the Grant under this Agreement is contingent upon (a) RLF's review of Grantee's work in connection with the Grant, and its determination that satisfactory progress and performance of the expected purposes is occurring, (b) RLF's timely receipt and its review and approval of Grant Reports submitted by Grantee, and (c) Grantee's compliance with all terms and conditions of the Grant. If at any time RLF determines that Grant purposes are not met, that Grant purposes are unlikely to be met, or that Grantee fails to satisfy the reporting requirements in paragraph 3 above, or otherwise violates the terms of the Grant, RLF may terminate the Grant or may (a) reduce or discontinue Grant funding, (b) require no further spending of Grant funds already disbursed to Grantee, and/or (c) require the return of unspent Grant funds already disbursed to Grantee. If termination occurs prior to the scheduled end date of the Grant, Grantee shall, upon RLF's request, provide RLF a full accounting of the receipt and disbursement of funds and expenditures incurred under the Grant as of the effective date of termination.

5. Grantee shall notify RLF immediately of any anticipated or actual changes in Grantee's head of organization, regardless of title, and/or key personnel identified either in the

Proposal or this Agreement. Grantee acknowledges and agrees that changes in Grantee's head of organization, regardless of title, and/or key personnel may trigger RLF review and reassessment of Grantee's ability to meet the purposes of the Grant, and that, following such review, RLF may decide to impose additional terms, conditions, or other limitations on any unexpended Grant funds, including return of those funds.

6. Grantee shall consult RLF prior to making any public announcement or publishing a written description of the Grant, including in the media or on the Internet. If RLF authorizes such announcement, the Grant is to be described in any written material as having been "made through the Open Rivers Fund, a program of Resources Legacy Fund supported by The William and Flora Hewlett Foundation." Grantee shall also submit copies of all printed press coverage of, or references to, Grantee's work funded by this Agreement, and shall notify RLF of all other related media coverage.

7. Grantee agrees that RLF may include information on the Grant in periodic public reports, and may also refer to the Grant in a press release or other public communication without Grantee's prior approval.

8. The parties agree that a material condition of this Agreement is that Grantee makes the data, research, knowledge, and other information developed with the Grant funds freely available and without condition to RLF, consistent with the charitable purposes of the Grant.

9. [intentionally omitted]

10. Grantee will maintain financial books and consistent with best Tribal practices and, if requested by RLF or its agent, will make such books and records available to RLF or its agent at a reasonable time and location for review. Grantee will keep copies of all books and records for at least four years after the date that all of Grantee's obligations under this Agreement have been fulfilled.

11. Grantee shall ensure compliance with all applicable laws and regulations in the performance of activities under this Agreement.

12. Grantee shall not use any portion of the Grant funds to conduct political, election, or lobbying activities.

13. [intentionally omitted]

14. [intentionally omitted]

15. [intentionally omitted]

16. Grantee shall maintain General Liability Insurance (including operations, products and completed operations, as applicable) with coverage limits no less than $1,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the activities under this Agreement or the general aggregate limit shall be twice the required occurrence limit. Additionally, Grantee shall maintain an Errors & Omissions/Professional Liability policy with coverage limits no less than $1,000,000 per occurrence. Upon RLF's request, Grantee shall furnish RLF with evidence of the appropriate insurance coverage.

17. To the extent permitted by law, Grantee agrees to indemnify, protect, defend, and hold harmless, at Grantee's sole cost and expense, RLF and its directors, officers, employees, agents, attorneys, representatives, successors, and assigns from and against any and all losses, demands, actions, suits, orders, causes of action, expenses, costs, obligations, liabilities, claims, debts, expenses, judgments, damages, and liabilities of whatever kind or nature, by whomever asserted, in law, equity, or otherwise, and including interest, penalties, and reasonable attorneys' and experts' fees and costs (each a "Claim" and, collectively, "Claims"), that RLF may incur as a result of (a) the project that is described in the Proposal and funded by the Grant; (b) the negligence or willful misconduct of Grantee or its employees or agents in connection this Agreement, or (c) Grantee's failure to perform, any of the representations, warranties, or agreements contained in this Agreement. Grantee hereby releases and forever discharges RLF, and its directors, officers, employees, agents, attorneys, representatives, successors, and assigns, from all Claims arising from, or relating to, or based upon, in whole or in part, this Agreement.

18. This Agreement represents the entire agreement of the parties with respect to the Grant, and supersedes any prior oral or written understanding or communication between the parties. This Agreement shall only be amended or modified in a writing signed by both parties, except that a no-cost extension, adjustment to payment schedule, or minor change to the project budget or scope of activities requested by Grantee may be approved unilaterally by RLF through a written or email communication to Grantee.

19. In the event either party is unable to perform its obligations under the terms of this Agreement because of acts of God, epidemics, or government action, such party shall not be liable for damages to the other for any damages resulting from such failure to perform or otherwise from such causes.

20. By signing this Agreement, Grantee agrees to its terms and conditions , and warrants and represents that its signatory whose signature appears below has been, and is on the date of this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on its behalf.

21. This Agreement is governed by the laws of the State of Washington, and the parties agree that enforcement of the Agreement, and resolution of any disputes arising out of or related to the subject matter of the Agreement, shall be resolved by arbitration conducted by a private arbitration service under the laws of the State of Washington. In order to foster a spirit of collaboration, the parties shall first make a good faith effort to resolve all disputes arising under this Agreement through an informal meeting of individuals authorized to act on behalf of the respective parties or their designees. Grantee grants a limited waiver of its sovereign immunity solely for actions requesting arbitration or enforcement of a binding arbitration award permitted herein. In such an instance, the arbitrator or arbitrators shall only award and the courts shall only enforce against the Grantee orders for specific performance and shall not award or enforce punitive, exemplary, speculative, or other types of damages, and a claim for binding arbitration may be asserted and any award or order may be enforced against the Grantee only and not against the Tribal council, Tribal officers, Tribal attorneys, Tribal employees, Tribal agents, Tribal members, or any person acting on behalf of Grantee. This limited waiver is not for the benefit of any third party and shall not be enforceable by any third party or by any assignee of the parties. Ten years after the Grantee transmits the final grant report to RLF, this limited waiver shall expire.

Organization: Cowlitz Indian Tribe
Project Name: Kwoneesum Dam Removal
Grant Amount: [redacted]

RLF Program: ORF
Grant Number: 15061

22. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signed signature pages may be transmitted by facsimile or other electronic means, and/or an electronic "e-signature" may be used by an authorized representative of Grantee to bind it to this Agreement, and any such signature shall have the same legal effect as an original.

RESOURCES LEGACY FUND:

By: [redacted] Date: 03/14/2022

[redacted]
Director of Lands, Rivers, and Communities

COWLITZ INDIAN TRIBE:

By: [redacted] Date: 03/22/2022
(Signature)

Printed name: [redacted]

Title: Chief Operating Officer

EIN: [redacted]

Internal Revenue Code Designation: DUNS 607700478

Please provide mailing address for payments.

Organization: Cowlitz Indian Tribe

Address: P.O. Box 2547

City/State/Zip Code: Longview, WA 98632

Attachment 1: RLF Reporting and Payment Schedule

PAYMENT AMOUNT	FINANCIAL & NARRATIVE REPORT DUE[1]	OTHER SCHEDULED ACTIVITIES OR DELIVERABLES	CONDITIONS FOR PAYMENT
[redacted]	n/a	n/a	Upon RLF's timely receipt of signed Grant Agreement.
[redacted]	Interim Phone Check-In with RLF program staff and RLF consultant On or about 09/01/2022	n/a	Upon completion of acceptable phone check-in
n/a	Final Grant Report 03/20/2023	Narrative report should describe the following: (a) Grantee's activities conducted during the reporting period; and (b) Grantee's progress in advancing Project Outcomes and Indicators of Success identified in Grantee's Proposal.	*Potential future funding contingent upon RLF's timely receipt and approval of final reports.*
n/a	Post-Dam Removal Monitoring Report 03/20/2024	Written report describing watershed monitoring activities conducted post-dam removal, with analysis of watershed impacts documented.	*Potential future funding contingent upon RLF's timely receipt and approval of monitoring reports.*

[1] See paragraph 3 of Grant Agreement. Further details regarding requirements for reports are provided in **Attachment 2**.

n/a	Post-Dam Removal Monitoring Report 03/20/2025	Written report describing watershed monitoring activities conducted post-dam removal, with analysis of watershed impacts documented.	*Potential future funding contingent upon RLF's timely receipt and approval of monitoring reports.*

PcSRF

Specific Award Conditions

Award Number: NA20NMF4380251
Amendment Number: 0

1) Handling of Environmental Data or Peer Reviewed Publications

1. Data Sharing: Environmental data collected or created under this Grant, Cooperative Agreement, or Contract must be made publicly visible and accessible in a timely manner, free of charge or at minimal cost that is no more than the cost of distribution to the user, except where limited by law, regulation, policy, or national security requirements. Data are to be made available in a form that would permit further analysis or reuse: data must be encoded in a machine-readable format, preferably using existing open format standards; data must be sufficiently documented, preferably using open metadata standards, to enable users to independently read and understand the data. The location (internet address) of the data should be included in the final report. Pursuant to NOAA Information Quality Guidelines, data should undergo quality control (QC) and a description of the QC process and results should be referenced in the metadata. 1,2

2. Timeliness: Data accessibility must occur no later than publication of a peer-reviewed article based on the data, or two years after the data are collected and verified, or two years after the original end date of the grant (not including any extensions or follow-on funding), whichever is soonest, unless a delay has been authorized by the NOAA funding program.

3. Disclaimer: Data produced under this award and made available to the public must be accompanied by the following statement: These data and related items of information have not been formally disseminated by NOAA, and do not represent any agency determination, view, or policy.

4. Failure to Share Data: Failing or delaying to make environmental data accessible in accordance with the submitted Data Management Plan, unless authorized by the NOAA Program, may lead to enforcement actions, and will be considered by NOAA when making future award decisions. Funding recipients are responsible for ensuring these conditions are also met by sub-recipients and subcontractors.

5. Funding acknowledgement: Federal funding sources shall be identified in all scholarly publications. An Acknowledgements section shall be included in the body of the publication stating the relevant Grant Programs and Award Numbers. In addition, funding sources shall be reported during the publication submission process using the FundRef mechanism (http://www.crossref.org/fundref/) if supported by the Publisher.

6. Manuscript submission: The final pre-publication manuscripts of scholarly publications produced with NOAA funding shall be submitted to the NOAA Institutional Repository at https://repository.library.noaa.gov after acceptance, and no later than upon publication, of the paper by a journal. NOAA will produce a publicly-visible catalog entry directing users to the published version of the article. After an embargo period of one year after publication, NOAA shall make the manuscript itself publicly visible, free of charge, while continuing to direct users to the published version of record.

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

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

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

2) Performance Progress Reports

Interim semi-annual Project Progress Reports (generated from the PCSRF database) are due no later than 30 days after the semi-annual reporting periods ending March 31 and September 30 for the entire project period of the award. A final Project Progress Report, also generated from the PCSRF database, is due within 90 days after award expiration. The report shall cover the last semi-annual reporting period ending on September 30 or March 31, or a portion thereof, based on the award expiration.

Project highlights with photographs are to be provided annually as part of the semi-annual progress reporting period ending on September 30. Recipients must submit project highlights with photographs for at least one, and up to three, completed projects. If an award includes more than one project, recipients must submit at least three project highlights with photographs. Project highlights shall be submitted as an attachment, in addition to the standard PCSRF database reporting, in the GOL system.

3) PCSRF Database System Progress Report Requirement

Project data must be entered into the PCSRF database within 30 days of project selection and the required data fields must be completed. Project data is to be updated in the database as project status changes or 30 days prior to submitting semiannual performance reports. Semi-annual progress reports are to be generated by and downloaded from the PCSRF database and then completed for submission by completing the narrative section and uploading the report into Grants Online. All required data fields in the PCSRF database must be completed and reporting deficiencies must be rectified within 30 days of notice. The PCSRF database is accessible at https://www.webapps.nwfsc.noaa.gov/apex/f?p=227:101. Contact nwfsc.sdm@noaa.gov or call 206-860-3433 for a username/password to have access to the PCSRF database.

4) New Award SAC

Award number NA20NMF4380251 supports the work described in the Recipient's proposal entitled "Kwoneesum Dam Removal Project," dated 3/20/2020 and revisions dated 6/15/2020, which is incorporated into the award by reference. Where the terms of the award and proposal differ, the terms of the award shall prevail.

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS

30 April 2019

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS

Table of Contents

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.[3] A specific award condition may amend or take precedence over a Standard Term on a case-by-case basis, when indicated by the specific award condition.

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

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[1] Please note that the OMB Uniform Guidance uses the term "non-Federal entity" to generally refer to an entity that carries out a Federal award as a recipient or subrecipient. Because some of the provisions of these DOC ST&Cs apply to recipients rather than subrecipients, or vice versa, for clarity, these DOC ST&Cs use the terms "non-Federal entity," "recipient," and "subrecipient" consistent with their meanings in the OMB Uniform Guidance. In addition, the OMB Uniform Guidance uses the term "pass-through entity" to refer to a non-Federal entity that makes a subaward.
"Non-Federal entity" is defined at 2 C.F.R. § 200.69 as "a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient."
"Recipient" is defined at 2 C.F.R. § 200.86 as "a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients."
"Subrecipient" is defined at 2 C.F.R. § 200.93 as "a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency."
"Pass-through entity" is defined at 2 C.F.R. § 200.74 as "a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program."
[2] *See* 2 C.F.R. § 200.46 for the definition of "foreign public entity" and 2 C.F.R. § 200.47 for the definition of "foreign organization."
[3] To match the terminology used in the OMB Uniform Guidance, the DOC now uses the phrase "specific award condition" in lieu of "special award condition."

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

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

A. PROGRAMMATIC REQUIREMENTS

.01 Reporting Requirements

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

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

1. Performance (technical) reports must contain the information prescribed in 2 C.F.R. § 200.328 (Monitoring and reporting program performance), unless otherwise specified in the award conditions.

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

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

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

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

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

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

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

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

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

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

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

.02 Revisions of Program Plans

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

.03 Other Federal Awards with Similar Programmatic Activities

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

.04 Prohibition against Assignment by a Non-Federal Entity

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

.05 Disclaimer Provisions

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

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

.06 Unsatisfactory Performance or Non-Compliance with Award Provisions

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

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

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

B. FINANCIAL REQUIREMENTS

.01 Financial Management

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

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

.02 Award Payments

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

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

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

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

method of payment to reimbursement only.

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

1. ASAP account number – the Federal award identification number found on the cover sheet of the award;

2. Agency Location Code (ALC); and

3. Region Code.

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

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

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

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

.03 Federal and Non-Federal Sharing

a. Awards that include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares must be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs exceed the total approved budget, the Federal share must not exceed the total Federal dollar amount authorized by the award.

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

.04 Budget Changes and Transfer of Funds among Categories

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

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

.05 Program Income

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

.06 Indirect or Facilities and Administrative Costs

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

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

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

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

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

      (A) Department of Labor: https://www.dol.gov/oasam/boc/dcd/np-comm-guide.htm or

      (B) Department of the Interior: https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/.

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

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

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

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

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

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

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

1. The line item amount for the Federal share of indirect costs contained in the approved award budget, including all budget revisions approved in writing by the Grants Officer; or

2. The Federal share of the total indirect costs allocable to the award based on the indirect cost rate approved by the cognizant agency for indirect costs and applicable to the period in which the cost was incurred, provided that the rate is approved on or before the award end date.

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

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

h. In accordance with 2 CFR § 200.414(f), any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Paragraph D.1.b of Appendix VII to 2 CFR Part 200, may elect to charge a de minimis rate of 10 percent of modified total direct costs.

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

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

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

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

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

.08 Tax Refunds

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

.09 Internal Controls

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

C. PROPERTY STANDARDS

.01 Standards

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

.02 Real and Personal Property

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

b. The Grants Officer may require a non-Federal entity to execute and to record (as applicable) a statement of interest, financing statement (form UCC-1), lien, mortgage or other public notice of record to indicate that real or personal property acquired or improved in whole or in part with Federal funds is subject to the Federal Interest, and that certain use and disposition requirements apply to the property. The statement of interest, financing statement (form UCC-1), lien, mortgage or other public notice must be acceptable in form and substance to the DOC and must be placed of record in accordance with applicable State and local law, with continuances re-filed as appropriate. In such cases, the Grants Officer may further require the non-Federal entity to provide the DOC with a written statement from a licensed attorney in the jurisdiction where the property is located certifying that the Federal Interest has been protected, as required under the award and in accordance with applicable State and local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, must be returned to the Grants Officer. Without releasing or excusing the non-Federal entity from these obligations, the non-Federal entity, by execution of the financial assistance award or by expending Federal financial assistance funds (in the case of a subrecipient), authorizes the Grants Officer and/or program office to file such notices and continuations as it determines to be necessary or convenient to disclose and protect the Federal Interest in the property. The Grants Officer may elect not to release any or a portion of the Federal award funds until the non-Federal entity has complied with this provision and any other applicable award terms or conditions, unless other arrangements satisfactory to the Grants Officer are made.

.03 Intellectual Property Rights

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

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

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

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

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

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

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

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

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

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

D. AUDITS

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

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

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

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

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

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

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

.02 Audit Resolution Process

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

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

1. The recipient has 30 calendar days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.

2. The recipient has 30 calendar days from the date of the transmittal of the final audit report to submit written comments and documentary evidence.

3. The DOC will review the documentary evidence submitted by the recipient and will notify the recipient of the results in an *Audit Resolution Determination Letter*. The recipient has 30 calendar days from the date of receipt of the *Audit Resolution Determination Letter* to submit a written appeal, unless this deadline is extended in writing by the DOC. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence to the DOC to dispute the validity of the audit resolution determination.

4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of applicable interest, penalties and administrative fees on the debt in accordance with 15 C.F.R. Part 19. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively.

5. The DOC will review the recipient's appeal and notify the recipient of the results in an *Appeal Determination Letter*. After the opportunity to appeal has expired or after the appeal determination has been rendered, DOC will not accept any further documentary evidence from the recipient. No other administrative appeals are available in DOC.

E. DEBTS

.01 Payment of Debts Owed to the Federal Government

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

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

2. Withholding advance payments otherwise due to the non-Federal entity; or

3. Taking any other action permitted by Federal statute.

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

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

.02 Late Payment Charges

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

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

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

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

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

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

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

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

.01 Conflict of Interest and Code of Conduct

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

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

c. Procurement-related conflict of interest. In accordance with 2 C.F.R. § 200.318 (General procurement standards), non-Federal entities must maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award and administration of contracts. *See* paragraph F.04 of these Standard Terms (Requirements for Procurements).

.02 Nonprocurement Debarment and Suspension

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

.03 Requirements for Subawards

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

.04 Requirements for Procurements

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

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

.05 Whistleblower Protections

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

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

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

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

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

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

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

G. NATIONAL POLICY REQUIREMENTS

.01 United States Laws and Regulations

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

.02 Non-Discrimination Requirements

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

a. Statutory Provisions

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

2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;

3. The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;

4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 C.F.R. Part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance.

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

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

6. Any other applicable non-discrimination law(s).

b. Other Provisions

1. Parts II and III of E.O. 11246 (Equal Employment Opportunity, 30 FR 12319),[4] which requires Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of E.O. 11246 and Department of Labor regulations implementing E.O. 11246 (41 C.F.R. § 60-1.4(b)).

2. E.O. 13166 (65 FR 50121, Improving Access to Services for Persons with Limited English Proficiency), requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. The DOC issued policy guidance on March 24, 2003 (68 FR 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that non-Federal entities provide meaningful access to their LEP applicants and beneficiaries.

c. Title VII Exemption for Religious Organizations

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

.03 LOBBYING RESTRICTIONS

a. Statutory Provisions

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

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

b. Disclosure of Lobbying Activities

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

.04 Environmental Requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

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

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

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

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

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

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

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

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

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

Many prohibitions and limitations apply to projects that adversely impact migratory birds and bald and golden eagles. Executive Order 13186 directs Federal agencies to enter a Memorandum of Understanding with the U.S. Fish and Wildlife Service to promote conservation of migratory bird populations when a Federal action will have a measurable negative impact on migratory birds.

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

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

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

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

.05 OTHER NATIONAL POLICY REQUIREMENTS

a. Buy-American Preferences

Strengthening Buy-American Preferences for Infrastructure Projects. Recipients of covered programs (as defined in Executive Order 13858, 31 January 2019) are hereby notified that they are encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or sub-award that is chargeable under this Award.

b. Criminal and Prohibited Activities

1. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including money representing grants, loans, or other benefits).

2. The False Claims Amendments Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively), provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United

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

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

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

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

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

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

c. Drug-Free Workplace

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

d. Foreign Travel

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

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

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

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

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

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

e. Increasing Seat Belt Use in the United States

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

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

1. Use of award funds (Federal or non-Federal) or the non-Federal entity's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy may prohibit the acceptance of gifts, including travel payments for federal employees, from non-Federal entities regardless of the source. Therefore, before award funds may be used by Federal employees, non-Federal entities must submit requests for approval of such action to the Federal Program Officer who must review and make a recommendation to the Grants Officer. The Grants Officer will notify the non-Federal entity in writing (generally through the recipient) of the final determination.

2. A non-Federal entity or its contractor may not issue a subaward, contract or subcontract of any part of a DOC award to any agency or employee of DOC or to other Federal employee, department, agency, or instrumentality, without the advance prior written approval of the DOC Grants Officer.

g. Minority Serving Institutions Initiative

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

h. Research Misconduct

The DOC adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 FR 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Non-Federal entities that conduct extramural research funded by DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Non-Federal entities also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Non-Federal entities must notify the Grants Officer of any allegation that meets the definition of research misconduct and detail the entity's inquiry to determine whether there is sufficient evidence to proceed with an investigation, as well as the results of any investigation. The DOC may take appropriate administrative or enforcement action at any time under the award, up to and including award termination and possible suspension or debarment, and referral to the Commerce OIG, the U.S. Department of Justice, or other appropriate investigative body.

i. Research Involving Human Subjects

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

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

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

   i. Documentation establishing approval of an activity in the project by an Institutional Review Board (IRB) under a Federal wide Assurance issued by Department of Health and Human Services or other Federal agency guidelines (*see also* 15 C.F.R. § 27.103);

   ii. Documentation to support an exemption for an activity in the project under 15 C.F.R. § 27.104(d);

   iii. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form;

   iv. Documentation of an IRB approval of continuing review approved prior to the expiration date of the previous IRB determination; and

   v. Documentation of any reportable events, such as serious adverse events, unanticipated problems resulting in risk to subjects or others, and instances of noncompliance.

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

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

j. Care and Use of Live Vertebrate Animals

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

k. Management and Access to Data and Publications

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

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

3. Publications, Videos, and Acknowledgment of Sponsorship.

   i. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded projects (*e.g.*, scientific research). Non-Federal entities must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Specific Award Conditions.

ii. Non-Federal entities may be required to submit a copy of any publication materials, including but not limited to print, recorded, or Internet materials, to the funding agency.

iii. When releasing information related to a funded project, non-Federal entities must include a statement that the project or effort undertaken was or is sponsored by DOC and must also include the applicable financial assistance award number.

iv. Non-Federal entities are responsible for assuring that every publication of material based on, developed under, or otherwise produced pursuant to a DOC financial assistance award contains the following disclaimer or other disclaimer approved by the Grants Officer:

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

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 of technology transmitted electronically, and oral or written communications.

3. Definitions

   i. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730-774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with a military and commercial application. The export (shipment, transmission, or release/transfer) of export-controlled items may require a license from DOC.

   ii. Deemed Export/Re-export. The EAR defines a deemed export as a release or transfer of export-controlled items (specifically, technology or source code) to a foreign person (foreign national) in the U.S. Such release is "deemed" to be an export to the foreign person's most recent country of citizenship or permanent residency (*see* 15 C.F.R. § 734.13(a)(2) & (b)). A release may take the form of visual inspection or oral or written exchange of information. See 15 C.F.R. § 734.15(a). If such a release or transfer is made abroad to a foreign person of a country other than the country where the release occurs, it is considered a deemed re-export to the foreign person's most recent country of citizenship or permanent residency. See 15 C.F.R. § 734.14(a)(2). Licenses from DOC may be required for deemed exports or re-exports. An act causing the release of export-controlled items to a foreign person (e.g., providing or using an access key or code) may require authorization from DOC to the same extent that an export or re-export of such items to the foreign person would. See 15 C.F.R. § 734.15(b).

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

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

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

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

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

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

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

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

Trafficking in persons.

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

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

i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

ii. Procure a commercial sex act during the period of time that the award is in effect; or

iii. Use forced labor in the performance of the award or subawards under the award.

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

i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or

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

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

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

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

i. Associated with performance under this award; or

ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension – Nonprocurement), as implemented by DOC at 2 C.F.R. Part 1326, (Nonprocurement Debarment and Suspension).

c. ***Provisions applicable to any recipient.***

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

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

1. "Employee" means either:

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. "Private entity":

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

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

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

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

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

Reporting Subawards and Executive Compensation

*a. **Reporting of first-tier subawards.***

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

2. Where and when to report.

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

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

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

*b. **Reporting Total Compensation of Recipient Executives.***

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

i. the total Federal funding authorized to date under this award is $25,000 or more;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and

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

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

i. As part of your registration profile found at the System for Award Management (SAM) website located at SAM.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

*c. **Reporting of Total Compensation of Subrecipient Executives.***

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you must report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

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

See also 2 C.F.R. § 200.300(b).

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

i. To the recipient.

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

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

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

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

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

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

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

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

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

3. Subaward:

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

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

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

4. Subrecipient means an entity that:

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

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

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

i. Salary and bonus.

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

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

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

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

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

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

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

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

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

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its Unique Entity Identifier, currently known as the DUNS number, to you.

2. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier, currently known as the DUNS number, to you.

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

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

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

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

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

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

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

v. A Federal agency, but only as a subrecipient under an award or subaward to a recipient.

4. Subaward:

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

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

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

5. Subrecipient means an entity that:

i. Receives a subaward from you under this award; and

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

See also 2 C.F.R. § 200.300(b).

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

Reporting of Matters Related to Recipient Integrity and Performance

1. General Reporting Requirement. If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report Submit the information required about each proceeding that:

i. Is relating to the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

ii. Reached its final disposition during the most recent five-year period; and

iii. Is one of the following:

(A) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

(B) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;

(C) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or

(D) Any other criminal, civil, or administrative proceeding if:

I. It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

II. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

III. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

NOAA

Specific Award Conditions

Name	Description	Amendment	Type	Due Date	Satisfied Date
New Award SAC	This award number NA23NMF4630041, to Cowlitz Indian Tribe, supports the work described in the Recipient's proposal entitled "Cowlitz Indian Tribe - Kwoneesum Dam Removal - Restoring Tribal Priority Fish Passage through Barrier Removal Notice of Funding Opportunity under the IIJA" dated 08/29/2022, and revisions dated 01/09/2023, 01/10/2023, 02/17/2023, and 02/21 /2023, which are incorporated into the award by reference. Where the terms of the award and proposal differ, the terms of the award shall prevail.	CD-450	Administrative		
Part 1 - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials	Pursuant to the Infrastructure Investment and Jobs Act("IIJA"), Pub.L. No. 117-58, which includes the Build American, Buy American (BABA) Act, Pub. L. No. 117-58, §§ 70901-52 and OMB M-22-11, recipients of an award of Federal financial assistance from the Departmen tof Commerce (DOC) are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless: 1) all iron and steel used in the project are produced in the United States–this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; 2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicablelaw or regulation; and 3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project. To help federal agencies and recipients meet BABA requirements, the U.S. Department of Commerce, National Institute for Standards and Technology (NIST), Hollings Manufacturing Extension Partnership (MEP) National Network™ provides a service to connect stakeholders, including recipients, to U.S. manufacturers that have relevant production capabilities and capacities to help fulfill current market and supply chain needs. Recipients considering a BABA nonavailability waiver are strongly encouraged to contact the NIST/MEP for assistance with supplier scouting services prior to seeking a BABA nonavailability waiver. Further information on the NIST/MEP supplier scouting services is available at: https://www.nist.gov/mep/supplier-scouting. N/A to Tribe	CD-450	Administrative *BABA Waiver See Dept of Interior Tribal waiver Dated Sept 1, 2023		
Part 2 - Required Use of American Iron, Steel, Manufactured Products, and Construction Materials	WAIVERS When necessary, recipients may apply for, and DOC may grant, a waiver from these requirements. DOC will notify the recipient for information on the process for requesting a waiver from these requirements. 1) When DOC has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which DOC determines that: a. applying the domestic content procurement preference would be inconsistent with the public interest; b. the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or c. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase	CD-450	Administrative		

Cooperative Agreement	This award is a cooperative agreement as described in 2 C.F.R. Sec. 200.1, meaning that NOAA is "substantially involved" in the project. NOAA Fisheries' participation will be crucial to ensuring the timely implementation of the most beneficial habitat restoration project. NOAA may participate in one or more of the following ways: --collaboration on the scope of work through participation in meetings and review of documents; --providing assistance with technical aspects of the habitat restoration project such as assistance with permitting or development of detailed work plans and monitoring plans; --review and comment on design plans at the beginning of the award, at various stages throughout any portion of the design process that occurs during the award (e.g. conceptual, 30%, 60%, and 90% completion), and at the final completion stage; --review of procurement materials to the extent authorized by 2 C. F.R. Sec. 200.325; --tracking the progression of the restoration from planning through implementation and post-construction monitoring, with particular emphasis on tracking Recipient achievement of targets for major milestones and performance metrics and sharing results; --other involvement consistent with Office of Management and Budget Guidance on Substantial Involvement. See 43 Federal Register 36860 (Aug. 18, 1978).	CD-450	Programmatic		
Performance Progress Reports	Reporting requirements are described in 2 C.F.R. Sec. 200.328-. 330, and 200.300(b); Department of Commerce Financial Assistance Standard Terms and Conditions Sec. A.01, C.03, and G. 05; and Bureau-Specific NOAA Administrative Standard Award Conditions, with the following supplement. Progress reports must be submitted using the NOAA Community-based Restoration Program's Performance Progress Report (PPR) reporting form approved by OMB under control number 0648-0718, or a successor form. The NOAA Federal Program Officer will provide this form to the Recipient. Interim semi-annual progress reports are due no later than 30 days after the semiannual reporting periods ending March 31 and September 30 for the entire duration of the award. These follow the same frequency and have the same due dates (April 30 and October 30, respectively) as the SF-425 Federal Financial Reports, which also must be submitted as a condition of this award. A comprehensive final report covering all activities during the award period is required and must be received by the NOAA Program Officer within 120 days after the end date of this award, but a final semi-annual report is not required.	CD-450	Programmatic		
Contact Information	Contact information for NOAA and the Recipient is maintained in the NOAA Grants Online award management system. In addition: The Federal Program Officer for this award [redacted] The Technical Monitor for this award is: [redacted]	CD-450	Programmatic		
Project Milestones	To ensure adequate and timely progress towards project completion, NOAA and the Recipient have cooperatively identified several milestones as outlined in the revised proposal narrative on page 12. Project progress will be evaluated throughout the award with particular emphasis on meeting these milestones. NOAA reserves the right to pursue enforcement action for the award under 2 C.F.R. 200.339-.343 at any time throughout the award period should NOAA determine that a Recipient is not meeting project milestones as outlined in the application submitted to the NOAA Grants Management Division for funding.	CD-450	Programmatic		
Project Files	The Recipient must maintain project files for all restoration activities taking place under this agreement consistent with 2 C.F. R. Sec. 200.334. These files must contain, at a minimum, project work plans and copies of all federal and state permits/consultations associated with project implementation.	CD-450	RFA Programmatic		
Outreach and Communications	Department of Commerce Financial Assistance Standard Term and Condition G.05.k.3. is supplemented as follows consistent with NOAA's collaboration on this project. The Recipient will coordinate with NOAA on outreach plans, events, products, and media coverage associated with the project. Please coordinate with the Federal Program Officer listed under the Contact Information award condition. Grantees will provide copies of final outreach products, website mentions, press materials, photos, etc. via the standard progress reports to NOAA, or when available throughout the award period. Grantees will provide NOAA with high-resolution before, during, and post-implementation photos of the project. Photos of the site prior to construction and during project implementation should be submitted with progress reports or as requested by NOAA.	CD-450	RFA Programmatic		
Acknowledgement of Project Contributors	The Recipient must display, where appropriate and practical, publicly visible signs indicating that the project has received funding from the NOAA Restoration Center. These signs should also identify other contributing partners. These contributions	CD-450	RFA Programmatic		

	the cost of the overall project by more than 25 percent. A request to waive the application of the domestic content procurement preference must be in writing. DOC will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described at whitehouse.gov/omb /management/made-in-america. DEFINITIONS "Construction materials" includes an article, material, or supply— other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives2 — that is or consists primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall. "Domestic content procurement preference" means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States. "Infrastructure" includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy. "Project" means the construction, alteration, maintenance, or repair of infrastructure in the United States -- 1 Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives. 2 IIJA, § 70917(c)(1).				
Implementation of Domestic Sourcing Requirements	Prior to initiation of any construction that may arise in this award, the Recipient is required to inform the NOAA Grants Officer and the Federal Program Officer whether it is using iron, steel, manufactured products, or construction materials as described in the Specific Award Condition in this award on Required Use of American Iron, Steel, Manufactured Products, and Construction Materials. In addition, the Recipient is required to inform the NOAA Grants Officer and the Federal Program Officer whether those materials are produced or manufactured in the United States, or alternatively, it is requesting one or more waivers, as described in the award condition. The Recipient is required to coordinate with NOAA regarding its compliance with this term.	CD-450	Administrative		
Pre-Award Costs – 90 Days	Pre-award costs incurred within 90 days prior to the award start day are allowable only to the extent of their reasonableness and relationship to the proposed activities of this award. The approved pre-award costs are a portion of, not in addition to, the approved total budget.	CD-450	Administrative		
Post Award NEPA Review Process	By accepting this award, the Recipient agrees to assist and cooperate with NOAA Fisheries in the preparation of any outstanding National Environmental Policy Act (NEPA) compliance documentation. For purposes of NEPA compliance, Phase 1 of the project includes design, permitting and preparations for contracting. The activities for which work can proceed (as described above) will have no significant individual or cumulative adverse effects on the environment. The Recipient will not expend any funds for Phase 2 project implementation which includes dam removal construction until impacts have been assessed, and NEPA compliance documentation has been completed by NOAA. At this time, $168,800 of the total award funds are available to the Recipient to complete Phase 1 tasks outlined above that have no adverse impacts on the environment. The remaining award funds will be available after the NOAA Program Officer provides NEPA clearance by confirming in Grants Online that this award condition has been satisfied.	CD-450	Programmatic		

	should also be acknowledged in all communications with the media and the public and in all outreach related to the projects, consistent with Department of Commerce Financial Assistance Standard Term and Condition G.05.k.3.				
Project Safety	The Recipient must have a written safety plan for management of the project, which should specifically address safety of project personnel, associates, visitors, and volunteers. The Recipient must conduct a safety briefing for volunteers immediately prior to their participation in hands-on restoration activities under this award. In addition, for any Self-Contained Underwater Breathing Apparatus (SCUBA) diving activities in a project, it is the responsibility of the Recipient to ensure that SCUBA divers are certified to a level commensurate with the type and conditions of the diving activity being undertaken. Furthermore, it is the responsibility of the Recipient to ensure that any SCUBA diving activities under this award meet, at a minimum, all applicable Federal, State, and local laws and regulations pertaining to the type of SCUBA diving being undertaken.	CD-450	RFA Programmatic		
Compliance with Applicable Laws, Obtaining Permits, and Consultation Requirements	The Recipient is required to comply with national policy requirements consistent with 2 C.F.R. Sec. 200.300 and Department of Commerce Financial Assistance Standard Terms and Conditions, Section G. The Recipient will ensure that implementation of the project will meet all Federal laws and regulations by obtaining all Federal, state, and local permits and consultations applicable to the project prior to expenditure of award funds for those activities requiring permits and consultations. This includes, but is not restricted to, consultations required under the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat), National Historic Preservation Act, and Coastal Zone Management Act. The Recipient will be cognizant of all conditions and restrictions required by their permits and consultations, and will immediately halt activities and contact their NOAA Technical Monitor if events occur that threaten to violate the conditions or restrictions required by their permits and consultations.	CD-450	RFA Programmatic		
Verification of Permits and Consultations	Verification of permits and regulatory compliance related to this project must be presented to the NOAA Technical Monitor prior to project implementation. The Recipient should provide a list of Federal, tribal, state, and local permits acquired for this project by email or letter to the NOAA Technical Monitor.	CD-450	RFA Programmatic		

* BABA Waiver

Approved: September 1, 2023
Expires: September 1, 2024

DEPARTMENT OF THE INTERIOR

TITLE:

GENERAL APPLICABILITY PUBLIC INTEREST TRIBAL CONSULTATION WAIVER FOR FINANCIAL ASSISTANCE AGREEMENTS TO INDIAN TRIBES

1. Summary

Agency: Department of the Interior

Waiver: The Department of the Interior (DOI) is issuing a *one-year* general applicability waiver of the requirements of section 70914 of the Build America, Buy America Act (BABA) included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58) (Buy America Preference) for Federal Financial Assistance agreements in accordance with 2 CFR 200 awarded to Federally recognized Indian Tribes (Tribes), having determined such waiver to be in the public interest. This waiver is critical in keeping with the Federal Government's commitment to follow consultation policies established through Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments,* before applying Buy America Preference to programs that affect tribal communities.

Applicability: This waiver action permits the use of non-domestic iron, steel, manufactured products, and construction materials in such projects that may otherwise be prohibited under section 70914(a) during the specified period of time for Department of the Interior Federal Financial Assistance agreements in which the direct recipient is a Federally recognized Indian Tribe as defined in in Part 83 of Title 25 of the Code of Federal Regulations.

The waiver will remain in effect for a period of one year from the date of final approval.

2. Background

The Buy America Preference set forth in section 70914 of the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), requires all iron, steel, manufactured products, and construction materials used for infrastructure projects under Federal financial assistance awards be produced in the United States.

Under section 70914(b), and in accordance with the Office of Management and Budget's (OMB) April 18, 2022 initial implementation guidance memorandum on the subject (M-22-11), the Department of the Interior may waive the application of the Buy America Preference, in any case in which it finds that: applying the domestic content procurement preference would be inconsistent with the public interest; types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. All waivers must have a written explanation for the proposed determination; provide a period of not less than 15 calendar days for public comment on the proposed waiver; and submit the proposed waiver to the Office of Management and Budget Made in America Office for review to determine if the waiver is consistent with policy.

OMB's M-22-11 provides guidance to agencies to consult with Tribal Nations before applying a Buy America Preference to a covered program that will affect Tribal communities. On September 21, 2022, nine agencies (U.S. Department of the Interior, U.S. Department of Agriculture, U.S. Department of Housing and Urban Development, U.S. Environmental Protection Agency, U.S. Department of Homeland Security, U.S. Department of Energy, U.S. Department of Transportation, U.S. Department of Commerce, and U.S. Small Business Administration) participated in a consultation hosted by the White House Council on Native American Affairs to consult with Tribal Nations on discretionary Buy America Preference provisions and the waiver categories characterized in the OMB memorandum. Based on the consultations held, Tribes were requested to provide written comments and feedback by October 20, 2022 for Federal agency consideration. The resulting comments were received by the White House Council and distributed to agencies on October 25, 2022.

The comments received from the Tribal leaders in response to these consultations expressed concerns about the undue burden the Buy America Preference would place on Tribes. Further the Tribes expressed that agencies need to be cognizant that Tribes should have the opportunity to dictate which materials can be procured on their land and Buy America Preferences undermine Tribal sovereignty and threaten delays of infrastructure projects and established budgets for Tribal Communities. Tribes also anticipate an increased total project cost for materials and acquisitions leading to some projects being rendered as unviable. Finally, they expressed that they have limited access to a wide variety of products, supplies, and personnel and that the Buy America Preference will impact critical future projects, such as housing infrastructure, where Tribes already face challenges due to lack of funding and remote locations. Rising inflation and ongoing supply chain issues will continue to disproportionally affect Tribes unless a waiver process is implemented specifically for Tribes.

In response to questions about how Federal agencies can assist Tribes in meeting the Buy America Preference, Tribes responded by requesting that waivers for Tribes be uniform across the Federal government. In addition some Tribes also provided feedback such as: (a) requesting a list of Native-owned businesses to provide easier ways to identify companies that meet Buy America Preference; (b) ensure that Tribes understand the process for identifying waivers with Agency understanding of how remote geographic locations impact the implementation of requirements; and (c) agencies should help build local hiring and training opportunities and assist Tribal Nations in those capacity building efforts and policies to advance such efforts. Finally, Tribes commented that it is imperative to assist in the offsetting of the cost differentiation between procuring goods manufactured in the United States versus elsewhere.

Participating Tribal leaders broadly requested that Federal agencies provide for maximum flexibility in allowing waivers of tribal participation in covered federal programs. Based on the feedback received, the participating Federal agencies began working jointly to coordinate and collaborate on waivers for Tribes in an effort to uphold the Nation's responsibilities between the Federal government and Federally recognized Tribes. Through cross-agency collaboration, it was determined that a waiver for Tribes is in the best interest of the DOI and public to allow ample opportunity for ongoing consultations while also building the capacity of Tribes through technical assistance to work towards eliminating the need for a waiver. Furthermore, DOI plans to engage Tribes, conduct consultations to provide training and technical assistance to build Tribal capacity to comply with Build America, Buy America requirements. In this way, the waiver will serve as a tool to promote investment in our domestic manufacturing base while also promoting the well-being, equity, and justice for Tribes.

3. Impact of Waiver to the Department of the Interior

The Department of the Interior's Fiscal Year 2022 – 2026 Strategic Plan provides a roadmap for fulling the Department's mission, achieving the vision of the Secretary of the Interior, and addressing the priorities of the Biden-Harris Administration. This plan outlines four specific strategic goals of the Department. The first of these four goals is to promote well-being, equity, and justice for Tribes, American Indians, Alaska natives, Native Hawaiians, and Insular communities. This includes enabling programs and opportunities that advance tribal sovereignty, tribal consultations to inform decision making, and coordinated Federal Government-wide engagement. This waiver seeks to advance the strategic goals of the Department while ongoing consultations and collaboration with the tribes and other Federal Government Agencies continues to develop.

Since the enactment of the Build America, Buy America Act, DOI has worked diligently to begin implementing Buy America Preferences for financial assistance agreements while simultaneously evaluating the impact of the Buy America Preference to Native American Tribes. In July 2022, the DOI issued a six-month temporary adjustment period waiver to allow the agency adequate time to adjust to the new Buy America Preference for various infrastructure projects while still maintaining current project deadlines and milestones. This six-month adjustment period also allowed time to initiate the Native American consultation process before applying Buy America Preference to programs that affect tribal communities. DOI's temporary adjustment period waiver expired on January 12, 2023.

After the enactment of the Buy America Preference, the White House Council on Native American Affairs (WHCNAA) recognized the ongoing tribal requests for increased inter-agency collaboration and coordination of the Buy America Preferences, including consultations. Rather than federal agencies consulting with tribes separately, WHCNAA invited Tribal Leaders to consult with the participating agencies in a joint, inter-agency consultation that occurred on September 21, 2022. DOI was a participant of that consultation and continues to be in coordination with the WHCNAA regarding on-going consultations. Based on the results of the consultation that occurred in September 2022, and on-going discussions still taking place with tribes, a determination was made it would be contrary to the public's interest to apply the Buy America Preference to financial assistance agreements awarded to Tribes until at least an initial one-year waiver period to allow for ongoing tribal consultations and the building of Tribal capacity to meet domestic procurement requirements.

Based on prior fiscal year data, Native American tribes received about $850 million through DOI federal financial assistance agreements across the 574 Federally recognized tribal entities for a variety of projects, many of which may include infrastructure. During the waiver period, the DOI will continue to participate in Tribal consultations and will work with tribes to identify where more narrow project or product specific waivers may be necessary to eliminate the need for a general applicability waiver going forward.

4. Waiver Justification

With the enactment of the Buy America Preference, Federal Financial Assistance agreements with Tribes must now comply with the requirements of the Build America, Buy America Act that were not previously required. On January 26, 2021, the Biden administration released a 'Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships' affirming the Administration's commitment to Executive Order (E.O.) 13175. Section 6 of E.O. 13175 requires each Federal agency to consider any application for a waiver by an Indian Tribe with a 'general view toward increasing opportunities for utilizing flexible approaches at the Indian tribal level' as 'consistent with applicable Federal policy objectives' and 'otherwise appropriate.' Underpinning this provision is the Federal trust responsibility, a fiduciary obligation to provide for the flexibility, as appropriate, to support program access, recognize Tribal Nations as sovereign entities, and facilitate Tribal economic development interests.

Based on feedback provided from tribes during initial consultations, a waiver is critical to ensure these new requirements do not adversely impact the ability for Tribal nations to establish procurement policies for Tribal sovereign interests. Tribal nations often reside in rural, remote areas across the United States which typically result in increased project expenses due to transportation and sourcing barriers. In addition, tribes often do not maintain a tax-base necessary to offset additional expenditures, including increases in anticipated project costs. The Buy America Preference seeks to provide for targeted economic benefit for domestic made iron, steel, manufactured products, and construction materials and realizes cost savings in many cases. However, in the event that the domestic purchase of products increases infrastructure construction expenses, Federal agencies may not be able to provide for increased project awards covering any additional expenses. The provision of a general waiver provides for greater equity in infrastructure project development through the fulfillment of the Federal government trust responsibility while mitigating additional cost prohibitive measures that may otherwise impede infrastructure development throughout rural communities.

Input from Tribal leaders also expressed the importance of a waiver to prevent increased costs to projects and project delays. Implementation of the Build America, Buy America Act will likely result in ongoing and planned projects being subject to cost increases associated with re-scoping projects, finding new sources of supply, and associated administrative costs. A waiver will help to ensure these current planned projects are not subject to cost increases while working toward identifying domestic sources of supply for future projects. Absent a waiver, Tribal leaders expressed concerns that ongoing and planned projects may experience substantial delays in project implementation and completion due to the additional time required to research and locate domestic sourced materials, restructure contracts, and submit and process waivers when domestic materials are not available. A waiver will help to keep these projects moving forward during the transition toward compliance.

A waiver will also help to reduce the increased burden for Tribes who now must expend additional administrative efforts to identify and maintain domestic sources of supply. This will allow for a more gradual modification of processes internally as additional funding is provided. Finally, a waiver will help Native American businesses and partners build capacity and resources to source domestic materials. This will help to alleviate the concern of alienating local contractors and the cascading impacts to Tribal economies.

For the reasons expressed above, a determination has been made that it would be contrary to the public's interest to apply the Buy America Preference to Tribes until sufficient time has been allotted to allow for ongoing tribal consultations and the building of Tribal capacity to meet domestic procurement requirements. During the one-year period of the waiver, DOI plans to implement an engagement plan to facilitate opportunities to address the concerns by Tribes based on their feedback to the consultation hosted by the White House Council on Native American Affairs on September 21, 2022, to discuss Build America, Buy America requirements. DOI will host Tribal consultations to receive more tailored feedback from Tribes, deliver training and technical assistance on financial assistance, Build America, Buy America provisions, and share tools and resources. The DOI Tribal Consultation waiver will allow DOI time to consult with Tribes and enhance their capacity to access DOI financial assistance programs and comply with Build America, Buy America requirements. DOI will utilize the information from the Tribal consultations to assess the need for targeted waivers in the future to address the address diverse needs of Tribes.

In the interim, the Department of the Interior, in collaboration with other agencies, remains committed to obtaining input from Tribes and intends to continue dialogue with interest groups and stakeholders to continue working toward consistent, long-term compliance with the Buy America requirements while also continuing to honor Trust responsibilities to Tribes. As consultations and collaboration efforts continue to develop, the need for ongoing waivers will be reevaluated.

5. Assessment of Cost Advantage of a Foreign-Sourced Product

Under OMB Memorandum M–22–11, Federal agencies are expected to assess ''whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products'' as appropriate before granting a public interest waiver. This assessment is not applicable to this waiver as this waiver is not based on the cost of foreign-sourced products.

6. Summary of Comments

Waiver: This notice was posted on July 31, 2023, to satisfy the requirement under section 70914 of BABA to publish any proposed BABA waiver and provide the public with a reasonable period of time for notice and comment. The Department of the Interior sought public and industry comment from all interested parties and received two (2) public comments in response to the proposed waiver. This notice closed for comments on August 15, 2023. A summary of the public comments received are as follows:

- One (1) entity expressed support for the waiver and sought clarification that the waiver would apply to infrastructure projects funded under the Inflation Reduction Act.

- One (1) entity disagreed with the waiver in its entirety indicating the proposed waiver was not in the public interest and suggested a product specific nonavailability waiver be used when appropriate as an alternative approach.

In our response to the first entity, DOI clarified that the waiver will apply to all DOI financial assistance agreements for infrastructure projects, including those projects funded by the Bipartisan Infrastructure Law and/or the Inflation Reduction Act, where a Federally Recognized Tribe is a direct recipient.

In our response to the second entity, DOI disagreed with the comment that the proposed waiver be denied because it is not in the public interest, and that it is not necessary to allow additional time for Tribal consultations. We acknowledged but found these comments inconsistent with the Buy America statutory authority which expressly contemplates waivers of domestic content procurement preference if doing so would be in the public interest. DOI noted that the comment failed to address the increased project expenses faced by Tribes due to transportation and sourcing barriers; and that the waiver is limited in duration to twelve months and factors in the unique public interest considerations and economies of Tribes.

After reviewing and responding to these comments, DOI is issuing the waiver with no substantive changes.

DOI will review the waiver as often as necessary to evaluate its continued need.

U. S. DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE (NRCS)
APPENDIX TO FORM NRCS-CPA-1202, "CONSERVATION PROGRAM CONTRACT"

General Contract Provisions

1. DEFINITIONS

A. The following definitions are applicable to the Conservation Program Contract (CPC) entered into under the program identified in the program-specific section of this appendix. All other words and phrases, unless the context of subject matter otherwise requires, shall have the meanings assigned to them in the regulations governing the applicable program.

i. Contract or CPC.—The program documents, including Form NRCS-CPA-1202, "Conservation Program Contract"; the Appendix to Form NRCS-CPA-1202; Form NRCS-CPA-1155, "Conservation Plan or Schedule of Operations"; Form NRCS-CPA-1156, "Revision of Plan/Schedule of Operations or Modification of a Contract"; and Form NRCS-CPA-152, "CPC Transfer Agreement." The contract sets forth the terms and conditions for program participation for the program identified in this Appendix.

ii. The Natural Resources Conservation Service or NRCS.—An agency of the United States Department of Agriculture (USDA). NRCS is administering this contract on behalf of the Commodity Credit Corporation (CCC). Therefore, where this contract refers to "CCC", NRCS may act on its behalf for the purposes of administering this contract.

iii. Participant.—A person, legal entity, joint operation, Indian tribe that is a producer, or other eligible party who has applied for participation in the program, has been selected as eligible for participation, and who has entered into this contract as responsible for implementing its terms and conditions. Any participant that will receive any share of a payment made for the implementation of this contract must be a signatory on the contract and eligible for such payment. Any participant on the contract may approve payment applications for the contract unless signatory is specifically not granted or assigned on the Contract Forms NRCS-CPA-1202 or NRCS-CPA-152.

2. ELIGIBILITY REQUIREMENTS

A. The participant must, upon request, provide evidence to NRCS demonstrating that such participant controls the land during the contract period. By signing this contract, the participant certifies that such participant will control the land subject to the contract for the contract period.

B. Land otherwise eligible for the applicable program shall not be eligible, except as agreed otherwise, in writing, by NRCS, if the land is subject to a deed or other restriction prohibiting the production of agricultural commodities or where a benefit has or will be obtained from a Federal agency in return for the participant's agreement not to produce such commodities on the land during the same time as the land would be enrolled in the program. By offering land for enrollment, the participant certifies as a condition for payment that no such restrictions apply to the subject land.

C. The participant shall not be eligible for payments for implementation of conservation practices or activities that the participant is required to implement to address non-compliance with 7 CFR Part 12, "Highly Erodible Land and Wetland Conservation." Contract payment will not be delayed for conservation practices or activities completed while in noncompliance with 7 CFR Part 12 or for the purpose of circumventing the payment eligibility requirements set forth in 7 CFR Part 12.

3. AGREEMENT

A. The participant agrees to—

i. Enroll eligible land into the program for the period of time as specified on Form NRCS-CPA-1202 beginning on the date this contract is executed by NRCS;

ii. Comply with the terms and conditions of this contract;

iii. Establish, maintain, and replace, as specified in this contract, the conservation practices or activities agreed to in Form NRCS-CPA-1155 and, if applicable, Form NRCS-CPA-1156;

iv. Complete a conservation practice or activity within the first 12 months of the contract. NRCS may extend the timeframe for completion if NRCS determines that the participant is unable to complete the conservation practice or activity for reasons beyond their control.

v. Install conservation practices and activities according to the implementation requirements, designs, constructions plans, or other documents in order to meet the applicable NRCS technical criteria, and if not in possession of such information, contact your local office before installing your conservation practices and activities

vi. Obtain the authorities, permits, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices or activities in accordance with applicable laws and regulations;

vii. Discontinue implementation and notify NRCS immediately if during the construction of any conservation practice or activity a previously unknown, unexpected, or unidentified endangered species, archeological, cultural, or historical site is encountered or the prescribed conditions for mitigation purposes have changed;

viii. Not undertake any action on land under the participant's control which tends to defeat the purposes of this contract, as determined by NRCS;

ix. Not start any financially-assisted conservation practice or activity before this contract is executed by NRCS, unless NRCS approves a waiver;

x. Complete and file Form CCC-902, "Farm Operating Plan," and as needed Form CCC-901, "Member's Information," as required by USDA under 7 CFR Part 1400, "Payment Limitation and Payment Eligibility." participants also agree to maintain updated information with the Farm Service Agency as provided in 7 CFR Part 1400.

xi. File forms required by NRCS for applicable payment limitation determinations.

xii. File Form CCC-941, "Average AGI Certification and Consent to Disclosure of Tax Information," required by USDA for Adjusted Gross Income (AGI) determinations.

xiii. Provide to NRCS, upon request, completed Form NRCS-CPA-1257 "Landowner Concurrence for Structural or Vegetative Activities," or other written concurrence from the landowner that identifies the participant has authority to install structural or vegetative conservation practices or activities.

xiv. File Form NRCS-CPA-1245, "Practice Approval and Payment Application," upon completion of a contracted conservation practice or activity, in order to receive payment.

xv. Retain all records, including receipts, as proof of completion and payments, and other documents related to this contract for a period of three (3) full years after completion of the terms of this contract, and give to the NRCS, the Office of the Inspector General or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this contract; and

xvi. Allow access to the land under contract to the NRCS representative, or its representative, for monitoring progress on this contract. NRCS shall provide reasonable notification to the participant prior to entering the land under contract.

xvii. Not engage the services of a certified technical service provider (TSP) before this contract is executed by NRCS. If interested in obtaining funds for TSP services, the participant must make a request to NRCS. NRCS will determine if funds are available for TSP services and will work with the participant to modify the contract accordingly. Under no circumstances will NRCS reimburse participants for TSP services obtained prior to approval of such reimbursement under the contract. The participant must submit invoices from the certified TSP for the work performed and any other documentation needed for NRCS to determine the technical services were completed in accordance with NRCS requirements. The participant is responsible for ensuring that the TSP services meet program requirements. NRCS may seek repayment of any TSP payments made to the participant if NRCS terminates this contract, as provided under paragraphs 6 and 7 of this Appendix.

xviii. Conduct business with NRCS employees and representatives in a respectful manner and ensure safety of NRCS employees and representatives while on site.

B. NRCS agrees, subject to the availability of funds, to:

i. Approve payment to the participant for completing an eligible conservation practice or activity as scheduled in Forms NRCS-CPA-1155 or NRCS-CPA-1156, if applicable, as described herein. This contract is a financial assistance agreement, not a procurement contract. As such, it is not subject to 5 CFR Part 1315, "Prompt Payment," and is governed by the terms set forth herein.

ii. Approve payments based on the actual extent of the conservation practice or activity implemented. NRCS will approve payments based on the payment rate and extent agreed to in Forms NRCS-CPA-1155 or NRCS-CPA-1156. NRCS will only approve payments for conservation practices or activities the participant completes within the contract period of performance and that meet or exceed the requirements described in the NRCS standards and specifications, designs, job sheets or guide sheets;

iii. Approve payments submitted on Form NRCS-CPA-1245 based upon the shares to which the parties have agreed as set forth on Form NRCS-CPA-1202.

4. PERIOD OF PERFORMANCE

This contract is effective when signed by the participant and executed by an authorized representative of NRCS. The contract term begins on the date NRCS executes the contract as indicated on the Forms NRCS-CPA-1202 or NRCS-CPA-152 and shall not exceed the maximum length authorized for the program. All required participants must sign this contract within the timeframe established by NRCS. In the event that a statute is enacted during the period of this contract which would materially change the terms and conditions of this contract, the NRCS may require the participant to either modify this contract consistent with the provisions of such statute or agree to contract termination.

5. CONTRACT CORRECTION, MODIFICATION, AND TRANSFER

A. Contract Correction.—NRCS reserves the right to correct all errors in entering data or the results of computations in this contract. If the participant does not agree to such corrections, NRCS shall terminate the contract.

B. Contract Modification.—NRCS and the participant may agree to modify this contract upon determination and approval of NRCS that the modification is consistent with the purposes of the program and is in the public interest. Any participant on the contract may approve modifications for the contract on behalf of all participants unless such signature authority is specifically denied on Form NRCS-CPA-1202.

C. Contract Transfer.

i. The participant must provide written notice to NRCS within 60 days of any voluntary or involuntary loss of control of any acreage under the contract, including changes in a participant's ownership structure or corporate form. NRCS will terminate the contract, if timely notice is not provided, if an eligible producer is not identified in the notice, or if the new producer is not approved by NRCS to accept the terms and conditions of the contract.

ii. NRCS may approve a transfer of the contract if the new producer meets the program eligibility requirements within a reasonable time frame as determined by NRCS, the new producer agrees to assume the rights and responsibilities for the acreage under the contract, and NRCS determines that the purposes of the program will continue to be met.

iii. Until NRCS approves the transfer of contract rights, a new producer is not a participant and may not receive payment for conservation practices or activities commenced prior to approval of the contract transfer. When NRCS approves a contract transfer, the transferee accepts all rights and responsibilities, including the right to payment for activities and practices implemented on the transferred land.

6. CONTRACT VIOLATION AND TERMINATION

A. If a participant fails to carry out the terms and conditions of this contract NRCS may terminate this contract. NRCS may require the participant to refund payments received under this contract, or if not terminated, require the participant to accept such adjustments in subsequent payments as are determined to be appropriate by NRCS.

B. NRCS may terminate this contract, in whole or in part, without liability, if NRCS determines that continued operation of this contract will result in the violation of a statute or regulation.

C. NRCS and the participant may agree to terminate this contract if NRCS determines that the termination is in the public interest.

D. NRCS may determine that a participant is not in violation of the contract for failure to comply with the contract if the circumstances for failing to comply were beyond the control of the participant, including a disaster or related condition, as determined by the NRCS.

E. The contract terminates upon death of the participant unless the estate or other successor of the deceased participant, as determined by NRCS, assumes responsibility for the contract and meets applicable eligibility requirements in accordance with paragraph 5 above. NRCS may transfer the contract to the estate or deceased participant successor by completing Form NRCS-CPA-152 The transfer agreement is not in effect until approved by NRCS. NRCS will issue payment and approve transfers in accordance with guidance provided in applicable provisions of 7 CFR Parts 707, "Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent," and 1400 as determined by NRCS. If the estate or authorized representative is identified by operation of State law, in a court-approved document, or a will, the estate or other authorized representative will be considered as appointed by the participant under the terms of the contract appendix. The term "estate representative" also refers to the heirs where the operation of law does not require the establishment of a formal estate.

7. PAYMENT COLLECTION AND RECOVERY OF COST

A. Collection of amounts due from a participant for contract violation, improper payment, or any other reason will follow procedures of 7 CFR Part 3 "Debt Management." NRCS will notify the participant and provide the reason for the collection and the amount owed. Unpaid debts accrue interest due to the NRCS beginning 30 days after the billing date at the current value of funds rate published in the Federal Register by the United States Department of Treasury.

B. In the event a participant violates the terms of this contract, the participant voluntarily terminates this contract before any contractual payments have been made, or this contract is terminated with cause by NRCS, NRCS will incur substantial costs in administering this contract which may not be possible to quantify with certainty. The participant agrees to pay, at the time of termination, liquidated damages in an amount equal to 10 percent of the total financial assistance obligated to the participant in this contract. The liquidated damage payment is for recovery of administrative costs and technical services and is not a penalty.

8. OPERATION AND MAINTENANCE OF CONSERVATION PRACTICES OR ACTIVITIES (O&M AGREEMENT)

The participant agrees to operate and maintain (O&M) all conservation practices or activities included within this contract. The participant's O&M responsibilities begin when they complete the conservation practice or activity, as determined by NRCS, and shall continue through the end of the practice or activity lifespan. Failure to carry out O&M may result in NRCS terminating this contract.

9. PROVISIONS RELATING TO TENANTS AND LANDLORDS

No payment will be approved for the current year if NRCS determines that any of the following conditions exist:

A. The landlord or operator has not given the tenants that have an interest in the agricultural operation covered by the contract, or that have a lease that runs through the contract term at the time of sign up, an opportunity to participate in the benefits of the program.

B. The landlord or operator has adopted any other scheme or device for the purpose of depriving any tenant of any benefits to which such tenant would otherwise be entitled. If any such conditions occur or are discovered after payments have been made, all or any part of the payments, as determined by NRCS, must be refunded and no further payments shall be made.

10. MISREPRESENTATION AND SCHEME OR DEVICE

A participant who is determined to have erroneously represented any fact affecting a determination with respect to this contract and the regulations applicable to this contract, adopted any scheme or device which tends to defeat the purposes of this contract, or made any fraudulent representation with respect to this contract, will not be entitled to payments or any other benefits made under this contract. The participant must refund to NRCS all payments received plus interest. In addition, NRCS may terminate the participant's interest in all conservation program contracts. The provisions of this paragraph of the Appendix shall be applicable in addition to any other criminal and civil fraud statutes.

11. RIGHTS TO APPEAL AND REQUEST EQUITABLE RELIEF

A. The participant may appeal an adverse decision under this contract in accordance with the appeal procedures set forth at 7 CFR Part 11, "National Appeals Division," Subpart A, and part 614, "NRCS Appeal Procedures." Pending the resolution of an appeal, no payments shall be made under this contract. Before a participant seeks judicial review, the participant must exhaust all appeal rights granted within these regulations.

B. The participant may also request equitable relief as provided under 7 U.S.C. 7996, "Equitable Relief from Ineligibility for Loans, Payments, or Other Benefits," and 7 CFR Part 635 "Equitable Relief from Ineligibility."

12. DRUG-FREE WORKPLACE (2 CFR Part 182 and 2 CFR Part 421)

By signing this contract, the participant certifies that the participant will comply with the requirements of 2 CFR Part 182. "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," and 2 CFR 421, "Requirements for Drug-Free Workplace (Financial Assistance)." If it is later determined that the participant knowingly rendered a false certification, or otherwise violated the requirements of the Drug-Free Workplace Act, NRCS, in addition to any other remedies available to NRCS under this contract or in general to the United States, may take action authorized under the Drug-Free Workplace Act.

13. CIVIL RIGHTS REQUIREMENTS

The participant agrees to follow proper rules and regulations in accordance with the requirements of Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendment, 1972; Section 504 Rehabilitation Act, 1973; Age Discrimination Act, 1975; and all other departmental rules and regulations, enforcing nondiscrimination in program delivery.

Environmental Quality Incentive Program (EQIP) Provisions which includes EQIP contracts enrolled under the Regional Conservation Partnership Program (RCPP-EQIP)

1. GENERAL TERMS

A. The regulations in 7 CFR Part 1466, "Environmental Quality Incentives Program", and any other applicable regulations are incorporated, by reference, herein. In the event of a conflict between these regulations and the terms of this Appendix, the provisions of the regulations will prevail.

B. In addition to the documents identified in the general provisions, the contract also incorporates the following documents, to which the participant is bound:

i. Conservation Plan and Plan Maps

ii. Operation and Maintenance Plans, as applicable

C. Definitions.—Refer to 7 CFR Part 1466 at §1466.3 for definitions of "Water Management Entity," "Indian Tribe," and, "Historically Underserved Producer" and the component definitions therein, of "Beginning Farmer or Rancher," "Socially Disadvantaged Farmer or Rancher," "Limited Resource Farmer or Rancher," and "Veteran Farmer or Rancher."

2. PROGRAM ELIGIBILITY REQUIREMENTS

A. Participants must be the operator, owner, or other tenant of an agricultural and/or nonindustrial private forestland (NIPF) operation in the Farm Service Agency (FSA) farm records management system and have effective control of the land for the EQIP contract period.

B. Participants must demonstrate to the satisfaction of NRCS that they are engaged in agricultural production or forestry management or have an interest in the agricultural or forestry operation associated with the land offered for an EQIP contract.

C. Participants must be in compliance with the highly erodible land and wetland conservation provisions found in 7 CFR Part 12.

D. Participants must comply with adjusted gross income (AGI) provisions found at 7 CFR Part 1400.

E. Participants must supply information, as required by NRCS, to determine eligibility for EQIP.

F. Participants who are eligible for EQIP and self-certify as meeting the requirements of any of the historically underserved (HU) designations are eligible for an increased payment rate and advance payments.

i. Increased Payment Rate.—HU participants must be awarded the applicable payment rate plus an additional rate that is not less than 25 percent above the applicable rate not to exceed 90 percent of the estimated incurred costs, as documented in an approved payment schedule.

ii. Advance Payments. —HU participants may elect to receive advance payments on a contract item basis for a portion of the anticipated costs associated with purchasing materials or contracting services to implement a conservation practice.

3. AGREEMENT

A. Participant accepts applicable program contract and payment limits as found in 7 CFR Part 1466 for EQIP and this Appendix.

   i. A person or legal entity may not receive, directly or indirectly, payments that in the aggregate exceed $450,000 for all EQIP contracts entered into during the period of December 20, 2018 through September 30, 2023 (i.e., the years of the 2018 Farm Bill) unless one of the following applies:

      - Water management entities where NRCS has approved a payment limitation waiver not to exceed $900,000.
      - Participants enrolled under an EQIP National Organic Initiative contract may not exceed a $140,000 payment limit.
      - Contracts with Indian Tribes or Alaska Native Corporations are not subject to payment limits.

   ii. Contract limit is the maximum payment amount allowed under a single contract.

      - Each EQIP contract with a person or legal entity will be limited to $450,000.
      - EQIP contracts with joint operations (general partnerships or joint ventures) or group projects may have a contract limit of up to $900,000 where NRCS has approved contract limitation waiver. The contract limit is separate from any applicable payment limitation.
      - The contract limitation will not increase due to the change in business type for contract transfers from a person or legal entity to a joint operation,
      - Indian Tribes or Alaska Native Corporations are not subject to contracts limits.

B. If an EQIP schedule of operations includes an animal waste storage or treatment facility on an animal feeding operation (AFO), the participant agrees to develop an NRCS-approved comprehensive nutrient management plan (CNMP) prior to implementation of any waste storage or treatment facility or associated nutrient management activities. The CNMP will account for resource concerns and conservation practices and activities planned for an AFO associated with storing, treating, land applying, or handling (transferring) of animal waste or organic byproducts, such as animal carcasses.

C. If an EQIP schedule of operations includes forest-related conservation practices or activities on forest land, the participant agrees to implement conservation practices and activities consistent with an approved forest management plan.

D. If an EQIP contract is funded under the EQIP Organic Initiative (16 U.S.C. 3839aa-2(i)), the participant agrees to develop and implement conservation practices that are consistent with an organic system plan.

4. PAYMENT

A. NRCS makes EQIP financial assistance payments to producers upon completion of conservation practices and activities, as described in program contracts, and based on certification that the conservation practices and activities meet NRCS standards and specifications

B. HU participants may elect to receive advance payments of not less than 50 percent of the EQIP conservation practice payment amount to purchase materials or contract services associated with practice implementation.

C. If NRCS makes an advance payment to an HU participant, the participant must expend the advance payment within 90 days of receipt of the funds. If funds provided in advance are not expended during the 90-day period beginning on the date of receipt of the funds, NRCS will notify the participant with an advance payment collection letter that the participant must return the funds within 90-days of receipt of the collection letter. Failure to return the funds will result in the participant being in violation of the terms of the contract, and the contract will be terminated.

D. The conservation practices associated with advance payment must be completed as scheduled in the EQIP schedule of operations.

E. Participants may assign payments, including advance payments, directly to vendors.

5. PERIOD OF PERFORMANCE

The contract period will last, at a minimum, from the date of obligation through the last scheduled conservation practice or activity (including any additional operation and maintenance necessary to achieve desired conservation benefits), not to exceed 10 years.

By signing this document, you acknowledge and agree that all the information provided is true and accurate on your behalf. Any false certifications made by participants by signing this Appendix may subject the participants to criminal and civil fraud statutes. You further acknowledge that you have read and accept all terms and conditions provided in this Appendix.

____ Date____________________

____ Date____________________

____ Date____________________

____ Date____________________

____ Date____________________

NOTE: This information collection is exempted from the Paperwork Reduction Act. The provisions of appropriate criminal and civil fraud, privacy and confidentiality, and other statutes may be applicable to the information provided.

WASHINGTON STATE
Recreation and
Conservation Office

RCO Tribal Grant Agreement

Project Sponsor: Cowlitz Indian Tribe
Project Title: Kwoneesum Dam Removal

Project Number: 20-1176R
Approval Date: 09/16/2020

PARTIES OF THE AGREEMENT

This Recreation and Conservation Office Agreement (Agreement) is entered into between the State of Washington by and through the Salmon Recovery Funding Board (SRFB or funding board) and the Recreation and Conservation Office (RCO), P.O. Box 40917, Olympia, Washington 98504-0917 and Cowlitz Indian Tribe (Sponsor, and primary Sponsor), PO Box 2547, Longview, WA 98632-8594, and shall be binding on the agents and all persons acting by or through the parties.

The Sponsor's Data Universal Numbering System (DUNS) Number is [redacted]

All Sponsors are equally and independently subject to all the conditions of this Agreement except those conditions that expressly apply only to the primary Sponsor.

The identified Authorized Representative(s)/Agent(s) have full authority to legally bind the Sponsor(s) regarding all matters related to the project, including but not limited to, full authority to: (1) enter into this project agreement on behalf of the Sponsor(s), (2) enter any amendments thereto on behalf of the Sponsors. Agreements and amendments must be signed by the Authorized Representative/Agent(s) of all sponsors, unless otherwise allowed in Amendments to Agreement Section.

For the purposes of this Agreement, as well as for grant management purposes with RCO, only the primary Sponsor may act as a fiscal agent to obtain reimbursements (See PROJECT REIMBURSEMENTS section).

PURPOSE OF AGREEMENT

This Agreement sets out the terms and conditions by which a grant is made from the State Building Construction Account of the State of Washington. The grant is administered by the Recreation and Conservation Office (RCO).

DESCRIPTION OF PROJECT

The Cowlitz Indian Tribe (Tribe) is requesting restoration funding to remove Camp Kwoneesum Dam, a documented fish passage barrier on Wildboy Creek, tributary to the West Fork Washougal River. The 55-foot-tall and 425-foot-long rock fill embankment dam creates a 9-acre reservoir and blocks all fish passage to 6.5 miles of productive tributary habitat. The Tribe plans to remove the dam during summer 2022, immediately restoring fish passage and reestablish downstream geomorphic processes to support the recovery of Washougal River coho salmon and summer steelhead populations. Our approach minimizes impacts to native aquatic inhabitants in the reservoir and surrounding tributaries during the removal and containment of 23,000 cubic yards of semi-suspended sediment within the reservoir. Project restoration work will include in-stream placement of large wood structures after the dam removal. The Tribe is currently developing the final design planset to remove Kwoneesum dam and restore fish access to a minimum of 6.5 miles of un-seeded, productive fish habitat for listed salmonids as well as resident trout and other native fish species.

PERIOD OF PERFORMANCE

The period of performance begins on September 16, 2020 (project start date) and ends on February 28, 2025 (project end date). No allowable cost incurred before or after this period is eligible for reimbursement unless specifically provided for by written amendment or addendum to this Agreement, or specifically provided for by applicable RCWs, WACs, and any applicable RCO manuals as of the effective date of this Agreement.

The Sponsor must request extensions of the period of performance at least 60 days before the project end date.

STANDARD TERMS AND CONDITIONS INCORPORATED

The Standard Terms and Conditions of the Recreation and Conservation Office are hereby incorporated by reference as part of this Agreement.

LONG-TERM OBLIGATIONS

For this restoration project, the Sponsor's long-term obligations shall be for a minimum of ten (10) years, or more as specified in the Landowner Agreement, beginning at project completion, unless otherwise identified in the Agreement or as approved by the funding board or RCO.

Where conflicts may exist between this section and other sections of the agreement, the latter shall apply.

PROJECT FUNDING

The total grant award provided for this project shall not exceed [redacted]. The RCO shall not pay any amount beyond that approved for grant funding of the project and within the percentage as identified below. The Sponsor shall be responsible for all total project costs that exceed this amount. The minimum matching share provided by the Sponsor shall be as indicated below:

	Percentage	Dollar Amount	Source of Funding
SRFB - Salmon State Projects	33.24%	[redacted]	State
Project Sponsor	66.76%	[redacted]	
Total Project Cost	100.00%	[redacted]	

FEDERAL FUND INFORMATION

This project is match to the following federal funding source(s) and the same provisions apply as if this project were funded by the federal funding source(s) as a federal subaward:

Federal Agency: US Dept of Commerce
Catalog of Federal Domestic Assistance Number and Name: 11.438 - PCSRF
Federal Award Identification Number: NA20NMF4380250
Federal Fiscal Year: 2020
Federal Award Date: 08/04/2020
Total Federal Award: [redacted]
Federal Award Project Description: FY2020 Washington State

Sponsor's Indirect Cost Rate: 22.73% of Total direct costs, less capital expenditures and pass through funds

This funding is not research and development (R&D).

If the Sponsor's total federal expenditures are $750,000 or more during the Sponsor's fiscal-year, the Sponsor is required to have a federal single audit conducted for that year in compliance with 2 C.F.R. Part 200, Sub Part F–Audit Requirements, Section 500 (2013). The Sponsor must provide a copy of the final audit report to RCO within nine months of the end of the Sponsor's fiscal year, unless a longer period is agreed to in advance by the federal agency identified in this section.

RCO may suspend all reimbursements if the Sponsor fails to timely provide a single federal audit; further the RCO reserves the right to suspend any and all RCO Agreement(s) with the Sponsor if such noncompliance is not promptly cured.

RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS

All rights and obligations of the parties under this Agreement are further specified in and shall be interpreted in light of the Sponsor's application and the project summary and eligible scope activities under which the Agreement has been approved as well as documents produced in the course of administering the Agreement, including the eligible scope activities, the milestones report, progress reports, and the final report. Provided, to the extent that information contained in such documents is irreconcilably in conflict with this Agreement, it shall not be used to vary the terms of the Agreement, unless those terms are shown to be subject to an unintended error or omission. This "Agreement" as used here and elsewhere in this document, unless otherwise specifically stated, has the meaning set forth in the definitions of the Standard Terms and Conditions of the Recreation and Conservation Office.

AMENDMENTS TO AGREEMENT

Except as provided herein, no amendment (including without limitation, deletions) of any of the terms or conditions of this Agreement will be effective unless provided in writing signed by all parties. Extensions of the period of performance and minor scope adjustments consented to in writing (including email) by the Sponsor need only be signed by RCO's director or designee, unless otherwise provided for in another agreement a Sponsor has with the RCO. This exception does not apply to a federal government Sponsor or a Sponsor that requests and enters into a formal amendment for extensions or minor scope adjustments.

It is the responsibility of a Sponsor to ensure that any person who signs an amendment on its behalf is duly authorized to do so, and such signature shall be binding on the Sponsor.

Any amendment to this Agreement, unless otherwise expressly stated, shall be deemed to include all applicable federal, state, and local government laws and rules, and policies applicable and active and published in the applicable RCO manuals or on the RCO website in effect as of the effective date of the amendment, without limitation to the subject matter of the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone.

COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND POLICIES

This Agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, applicable RCO manuals as identified below, and any applicable federal program and accounting rules effective as of the date of this Agreement, and with respect to any amendments to this Agreement, as of the effective date of that amendment.

Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone.

For the purpose of this Agreement all applicable RCO WACs and funding board policies shall apply as terms of this Agreement.

For the purpose of this Agreement, the following RCO manuals are deemed applicable and shall apply as terms of this Agreement:

- Long Term Obligations - Manual 7
- Reimbursements - Manual 8
- Restoration Projects - Manual 5
- Salmon Recovery Grants - Manual 18

Any applicable tribal preference laws may otherwise apply for a Sponsor that is a federally recognized Indian Tribe provided such preference laws are consistent with federal law.

SPECIAL CONDITIONS

Special Condition #1: Federal Nexus

This project appears to be subject to the National Historic Preservation Act, Section 106, and therefore appears to be exempt from Governor's Executive Order 05-05 Archaeological and Cultural Resources (EO 05-05) as described in the terms of this project agreement. In order for this project to be exempt from EO 05-05, the Section 106 Area of Potential Effect (APE) must include all ground-disturbing activities subject to this project agreement, including any staging area. The sponsor is encouraged to work with the federal permitting agency to align the Section 106 APE with the scope of work subject to this project agreement. If the APE does not include all ground-disturbing activities subject to this project agreement, promptly notify the RCO grant manager, as this will require RCO to initiate cultural resources consultation following EO 05-05 for those activities not included in the federal APE. RCO will withhold reimbursement of development or restoration expenditures until this requirement is met. For acquisition projects, final payment will be withheld until evidence of cultural resources review is provided. All cultural resources work must meet reporting guidelines outlined by the Department of Archaeology and Historic Preservation and Section 106 of the National Historic Preservation Act. In the event that archaeological materials or human remains are discovered within the project area, work in the immediate vicinity must stop, and the Sponsor must ensure compliance with the provisions found in this agreement and under state and federal law.

AGREEMENT CONTACTS

The parties will provide all written communications and notices under this Agreement to the mail address or the email address listed below if not both:

Sponsor Project Contact
Peter Barber
Restoration Ecologist
PO Box 2547
Longview, WA 98632
pbarber@cowlitz.org

RCO Contact
Amee Bahr
Natural Resources Building
PO Box 40917
Olympia, WA 98504-0917
Amee.Bahr@rco.wa.gov

These addresses and contacts shall be effective until receipt by one party from the other of a written notice of any change.

ENTIRE AGREEMENT

This Agreement, with all amendments and attachments, constitutes the entire Agreement of the parties. No other understandings, oral or otherwise, regarding this Agreement shall exist or bind any of the parties.

EFFECTIVE DATE

This Agreement, for project 20-1176, shall be subject to the written approval of the RCO's authorized representative and shall not be effective and binding until the date signed by both the sponsor and the RCO, whichever is later (Effective Date).

Reimbursements for eligible and allowable costs incurred within the period of performance identified in the PERIOD OF PERFORMANCE section are allowed only when this Agreement is fully executed and an original is received by RCO.

The Sponsor has read, fully understands, and agrees to be bound by all terms and conditions as set forth in this Agreement and the STANDARD TERMS AND CONDITIONS OF THE RECREATION AND CONSERVATION OFFICE. The signators listed below represent and warrant their authority to bind the parties to this Agreement.

Cowlitz Indian Tribe

By: [redacted] **Date:** 12-28-20

Name (printed): [redacted]

Title: [redacted]

State of Washington Recreation and Conservation Office
On behalf of the Salmon Recovery Funding Board (SRFB or funding board)

By: [redacted] **Date:** 2/17/21

Director
Recreation and Conservation Office

Pre-approved as to form:

By: [redacted] **Date:** 07/01/2020

Project Sponsor: Cowlitz Indian Tribe **Project Number:** 20-1176R
Project Title: Kwoneesum Dam Removal **Approval Date:** 09/16/2020

Eligible Scope Activities

ELIGIBLE SCOPE ACTIVITIES

Restoration Metrics

Worksite #1, Kwoneesum Dam

Targeted salmonid ESU/DPS (A.23):	Coho Salmon-Lower Columbia River ESU, Steelhead-Lower Columbia River DPS
Targeted species (non-ESU species):	Cutthroat, Searun Cutthroat
Miles of Stream and/or Shoreline Treated or Protected (C.0.b):	0.73
Project Identified In a Plan or Watershed Assessment (C.0.c):	Washougal Subbasin, WA Lower Columbia Salmon Recovery and Fish & Wildlife Subbasin Plan_2010. The #7 priority to 'Restore access to habitat blocked by artificial barriers' identified Wildboy Creek/Wildboy Dam (aka Kwoneesum dam) as the highest priority. Page 94.
Type Of Monitoring (C.0.d.1):	None

Fish Passage Improvement

Miles Of Stream Made Accessible (C.2.b.1):	0.73
Type Of Barrier (C.2.b.3):	Push-Up Dam

Fish passage blockages removed or altered (C.2.c.1)

Number of Blockages/Impediments/Barriers Removed/Altered (C.2.c.2):	1

Instream Habitat Project

Total Miles Of Instream Habitat Treated (C.4.b):	0.73

Channel structure placement (C.4.d.1)

Material Used For Channel Structure (C.4.d.2):	Individual Logs (Anchored), Individual Logs (Unanchored), Logs Fastened Together (Logjam)
Miles of Stream Treated for channel structure placement (C.4.d.3):	0.73
Pools Created through channel structure placement (C.4.d.5):	12
Number of structures placed in channel (C.4.d.7):	35

Cultural Resources

Cultural resources

Permits

Obtain permits

Architectural & Engineering

Architectural & Engineering (A&E)

Agency Indirect Costs

Agency Indirect

Project Sponsor: Cowlitz Indian Tribe
Project Title: Kwoneesum Dam Removal

Project Number: 20-1176R
Approval Date: 09/16/2020

Project Milestones

PROJECT MILESTONE REPORT

Complete	Milestone	Target Date	Comments/Description
X	Landowner Agreement to RCO	09/16/2020	Attached to PRISM
X	Project Start	09/16/2020	
	Progress Report Due	03/31/2021	
	Preliminary Design to RCO	06/30/2021	As per Manual 18 Appendix D-3
	Progress Report Due	09/30/2021	
	Annual Project Billing Due	09/30/2021	
	Applied for Permits	12/31/2021	
	Cultural Resources Complete	12/31/2021	Federal Nexus: Based upon your grant application this project appears to be subject to Section 106 of the NHPA. Sponsor must provide evidence of S106 compliance (or qualifying exemption) as defined by the Lead Federal Agency. See special condition #1.
	Progress Report Due	03/31/2022	
	Progress Report Due	09/30/2022	
	Annual Project Billing Due	09/30/2022	
	Other	12/01/2022	All bid Docs/Plans to RCO
	Permits Complete	12/31/2022	
	Progress Report Due	03/31/2023	
	Bid Awarded/Contractor Hired	06/30/2023	
	Restoration Started	07/31/2023	
	Other	09/30/2023	50% Restoration Complete
	Annual Project Billing Due	09/30/2023	
	Progress Report Due	09/30/2023	
	Progress Report Due	03/31/2024	
	Progress Report Due	09/30/2024	
	Other	09/30/2024	90% Restoration Complete
	Funding Acknowl Sign Posted	12/31/2024	
	Restoration Complete	12/31/2024	
	Final Design to RCO	12/31/2024	As per Manual 18 Appendix D-4 (As-built)
	Agreement End Date	02/28/2025	
	RCO Final Inspection	02/28/2025	
	Final Report Due	03/31/2025	
	Final Billing Due	03/31/2025	

Standard Terms and Conditions of the Recreation and Conservation Office

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STANDARD TERMS AND CONDITIONS EFFECTIVE DATE

This agreement reflects Standard Terms and Conditions of the Recreation and Conservation Office as of 10/15/2020.

CITATIONS, HEADINGS AND DEFINITIONS

A. Any citations referencing specific documents refer to the current version on the effective date of this Agreement or the effective date of any amendment thereto.

B. Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.

C. Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:

acquisition project – A project that purchases or receives a donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access/trail easements, covenants, water rights, leases, and mineral rights.

agreement or project agreement – The document entitled "RCO Tribal Project Agreement" accepted by all parties to the present project and transaction, including without limitation the Standard Terms and Conditions of the Recreation and Conservation Office, all attachments, addendums, and amendments, and any intergovernmental agreements or other documents that are incorporated into the Agreement subject to any limitations on their effect.

applicable manual(s) – A manual designated in this Agreement to apply as terms of this Agreement, subject to substitution of the "RCO director" for instances where the term "board" occurs.

applicable WAC(s) – Designated chapters or provisions of the Washington Administrative Code that are deemed under this Agreement to apply as terms of the Agreement, subject to substitution of the "RCO director" for instances where the term "board" occurs.

applicant – Any party that meets the qualifying standards, including deadlines, for submission of an application soliciting a grant of funds administered by RCO.

application – The documents and other materials that an applicant submits to the RCO to support the applicant's request for grant funds; this includes materials required for the "Application" in the RCO's automated project information system, and other documents as noted on the application checklist including but not limited to legal opinions, maps, plans, evaluation presentations and scripts.

Authorized Representative/Agent – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

C.F.R. – Code of Federal Regulations

contractor – An entity that receives a contract from a Sponsor related to performance of work or another obligation under this Agreement.

conversion – A conversion occurs 1) when facilities acquired, developed, renovated or restored within the project area are changed to a use other than that for which funds were approved, without obtaining prior written formal RCO or board approval, 2) when property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was approved without obtaining prior written formal RCO or board approval, or 3) when obligations to operate and maintain the funded property are not complied with after reasonable opportunity to cure.

director – The chief executive officer of the Recreation and Conservation Office or that person's designee.

effective date – The date when the signatures of all parties to this agreement are present in the agreement.

equipment – Tangible personal property (including information technology systems) having a useful service life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the Sponsor or $5,000 (2 C.F.R. § 200.33 (2013)).

funding board or board – The Washington State Recreation and Conservation Funding Board, or the Washington State Salmon Recovery Funding Board, or both as may apply.

Funding Entity – the entity that approves the project that is the subject to this Agreement.

grant program – The source of the grant funds received. May be an account in the state treasury, or a grant category within a larger grant program, or a federal source.

indirect cost – Costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved (2 C.F.R. § 200.56 (2013)).

long-term compliance period – The period of time after the project end date or end of the period of performance (depending on the project types and grant program). During this period, the Sponsor has continuing obligations under the Agreement. This period may have a nonspecific end date (in perpetuity) or an expressly specified number of years.

long-term obligations – Sponsor's obligations after the project end date, as specified in the Agreement and applicable regulations and policies.

match or matching share – The portion of the total project cost provided by the Sponsor.

milestone – An important event with a defined date to track an activity related to implementation of a funded project and monitor significant stages of project accomplishment.

Office – Means the Recreation and Conservation Office or RCO.

pass-through entity – A non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (2 C. F. R. § 200.74 (2013)). If this Agreement is a federal subaward, RCO is the pass-through entity.

period of performance – The period beginning on the project start date and ending on the project end date.

pre-agreement cost – A project cost incurred before the period of performance.

primary Sponsor – The Sponsor who is not a secondary Sponsor and who is specifically identified in the Agreement as the entity to which RCO grants funds to and authorizes and requires to administer the grant. This administration includes but is not limited to acting as the fiscal agent for the grant (e.g. requesting and accepting reimbursements, submitting reports). Primary Sponsor includes its officers, employees, agents and successors.

project – An undertaking that is, or may be, funded in whole or in part with funds administered by RCO.

project area – A geographic area that delineates a grant assisted site which is subject to project agreement requirements.

project cost – The total allowable costs incurred under this Agreement and all required match share and voluntary committed matching share, including third-party contributions (see also 2 C.F.R. § 200.83 (2013) for federally funded projects).

project end date – The specific date identified in the Agreement on which the period of performance ends, as may be changed by amendment. This date is not the end date for any long-term obligations.

project start date – The specific date identified in the Agreement on which the period of performance starts.

RCFB – Recreation and Conservation Funding Board

RCO – Recreation and Conservation Office – The state agency that administers the grant that is the subject of this Agreement. RCO includes the director and staff.

RCW – Revised Code of Washington

reimbursement – RCO's payment of funds from eligible and allowable costs that have already been paid by the Sponsor per the terms of the Agreement.

renovation project – A project intended to improve an existing site or structure in order to increase its useful service life beyond current expectations or functions. This does not include maintenance activities to maintain the facility for its originally expected useful service life.

secondary sponsor – One of two or more Sponsors who is not a primary Sponsor. Only the primary Sponsor may be the fiscal agent for the project.

Sponsor – A Sponsor is an organization that is listed in and has signed this Agreement.

Sponsor Authorized Representative/Agent – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

SRFB – Salmon Recovery Funding Board

subaward – Funds allocated to the RCO from another organization, for which RCO makes available to or assigns to another organization via this Agreement. Also, a subaward may be an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of any award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal or other program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. Also see 2 C.F.R. § 200.92 (2013). For federal subawards, a subaward is for the purpose of carrying out a portion of a Federal award and creates a federal assistance relationship with the subrecipient (2 C.F.R. § 200.330 (2013)). If this Agreement is a federal subaward, the subaward amount is the grant program amount in the Project Funding Section.

subrecipient – Subrecipient means an entity that receives a subaward. For non-federal entities receiving federal funds, a subrecipient is an entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency (2 C.F.R. § 200.93 (2013)). If this Agreement is a federal subaward, the Sponsor is the subrecipient.

useful service life – Period during which an asset or property is expected to be useable for the purpose it was acquired, developed, renovated, and/or restored per this Agreement.

WAC – Washington Administrative Code.

PERFORMANCE BY THE SPONSOR

The Sponsor shall undertake the project as described in this Agreement, and in accordance with the Sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the RCO. All submitted documents are incorporated by this reference as if fully set forth herein.

Timely completion of the project and submission of required documents, including progress and final reports, is important. Failure to meet critical milestones or complete the project, as set out in this Agreement, is a material breach of the Agreement.

ASSIGNMENT

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Sponsor without prior written consent of the RCO.

RESPONSIBILITY FOR PROJECT

While RCO administers the grant that is the subject of this Agreement, the project itself remains the sole responsibility of the Sponsor. The RCO and Funding Entity (if different from the RCO) undertakes no responsibilities to the Sponsor, or to any third party, other than as is expressly set out in this Agreement. The responsibility for the implementation of the project is solely that of the Sponsor. When a project is Sponsored by more than one entity, any and all Sponsors are equally responsible for the project and all post-completion stewardship responsibilities and long-term obligations unless otherwise stated in this Agreement.

The RCO has no responsibility for reviewing, approving, overseeing or supervising design or construction of the project and leaves such review, approval, oversight and supervision exclusively to the Sponsor and others with expertise or authority. In this respect, the RCO will act only to confirm at a general, lay, and nontechnical level, solely for the purpose of compliance and payment and not for safety or suitability, that the project has apparently been completed as per the Agreement.

INDEMNIFICATION

Subject to the limitations provided in this Agreement, the Sponsor shall defend, indemnify, and hold the Recreation and Conservation Office (RCO), the Recreation and Conservation Funding Board, the Salmon Recovery Funding Board, collectively referred to herein as "the RCO"; and its officers and employees harmless from all damage, loss, claims, demands, or suits at law or equity arising in whole or in part from the actual or alleged acts, errors, omissions or negligence in connection with this Agreement (including without limitation all work or activities thereunder), or the breach of any obligation under this Agreement, by the Sponsor or the Sponsor's agents, employees, contractors, and subcontractors of any tier, or any persons for whom the Sponsor may be vicariously liable. If the RCO is immune from suit pursuant to a specific statutory exemption and or limitation as to the particular claim, demand(s), or suit(s) at law or equity, the Sponsor shall have no obligation to defend, indemnify or hold the RCO harmless. Should this section conflict with any other section of this Agreement, the terms of this section shall take precedence.

Provided that nothing herein shall require a Sponsor to defend or indemnify the RCO against and hold harmless the RCO from claims, demands or suits at law or equity based solely upon the negligence of the RCO, its employees and/or agents for whom the RCO is vicariously liable.

Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Sponsor or the Sponsor's agents or employees, contractors, and subcontractors of any tier, or any persons for whom the Sponsor is vicariously liable, and (b) the RCO its employees and agents, contractors, and subcontractors of any tier or any for whom it is vicariously liable, the indemnity obligation shall be valid and enforceable only to the extent of the Sponsor's negligence or the negligence of the Sponsor's agents, employees, contractors, and subcontractors of any tier, or any persons for whom the Sponsor may be vicariously liable.

In the event a tribal employee files suit against the RCO for damages sustained in an occupational injury occurring while the tribal employee is performing services pursuant to this agreement, and RCO seeks indemnification by the tribe under this agreement for such a damages claim, the tribe shall waive and not assert immunity under the tribe's or the State's workers' compensation laws. The tribe's agreement not to assert its immunity under workers' compensation laws applies only to a claim by RCO for indemnification under this agreement, and does not preclude the tribe from asserting immunity or any other viable defenses to a claim by either a tribal employee or a third party.

INDEPENDENT CAPACITY OF THE SPONSOR

The Sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of the RCO or Funding Entity. The Sponsor will not hold itself out as nor claim to be an officer, employee or agent of the RCO or the Funding Entity, or of the state of Washington, nor will the Sponsor make any claim of right, privilege or benefit which would accrue to an employee under RCW 41.06.

The Sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by applicable federal, state, and/or local laws.

CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, RCO may, in its sole discretion, by written notice to the Sponsor terminate this Agreement if it is found after due notice and examination by RCO that there is a violation of the Ethics in Public Service Act, RCW 42.52 if applicable; or any similar applicable statute involving the Sponsor in the procurement of, or performance under, this Agreement.

In the event this Agreement is terminated as provided herein, RCO shall be entitled to pursue the same remedies against the Sponsor as it could pursue in the event of a breach of the Agreement by the Sponsor. The rights and remedies of RCO provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

COMPLIANCE WITH APPLICABLE LAW

In implementing the Agreement, the Sponsor shall comply with all applicable federal, state, and local laws (including without limitation all applicable ordinances, codes, rules, and regulations).

A. **Nondiscrimination Laws.** The Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Act; provided, however, if consistent with federal law, the applicable tribal preference laws may otherwise apply if the Sponsor is a federally recognized Indian Tribe. In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the RCO or Funding Entity. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law. Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause in each contract for construction of this project:

   "During the performance of this contract, the contractor agrees to comply with all applicable federal and state nondiscrimination laws, regulations and policies."

B. **Secular Use of Funds.** No funds awarded under this grant may be used to pay for any religious activities, worship, or instruction, or for lands and facilities for religious activities, worship, or instruction. Religious activities, worship, or instruction may be a minor use of the grant supported recreation and conservation land or facility.

C. **Wages and Job Safety.** The Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction which affect wages and job safety. The Sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.40. The Sponsor also agrees to comply with applicable provisions of the rules and regulations of the Washington State Department of Labor and Industries. However, applicable tribal wage and safety rules and preferences may otherwise apply if the Sponsor is a federally recognized Indian Tribe.

If Sponsor is a federally recognized Indian Tribe, the following shall apply: The Tribe shall provide workers compensation coverage for all of its employees in accordance with applicable tribal worker's compensation laws. To the extent grant funded employees are not subject to tribal workers compensation program coverage, they shall be covered by applicable state or federal workers compensation laws, and the Tribe shall not assert immunity under such workers compensation laws for actions brought under such laws by its employees or agents; and if such employees are not subject to state or federal workers compensation laws, the Tribe shall require employees to be insured under Employer's Contingent Liability (Stop Gap) with a minimum coverage limit of $1,000,000 on accident and aggregate.

D. **Archaeological and Cultural Resources.** RCO facilitates the review of applicable projects for potential impacts to archaeological sites and state cultural resources. The Sponsor must assist RCO in compliance with Governor's Executive Order 05-05 or the National Historic Preservation Act before and after initiating ground-disturbing activity or construction, repair, installation, rehabilitation, renovation, or maintenance work on lands, natural resources, or structures. The funding board requires documented compliance with Executive Order 05-05 or Section 106 of the National Historic Preservation Act, whichever is applicable to the project. If a federal agency declines to consult, the Sponsor shall comply with the requirements of Executive Order 05-05. In the event that archaeological or historic materials are discovered during project activities, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the following: concerned Tribes' cultural staff and cultural committees, RCO, and the State Department of Archaeology and Historic Preservation. If human remains are discovered during project activity, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification provided to the concerned Tribe's cultural staff and cultural committee, RCO, State Department of Archaeology, the coroner and local law enforcement in the most expeditious manner possible according to RCW 68.50.

E. **Restrictions on Grant Use.** No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature.

No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.

F. **Debarment and Certification.** By signing the Agreement with RCO, the Sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, the Sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on Washington State Department of Labor and Industries' "Debarred Contractor List."

RECORDS

A. **Digital Records.** If requested by RCO, the Sponsor must provide a digital file(s) of the project property and funded project site in a format specified by the RCO.

B. **Maintenance.** The Sponsor shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of six years from the date RCO deems the project complete, as defined in the PROJECT REIMBURSEMENTS Section. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

C. **Access to Records and Data.** At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the Sponsor's reports, including computer models and methodology for those models.

D. **Public Records.** Sponsor acknowledges that the RCO is subject to RCW 42.56 and that this Agreement and any records Sponsor submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06 and 420-04 (which ever applies). Additionally, the Sponsor agrees to disclose any information in regards to the expenditure of that funding as if the project sponsor were subject to the requirements of chapter 42.56 RCW. By submitting any record to RCO, Sponsor understands that RCO may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The Sponsor warrants that it possesses such legal rights as are necessary to permit RCO to disclose and copy such document to respond to a request under state public records laws. The Sponsor hereby agrees to release RCO from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying, provided that RCO follows RCW 42.56 and applicable regulations and guidance.

PROJECT FUNDING

A. Authority. This Agreement and funding is made available to Sponsor through the RCO.

B. **Additional Amounts.** The RCO or Funding Entity shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the RCO director and incorporated by written amendment into this Agreement.

C. **Before the Agreement.** No expenditure made, or obligation incurred, by the Sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by the RCO director, such as a waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.

D. **After the Period of Performance.** No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the RCO or Funding Entity may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

PROJECT REIMBURSEMENTS

A. **Reimbursement Basis.** This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12, which ever has been designated to apply. Only the primary Sponsor may request reimbursement for eligible and allowable costs incurred during the period of performance. The primary Sponsor may only request reimbursement after (1) this Agreement has been fully executed and (2) the Sponsor has remitted payment to its vendors. RCO will authorize disbursement of project funds only on a reimbursable basis at the percentage as defined in the PROJECT FUNDING Section. Reimbursement shall not be approved for any expenditure not incurred by the Sponsor or for a donation used as part of its matching share. RCO does not reimburse for donations. All reimbursement requests must include proper documentation of expenditures as required by RCO.

B. **Reimbursement Request Frequency.** The primary Sponsor is required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30 or as identified in the milestones. Sponsors must refer to the most recent applicable RCO manuals and this Agreement regarding reimbursement requirements.

C. **Compliance and Payment.** The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement and other agreements between RCO and the Sponsor.

D. **Retainage Held Until Project Complete.** RCO reserves the right to withhold disbursement of the total amount of the grant to the Sponsor until the project has been completed. A project is considered "complete" when:

1) All approved or required activities outlined in the Agreement are done;

2) On-site signs are in place (if applicable);

3) A final project report is submitted to and accepted by RCO;

4) Any other required documents and media are complete and submitted to RCO;

5) A final reimbursement request is submitted to RCO;

6) The completed project has been accepted by RCO;

7) Final amendments have been processed;

8) Fiscal transactions are complete, and

9) RCO has accepted a final boundary map of the project area for which the Agreement terms will apply in the future.

ADVANCE PAYMENTS

Advance payments of or in anticipation of goods or services are not allowed unless approved by the RCO director and are consistent with legal requirements and Manual 8: Reimbursements.

RECOVERY OF PAYMENTS

A. **Recovery for Noncompliance.** In the event that the Sponsor fails to expend funds under this Agreement in accordance with applicable state and federal laws, and/or the provisions of the Agreement, or meet its percentage of the project total, RCO reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.

B. **Overpayment Payments.** The Sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by the Sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time that payment becomes due and owing.

COVENANT AGAINST CONTINGENT FEES

The Sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement on an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Sponsor for the purpose of securing business. RCO shall have the right, in the event of breach of this clause by the Sponsor, to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement grant amount or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

INCOME (AND FEES) AND USE OF INCOME

A. **Compatible source.** The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement and any applicable manuals, RCWs, and WACs.

B. **Use of Income.** Subject to any limitations contained in applicable state or federal law and applicable rules and policies, income or fees generated at a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) during or after the reimbursement period cited in the Agreement, must be used to offset:

   1) The Sponsor's matching resources;

   2) The project's total cost;

   3) The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the grant funding;

   4) The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the Sponsor's system;

   5) Capital expenses for similar acquisition and/or development and renovation; and/or

   6) Other purposes explicitly approved by RCO.

C. Fees. User and/or other fees may be charged in connection with land acquired or facilities developed, maintained, renovated, or restored and shall be consistent with the:

   1) Grant program laws, rules, and applicable manuals;

   2) Value of any service(s) furnished;

   3) Value of any opportunities furnished; and

   4) Prevailing range of public fees in the state for the activity involved.

PROCUREMENT REQUIREMENTS

Procurement Requirements. If the Sponsor has, or is required to have, a procurement process that follows applicable state and/or federal law or procurement rules and principles, it must be followed, documented, and retained. If no such process exists, the Sponsor must follow these minimum procedures:

1) Publish a notice to the public requesting bids/proposals for the project;

2) Specify in the notice the date for submittal of bids/proposals;

3) Specify in the notice the general procedure and criteria for selection;

4) Sponsor must contract or hire from within its bid pool. If bids are unacceptable the process needs to be repeated until a suitable bid is selected; and

5) Comply with the same legal standards regarding unlawful discrimination based upon race, gender, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer; provided, however; if consistent with federal law, the applicable tribal preference laws may otherwise apply if the Sponsor is a federally recognized Indian Tribe.

Alternatively, Sponsor may choose a bid from a bidding cooperative if authorized to do so.

This procedure creates no rights for the benefit of third parties, including any proposers, and may not be enforced or subject to review of any kind or manner by any entity other than the RCO. Sponsors may be required to certify to the RCO that they have followed any applicable state and/or federal procedures or the above minimum procedure where state or federal procedures do not apply.

TREATMENT OF EQUIPMENT AND ASSETS

Equipment shall be used and managed only for the purpose of this Agreement , unless otherwise provided herein or in the applicable manuals, or approved by RCO in writing.

A. **Discontinued Use.** Equipment obtained under this Agreement shall remain in the possession of the Sponsor for the duration of the project, or RULES of applicable grant assisted program. When the Sponsor discontinues use of the equipment for the purpose for which it was funded, RCO may require the Sponsor to deliver the equipment to RCO, or to dispose of the equipment according to RCO published policies.

B. **Loss or Damage.** The Sponsor shall be responsible for any loss or damage to equipment.

RIGHT OF INSPECTION

The Sponsor shall provide right of access to the project to RCO, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, long-term obligations, compliance, and/or quality assurance under this Agreement. If a landowner agreement or other form of control and tenure has been executed, it will further stipulate and define the RCO's right to inspect and access lands acquired or developed with this funding assistance.

STEWARDSHIP AND MONITORING

Sponsor agrees to perform monitoring and stewardship functions as stated in the applicable WACs and manuals, this Agreement, or as otherwise directed by RCO consistent with the existing laws and applicable manuals. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the RCO; provided that RCO does not represent that any monitoring it may recommend will be adequate to reasonably assure project performance or safety. It is the sole responsibility of the Sponsor to perform such additional monitoring as may be adequate for such purposes.

ACKNOWLEDGMENT AND SIGNS

A. **Publications.** The Sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project during the project period and in the future.

B. **Signs.**

1) During the period of performance through the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations on the project area that acknowledge the applicable grant program's funding contribution, unless waived by the director; and

2) During the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations to notify the public of the availability of the site for reasonable public access.

C. **Ceremonies.** The Sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The Sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication ceremonies.

PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION AND RESTORATION PROJECTS

The following provisions shall be in force:

A. **Operations and Maintenance.** Properties, structures, and facilities developed, maintained, or operated with the assistance of money granted per this Agreement and within the project area shall be built, operated, and maintained according to applicable regulations, laws, building codes, and health and public safety standards to assure a reasonably safe condition and to prevent premature deterioration. It is the Sponsor's sole responsibility to ensure the same are operated and maintained in a safe and operable condition. The RCO does not conduct safety inspections or employ or train staff for that purpose.

B. **Document Review and Approval.** Prior to commencing construction or finalizing the design, the Sponsor agrees to submit one copy of all construction and restoration plans and specifications to RCO for review solely for compliance with the scope of work to be identified in the Agreement. RCO does not review for, and disclaims any responsibility to review for safety, suitability, engineering, compliance with code, or any matters other than the scope so identified. Although RCO staff may provide tentative guidance to a Sponsor on matters related to site accessibility by persons with a disability, it is the Sponsor's responsibility to confirm that all legal requirements for accessibility are met even if the RCO guidance would not meet such requirements.

   1) Change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the RCO must receive prior written approval of the RCO.

C. **Control and Tenure.** The Sponsor must provide documentation that shows appropriate tenure (such as landowner agreement, long-term lease, easement, or fee simple ownership) for the land proposed for construction. The documentation must meet current RCO requirements identified in this Agreement and any applicable manual as of the effective date of this Agreement and determines the long-term compliance period unless otherwise provided in any applicable manual, RCW, WAC, or as approved by the RCO.

D. **Use of Best Management Practices.** Sponsors are encouraged to use best management practices including those developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. AHG documents include "Integrated Streambank Protection Guidelines", 2002; "Land Use Planning for Salmon, Steelhead and Trout: A land use planner's guide to salmonid habitat protection and recovery", 2009", "Protecting Nearshore Habitat and Functions in Puget Sound", 2010; "Stream Habitat Restoration Guidelines", 2012; "Water Crossing Design Guidelines", 2013; and "Marine Shoreline Design Guidelines", 2014. These documents, along with new and updated guidance documents, and other information are available on the AHG Web site. Sponsors are also encouraged to use best management practices developed by the Washington Invasive Species Council (WISC) described in "Reducing Accidental Introductions of Invasive Species" which is available on the WISC Web site.

LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS

A. **Long-Term Obligations.** Sponsor shall comply with the terms of this Agreement.

B. **Perpetuity.** For acquisition projects, unless otherwise allowed by applicable manual, policy, program rules, or this Agreement, or approved in writing by RCO, RCO requires that the project area continue to function as intended after the period of performance in perpetuity. The ability for RCO to enforce this long-term obligation for an acquisition project shall be as prescribed in this Agreement.

C. **Conversion.** The Sponsor shall not at any time convert any real property (including any interest therein) or facility acquired pursuant to this Agreement, unless provided for in applicable statutes, rules, and policies. Conversion includes, but is not limited to, putting such property to uses other than those purposes for which funds were approved or transferring such property to another entity without prior approval via a written amendment to the Agreement. All real property or facilities acquired with funding assistance shall remain in the same ownership and in public use/access status in perpetuity unless otherwise expressly provided in the Agreement or applicable policy or unless a transfer or change in use is approved by the RCO through an amendment. Failure to comply with these obligations is a conversion. Further, if the project is subject to operation and or maintenance obligations, the failure to comply with such obligations, without cure after a reasonable period as determined by the RCO, is a conversion. Determination of whether a conversion has occurred shall be based upon the terms of this Agreement, including without limitation all WACs and manuals deemed applicable and all applicable laws.

   For acquisition projects that are expressly term limited in the Agreement, such as one involving a lease or a term-limited restoration, renovation or development project or easement, the restriction on conversion shall apply only for the length of the term, unless otherwise provided by this Agreement, any applicable manual or WAC, or any applicable state or federal law.

   When a conversion has been determined to have occurred, the Sponsor is required to remedy the conversion per this Agreement and the applicable manuals, WACs and laws, and the RCO may pursue such remedies as the above allows.

CONSTRUCTION, OPERATION, USE, AND MAINTENANCE OF ASSISTED PROJECTS

The following provisions shall be in force for this agreement:

A. **Property and facility operation and maintenance.** Sponsor must ensure that properties or facilities assisted with the grant funds, including undeveloped sites, are built, operated, used, and maintained:

   1) According to applicable federal, state, and local laws and regulations, including public health standards and building codes;

   2) In a reasonably safe condition for the project's intended use;

   3) Throughout its estimated useful service life so as to prevent undue deterioration;

   4) In compliance with all applicable federal and state nondiscrimination laws, regulations and policies.

B. **Open to the public.** Unless otherwise specifically provided for in the Agreement, and in compliance with applicable statutes, rules, and applicable WACs and manuals, facilities must be open and accessible to the general public, and must:

   1) Be constructed, maintained, and operated to meet or exceed the minimum requirements of the most current applicable guidelines or rules, local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as amended and updated.

   2) Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.

   3) Be available for appropriate use by the general public at reasonable hours and times of the year, according to the type of area or facility, unless otherwise stated in RCO manuals, by a decision of the RCO director in writing. Sponsor shall notify the public of the availability for use by posting and updating that information on its website and by maintaining at entrances and/or other locations openly visible signs with such information.

PROVISIONS FOR SALMON RECOVERY FUNDING BOARD PROJECTS

For habitat restoration projects funded in part or whole with federal funds administered by the SRFB, the Sponsor shall not commence with clearing of riparian trees or in-water work unless either the Sponsor has complied with 50 C.F.R. § 223.203(b)(8) (2000), limit 8 or until an Endangered Species Act consultation is finalized in writing by the National Oceanic and Atmospheric Administration. Violation of this requirement may be grounds for terminating this Agreement. This section shall not be the basis for any enforcement responsibility by RCO.

PROVISIONS FOR ANY FEDERAL FUND SOURCE

A. **Sub-Recipient** (Sponsor) must comply with the cost principles of 2 C.F.R. Part 200 Subpart E (2013). Unless otherwise indicated, the cost principles apply to the use of funds provided under this Agreement to include match and any in-kind matching donations. The applicability of the cost principles depends on the type of organization incurring the costs.

B. **Binding Official.** Per 2 CFR 200.415, Sponsor certifies through its actions or those of authorized staff, at the time of a request for reimbursement, the following: "To the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

C. **Equal Employment Opportunity.** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor).

   See 2 C.F.R. Part 200, Appendix II, paragraph C.

   1) **Federally Assisted Construction Contract.** The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a

person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

2) **Construction Work.** The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

D. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-federal entities (Sponsors) must include a provision for compliance with the Davis- Bacon Act (40 U.S.C. 3141-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity (Sponsor) must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity (Sponsor) must report all suspected or reported violations to the federal awarding agency identified in the Federal Fund Information section.

The contracts must also include a provision for compliance with the Copeland "Anti- Kickback" Act (40 U. S. C. 3145), as supplemented by Department of Labor regulations (29 C.F.R Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient (Sponsor) must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity (Sponsor) must report all suspected or reported violations to the Federal awarding agency identified in the Federal Fund Information section.

E. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-federal entity (Sponsor) in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

F. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 C.F.R § 401.2(a) and the recipient or subrecipient (Sponsor) wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient (Sponsor) must comply with the requirements of 37 C.F.R Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

G. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended.** Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency identified in the Federal Fund Information section and the Regional Office of the Environmental Protection Agency (EPA).

H. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** By signing this Agreement, the Sponsor certifies (per the certification requirements of 31 U.S.C.) that none of the funds that the Sponsor has (directly or indirectly) received or will receive for this project from the United States or any agency thereof, have been used or shall be used to engage in the lobbying of the Federal Government or in litigation against the United States. Such lobbying includes any influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this project. Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

I. **Procurement of Recovered Materials.** A non-federal entity (Sponsor) that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act . The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

J. **Required Insurance.** The non-federal entity (Sponsor) must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with federal funds as provided to property owned by the non-federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award (2 C.F.R § 200.310 (2013)).

K. **Debarment and Suspension (Executive Orders 12549 and 12689).** The Sponsor must not award a contract to parties listed on the government- wide exclusions in the System for Award Management (SAM), in accordance with the Office of Management and Budget (OMB) guidelines at 2 C.F.R § 180 that implement Executive Orders 12549 (3 C.F.R part 1986 Comp., p. 189) and 12689 (3 C.F.R part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

L. **Conflict of Interest.** Sponsor agrees to abide by the conflict of interest policy and requirements of the federal funding agency established pursuant to 2 C.F.R 200.

ORDER OF PRECEDENCE

This Agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the Agreement shall be construed to conform to those laws. In the event of a direct and irreconcilable conflict between the terms of this Agreement and any applicable statute, rule, or policy or procedure, the conflict shall be resolved by giving precedence in the following order:

A. Federal law and binding executive orders;

B. Code of federal regulations;

C. Terms and conditions of a grant award to the state from the federal government;

D. Federal grant program policies and procedures adopted by a federal agency that are required to be applied by federal law;

E. Applicable State law (constitution, statute);

F. Applicable Washington Administrative Code;

G. Applicable RCO manuals.

LIMITATION OF AUTHORITY

Only RCO's Director or RCO's delegate by writing (delegation to be made prior to action) shall have the authority to alter, amend, modify, or waive any clause or condition of this Agreement; provided that any such alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made as a written amendment to this Agreement and signed by the RCO Director or delegate.

WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the director, or the director's designee, and attached as an amendment to the original Agreement.

APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH

The Funding Entity (if different from RCO) and RCO relies on the Sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

SPECIFIC PERFORMANCE

RCO may enforce this Agreement by the remedy of specific performance, which usually will mean completion of the project as described in this Agreement and /or enforcement of long-term or other obligations. However, the remedy of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the RCO shall be deemed exclusive. The RCO may elect to exercise any, a combination of, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity, including but not limited to seeking full or partial repayment of the grant amount paid and damages.

TERMINATION AND SUSPENSION

The RCO will require strict compliance by the Sponsor with all the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules, and RCO policies, and with the representations of the Sponsor in its application for a grant as finally approved by RCO. For federal awards, notification of termination will comply with 2 C.F.R. § 200.340.

A. **For Cause.**

   1) The RCO director may suspend or terminate the obligation to provide funding to the Sponsor under this Agreement:

      a) If the Sponsor breaches any of the Sponsor's obligations under this Agreement;

      b) If the Sponsor fails to make progress satisfactory to the RCO director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to milestones and other defined deadlines; or

      c) If the primary and secondary Sponsor(s) cannot mutually agree on the process and actions needed to implement the project.

   2) Prior to termination, the RCO shall notify the Sponsor in writing of the opportunity to cure. If corrective action is not taken within 30 days or such other time period that the director approves in writing, the Agreement may be terminated. In the event of termination, the Sponsor shall be liable for damages or other relief as authorized by law and/or this Agreement.

   3) RCO reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by the Sponsor, or a decision by the RCO to terminate the Contract.

B. **For Convenience.** Except as otherwise provided in this Agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part when it is in the best interest of the state. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement prior to the effective date of termination. A claimed termination for cause shall be deemed to be a "Termination for Convenience" if it is determined that:

   1) The Sponsor was not in default; or

   2) Failure to perform was outside Sponsor's control, fault or negligence.

C. **Rights or Remedies of the RCO.**

   1) The rights and remedies of RCO provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

   2) In the event this Agreement is terminated by the director, after any portion of the grant amount has been paid to the Sponsor under this Agreement, the director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived. However, any repayment shall be limited to the extent it would be inequitable and represent a manifest injustice in circumstances where the project will fulfill its fundamental purpose for substantially the entire period of performance and of long-term obligation.

D. **Non Availability of Funds.** The obligation of the RCO to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. If amounts sufficient to fund the grant made under this Agreement are not appropriated to RCO for expenditure for this Agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the

Legislature or the Office of Financial Management occurs. If RCO participation is suspended under this section for a continuous period of one year, RCO's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the Sponsor.

1) **Suspension:** The obligation of the RCO to manage contract terms and make payments is contingent upon the state appropriating state and federal funding each biennium. In the event the state is unable to appropriate such funds by the first day of each new biennium RCO reserves the right to suspend the Agreement, with ten (10) days written notice, until such time funds are appropriated. Suspension will mean all work related to the contract must cease until such time funds are obligated to RCO and the RCO provides notice to continue work.

DISPUTE RESOLUTION

General. This Dispute Resolution section applies only to disputes between the Sponsor and RCO regarding the Parties rights and responsibilities under this Agreement, including disputes concerning any claims of the Parties for any indemnification pursuant to this Agreement for third party claims.

The parties shall, if possible, first attempt to resolve any disputes through Informal Negotiations as described below. If that is not possible or is unsuccessful, the parties shall elect to resolve the dispute through (1) a Dispute Hearing process if agreeable to both parties, or (2) binding arbitration; provided the Sponsor shall have the option to elect to resolve the dispute in state or federal court if such courts possess jurisdiction over the dispute in question.

For all of the dispute resolution methods, (1) each party shall bear its own attorney's fees and costs; and (2) during utilization of any and/or all of the mediation, arbitration and/or Dispute Hearing steps and processes, any statutes of limitation shall be tolled, and in no circumstances shall any time utilizing such steps and processes be considered when determining whether any statutes of limitation have expired.

Informal Negotiations. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place.

Unless otherwise agreed in writing by the negotiating parties, the above-described negotiation shall end at the close of the first meeting of executives described above. Such closure shall not preclude continuing or later negotiations, if desired.

All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

Dispute Hearing. In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues.

A party's request for a dispute hearing must be in writing and clearly state:

A. The disputed issues;

B. The relative positions of the parties;

C. The Sponsor's name, address, project title, and the assigned project number.

The dispute shall be heard by a panel of three persons consisting of one person chosen by the Sponsor, one person chosen by the RCO director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the third person shall be chosen by the funding board's chair.

Any hearing under this section shall be informal, with the specific processes to be determined by the dispute panel according to the nature and complexity of the issues involved. The process may be solely based on written material, if the parties so agree. The disputes panel shall be governed by the provisions of this Agreement in deciding the disputes.

The parties shall be bound by the majority decision of the dispute panelists, unless the remedy directed by that panel is beyond the legal authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a dispute hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute, or completion of any Informal Negotiations conducted by the parties concerning the disputed action or position, whichever is later.

All fees and costs associated with the implementation of this process (excluding each party's own attorney's fees and costs) shall be shared equally by the parties.

Arbitration. In the event the Parties do not agree to resolve the dispute through a Dispute Hearing Process as set forth above, the parties shall resolve any controversy, claim or dispute concerning the making, formation, validity, obligations under, or breach of, this Agreement (Disputed Matter) through binding arbitration conducted under Judicial Arbitration and Mediation Services (JAMS) rules. Prior to invoking arbitration, the parties may agree to mediation, in which event the parties will use their best efforts to select a mediator as soon as possible. The mediator's costs and attendant costs of mediation shall be borne equally by the parties.

Either party may make a written demand for binding arbitration before a qualified arbitrator in Seattle, Washington, or at another place as the parties may agree in writing. Request for binding arbitration under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute, or completion of any Informal Negotiations conducted by the parties concerning the disputed action or position, whichever is later. A qualified arbitrator will mean a person generally familiar with the subject matter of the Disputed Matter with at least five years of arbitration experience, and knowledge of federal Indian law, if federal Indian law is part of the dispute. If the parties cannot agree on a single arbitrator, a three-person arbitration panel shall be selected as follows: each party shall select an arbitration panel member and the two selected panelists shall select a third. If the panelists cannot agree on a third arbitrator, the third arbitrator shall be selected by JAMS. The arbitration shall be administered by JAMS pursuant to its Expedited Procedures as now written or hereafter amended. Each party will pay for its own attorneys' fees and costs. The substantially prevailing party is entitled to reimbursement from the other party of all moneys it paid to the third arbitrator or JAMS related to the arbitration proceeding. The arbitrator's award shall be binding upon the parties and no appeal shall be permitted, except for a request to vacate under RCW 7.04A.230 or 9 U.S.C. § 10.

GOVERNING LAW/VENUE

This Agreement shall be construed and interpreted in accordance with the authorities set forth in the Order of Preference section. In the event of a lawsuit involving this Agreement, venue shall be in the jurisdiction where the project is situated, if venue there is legally proper, and if not, in another jurisdiction where venue is legally proper.

PROVISIONS FOR FEDERALLY RECOGNIZED INDIAN TRIBES

A. Limited Waiver of Sovereign Immunity. The Tribe expressly retains all rights and benefits of sovereign immunity. Nothing in this Agreement shall be deemed as a waiver of sovereign immunity or as increasing the Tribe's liability beyond any statutory or other limitation of liability, except as expressly stated herein.

   The Tribe hereby grants and provides a limited waiver of sovereign immunity for the following purposes as may be needed by Sponsor or RCO:

   1) to enforce the terms of this Agreement, including the indemnification provisions, and any documents recorded pursuant to this Agreement, such as those related to real property interests in the form of deeds, easements, or covenants,

   2) to enforce the Dispute Resolution provisions of this Agreement,

   3) to compel arbitration of a Disputed Matter,

   4) to enforce any mediation agreement, Disputes Panel Decision, or Arbitration award or judgment, and/or vacate an Arbitration award or judgment under RCW 7.04A.230 or 9 U.S.C. § 10,

   5) to enforce the long-term obligations of this agreement.

B. This limited waiver of sovereign immunity shall apply to all matters in the above subsection A in federal district court, and if the federal district court lacks jurisdiction, then in a State court of competent jurisdiction. Such court may render judgment and issue such orders as may be necessary to enforce such awards or judgments. This waiver does not extend to and is not for the benefit of any third party and shall not be enforceable by any third party or by any assignee of the parties; nor does it extend to any other type of action or to any other forum or regarding any other matter. No award for punitive damages of any kind may be made or enforced against the Tribe.

   Duration of Limited Waiver of Sovereign Immunity described in subsection A above. The limited waiver of sovereign immunity shall apply during the period of performance of this Agreement and then be limited as follows:

   1) For land acquisition projects: Limited to the 10 years following the end date of this agreement, however, the waiver shall be in perpetuity for fee simple property acquisitions or perpetual easements. However, the limited waiver of sovereign immunity in perpetuity is limited to the sole purpose of enforcing only subsections

B and C of the Long-Term Obligations of the Projects and Sponsors section of this Agreement. Long-term obligations include any property or value owed to RCO for any conversion of the project real property to other purposes. For land acquisitions that are term limited, any limited waiver of sovereign immunity shall be limited to the longer of the 10 years following the end date of this agreement or the time required to enforce long-term obligations but only then for any relief owed to RCO for any conversion of real property to other purposes.

2) For restoration projects: Limited to the 10 years following the end date of this agreement.

3) For non-capital projects: Limited to the period of performance. Non-capital projects include Planning, Research, Monitoring, Education, Enforcement, Maintenance, Preliminary Design, Assessments, Acquisition of Water Rights, and Studies.

4) For capital projects: Limited to the 25 years after the end date of this agreement. Capital projects include Development and Renovation (construction and/or renovation), and completed final designs.

C. Liability Limits. Any payment of a monetary judgment arising from a resolution or judgment under the Dispute Resolution section, or any other defense and/or indemnity obligation under this Agreement, Sponsor's long-term obligations, or a default of an explicit duty owed by the Tribe to the RCO under the terms of this Agreement, shall be limited by and to the following:

1) For Noncapital Projects (Planning, Research, Monitoring, Education, Enforcement, Maintenance, Preliminary Design, Assessments, Acquisition of Water Rights, and Studies.): The RCO grant amount.

2) For Restoration, Development (construction/renovation), Renovation, Acquisition, and completed final design projects: a per occurrence limit of $1 million (with a maximum aggregate limit of $3 million), or the grant amount, whichever greater, or in the case of a long-term obligation the cost of conversion or replacement property based on the current fair market value of a replacement property or an equivalent amount if the Sponsor has not obtained or is unable to obtain replacement property.

D. In disputes between the parties, each party shall bear its own attorneys' fees and costs. Attorneys' fees and costs in connection with third party claims subject to the Sponsor's indemnification of RCO shall not reduce or otherwise affect the Sponsor's liability limits in subsection C above.

SEVERABILITY

The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

END OF AGREEMENT

This is the end of the agreement.

Exhibit M
Tribe's Q&A Responses / Addenda

Reserved for incorporation into the Contract Documents upon award and subsequent negotiations.

Exhibit N
Selected Construction Contractor's Proposal and Bid Forms

Reserved for incorporation into the Contract Documents upon award and subsequent negotiations.

Exhibit O
Selected Construction Contractor's Bonds

Reserved for incorporation into the Contract Documents upon award and subsequent negotiations.