STATE OF SOUTH CAROLINA)
) **MEMORANDUM OF UNDERSTANDING**
COUNTY OF CHARLESTON)

THIS Memorandum of Understanding is entered into this ____ day of _____2020, by and between the City of Charleston (the "City"), and the Charleston Citywide Local Development Corporation (the "LDC"), (collectively the "Parties").

WHEREAS, the U.S. Department of Commerce, Economic Development Administration (the "EDA"), has awarded the City of Charleston Financial Assistance Award No. 04-79-07537 in the amount of $935,000 for a revolving loan fund (the "Grant Award") under the Coronavirus Aid, Relief, and Economic Security (CARES) Act Revolving Loan Fund Supplemental Disaster Recovery and Resiliency Awards; and

WHEREAS, pursuant to the Grant Award, the funds shall be used to capitalize a revolving loan fund (CARES Act RLF) for loans to borrowers located within Charleston County, South Carolina, to alleviate economic dislocation caused by the coronavirus (COVID-19) pandemic and its aftermath, to provide permanent resources to support economic resiliency, and to further the long-term economic adjustment objectives of the region; and

WHEREAS, in order for the City to comply with the EDA Grant Award requirements, the City and the LDC agree that the LDC shall act as the City's agent for purposes of managing and administering the CARES Act RLF; and

WHEREAS, the Parties desire to enter into this Memorandum of Understanding to set forth their respective duties, obligations and liabilities with regard to the Grant Award.

NOW THEREFORE, for and in consideration of the mutual promises, covenants, and conditions as are hereinafter set forth, it is agreed, by and between the Parties, as follows:

1. The recitals set forth above are incorporated by reference as if fully set forth herein and made a part hereof.

2. The LDC agrees to manage and administer the Grant Award and the associated CARES Act RLF for the benefit of the City by providing loans to borrowers located within Charleston County, South Carolina, for the uses set forth in the Authorized Scope of Work approved for this Grant Award.

   a. Given the City of Charleston's role as grant applicant, and the partnership between the LDC and the City in administering other EDA RLF funds, LDC will coordinate directly with City staff to give extra

consideration and priority to prospective borrowers located within the City of Charleston.

b. During the initial round of lending (the "Disbursement Phase") under the CARES Act RLF, LDC will be reimbursed for administrative costs directly through the EDA Grant Award funds designated for such purpose by the EDA. During the supplemental round of lending when RLF funds are re-lent to new borrowers (the "Revolving Phase"), interest (no greater than 4%) and origination fees earned (no greater than 1%) will be used to reimburse the LDC for administrative costs.

c. The CARES Act RLF will be administered and executed in accordance with the plans and amendments approved by the EDA and jointly submitted by the City of Charleston and the LDC.

3. The LDC shall manage and administer the CARES Act RLF on behalf of the City of Charleston and shall abide by all the terms and conditions of the Grant Award, including but not limited to, the following documents attached hereto as Exhibit A and incorporated herein by reference (the "Grant Award Documents"):

a. Financial Assistance Award No. 04-79-07537 (Form CD-450);
b. EDA Specific Award Conditions;
c. EDA Revolving Loan Fund Standard Terms and Conditions dated April 30, 2019;
d. U.S. Department of Commerce Financial Assistance Standard Terms and Conditions;
e. U.S. Department of Commerce Office of Inspector General Fraud Awareness Training EDA CARES Act Assistance FY 2020;
f. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements, as adopted pursuant to 2 CFR §1327.101.

4. Pursuant to the terms and conditions of the Grant Award Documents, the LDC agrees to fulfill the specific duties described in Exhibit B, attached hereto and incorporated herein by reference.

5. The LDC hereby indemnifies the City with respect to any and all matters directly or indirectly arising in any manner out of the matters contemplated by this Memorandum of Understanding.

6. This Memorandum of Understanding shall remain in effect as long as funds exist in the CARES Act RLF.

7. This Memorandum of Understanding shall be governed by the laws of the State of South Carolina.

IN WITNESS WHEREOF, We, the undersigned, have read and agree with all sections of the Memorandum of Understanding.

WITNESS:	CITY OF CHARLESTON
_____	By: _____
	Its: _____
WITNESS:	CHARLESTON CITYWIDE LOCAL DEVELOPMENT CORPORATION
_____	By: _____
	Its: _____

EXHIBIT A

Attach Grant Award Documents

EXHIBIT B

LDC Duties

1. Provide City with quarterly summary of loan and bank activity and administrative draws, including copies of bank statements, LDC Balance Sheet, and documents supporting the administrative costs.
2. Permit City to conduct on-site monitoring of loan and bank records as deemed necessary by the City.
3. Provide copy to the City of the annual audit.
4. Provide copies to the City of all correspondence with the EDA.
5. Maintain a separate bank account for this award.
6. Complete the ACH Vendor Enrollment Form.
7. Provide copies to the City of all financial reporting sent to the EDA.
8. Provide to the City the names of the parties that are required to take the OIG Fraud Awareness Training.
9. Provide evidence of adequate fidelity bond coverage for persons authorized to handle funds under the Grant Award to City and EDA.
10. All other duties as may be required to comply with the terms and conditions of the Grant Award Documents.

FORM CD-450
(REV. 04/17)

U.S. DEPARTMENT OF COMMERCE

☑ GRANT ☐ COOPERATIVE AGREEMENT

FINANCIAL ASSISTANCE AWARD

FEDERAL AWARD ID NUMBER
04-79-07537

RECIPIENT NAME Charleston, City of	PERIOD OF PERFORMANCE 24 months after date of EDA approval
STREET ADDRESS 116 Meeting Street	FEDERAL SHARE OF COST $ 935,000
CITY, STATE, ZIP CODE Charleston, SC 29403	RECIPIENT SHARE OF COST $ 0
AUTHORITY Public Works and Economic Development Act of 1965, as amended	TOTAL ESTIMATED COST $ 935,000

CFDA NO. AND NAME
11.307 Economic Adjustment Program

PROJECT TITLE
Revolving Loan Fund

This Award Document (Form CD-450) signed by the Grants Officer constitutes an obligation of Federal funding. By signing this Form CD-450, the Recipient agrees to comply with the Award provisions checked below and attached. Upon acceptance by the Recipient, the Form CD-450 must be signed by an authorized representative of the Recipient and returned to the Grants Officer. If not signed and returned without modification by the Recipient within 30 days of receipt, the Grants Officer may unilaterally withdraw this Award offer and de-obligate the funds.

- ☐ DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS (31 March 2017)
- ☐ R & D AWARD
- ☐ FEDERAL-WIDE RESEARCH TERMS AND CONDITIONS, AS ADOPTED BY THE DEPT. OF COMMERCE
- ☑ SPECIAL AWARD CONDITIONS
- ☐ LINE ITEM BUDGET
- ☑ 2 CFR PART 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS, AS ADOPTED PURSUANT TO 2 CFR § 1327.101
- ☐ 48 CFR PART 31, CONTRACT COST PRINCIPLES AND PROCEDURES
- ☐ MULTI-YEAR AWARD. PLEASE SEE THE MULTI-YEAR SPECIAL AWARD CONDITION.
- ☑ OTHER(S): Revolving Loan Fund Financial Assistance Award Standard Terms & Conditions, April 30, 2019

OIG Fraud Awareness Training - EDA CARES Act Assistance FY 2020

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER H. Philip Paradice, Jr., Director, Atlanta Regional Office H. Philip Paradice, Jr Digitally signed by H. Philip Paradice, Jr Date: 2020.07.27 09:51:52 -04'00'	DATE 7/24/2020
PRINTED NAME, PRINTED TITLE, AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL John J. Tecklenburg, Mayor	DATE 8/18/2020

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

REVOLVING LOAN FUND AWARD: Economic Adjustment Assistance for Disaster Economic Recovery Under Sections 209 and 703 of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. §§ 3149 and 3233

PROJECT TITLE: Coronavirus Aid, Relief, and Economic Security (CARES) Act Revolving Loan Fund Supplemental Disaster Recovery and Resiliency Awards.

1. **SCOPE OF WORK:** This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award, as the *Authorized Scope of Work* (Attachment 1). All work on this project must be consistent with the *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work in writing through an amendment memorialized through execution of a Form CD-451, *Amendment to Financial Assistance Award.*

2. **PROJECT CONTACT INFORMATION:** Contact information for Recipient and key EDA staff with responsibilities for this Award is contained in Attachment 2. Recipient agrees to notify EDA promptly of any changes to Recipient's contact information.

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

   - Recipient's application, including any attachments, project descriptions, schedules, and subsequently submitted supplemental documentation
   - Authorized Scope of Work (Attachment 1)
   - Project Contact Information (Attachment 2)
   - Authorized Budget (Attachment 3)
   - Authorized Staffing Plan (Attachment 4)

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

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

   Authorized Award End Date.....24 months from the Date of Award

Submission of Final Project Progress Report.....No later than 90 days from the Authorized Award End Date

Submission of Final Financial Documents (SF-425).....No later than 90 days from the Authorized Award End Date

Recipient shall diligently pursue the development and implementation of the project upon receipt of the EDA Award so as to ensure completion within this time schedule, and shall promptly notify EDA in writing of any event that could substantially delay meeting any of the time limits set forth above. Recipient further acknowledges that failure to meet the Project Development Time Schedule may result in EDA pursuing remedies for non-compliance, potentially including termination of the Award, in accordance with the regulations set forth at 2 C.F.R. §§ 200.338 200.342.

5. **UNUSUAL AND COMPELLING URGENCY:** As set forth in the *Authorized Scope of Work* (Attachment 1), this Award is made pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. 116-136 (March 27, 2020) to respond to the coronavirus pandemic. EDA is making this Award to Recipient non-competitively, based on EDA's finding that the coronavirus (COVID-19) pandemic constitutes a situation of unusual and compelling urgency and that it is therefore in the public interest to make noncompetitive awards to existing grantees, including Recipient, that have made substantial investment in establishing revolving loan fund lending capacity and therefore possess unique abilities to respond to the pandemic quickly.

   Because of the unusual and compelling urgency of the situation, time is of the essence in the implementation of the Authorized Scope of Work. By accepting this Award, Recipient certifies that it will use its best efforts to implement the *Authorized Scope of Work* expeditiously to maximize the benefits of the project in responding to the pandemic. Recipient acknowledges that failure to implement the project at an acceptable pace, as determined in EDA's reasonable discretion in accordance with the approved Grant Administration Plan (see paragraph 27, below), may result in EDA taking action to modify or terminate the Award in accordance with 2 C.F.R. § 200.338. If at any point during the period of performance (through the Authorized Award End Date), EDA determines there is an unacceptable risk that Recipient will be unable to disburse the full amount of the award designated for RLF lending, EDA may reduce that portion of the Award by an amount that EDA, in its reasonable discretion, deems appropriate.

6. **PROJECT REPORTING AND FINANCIAL DISBURSEMENTS INSTRUCTIONS:**

   A. **AWARD DISBURSEMENTS:** EDA will make disbursements using the Department of the Treasury's Automated Standard Application for Payments (ASAP) system or through Electronic Funds Transfer (EFT) directly to Recipient's bank account and in accordance

with the requirements of the Debt Collection Improvement Act of 1996. For disbursements using ASAP, Recipient is required to furnish documentation required by ASAP. Complete information concerning the ASAP system may be obtained by visiting https://www.fiscal.treasury.gov/asap/.

To receive disbursements, Recipient must submit a Form SF-270 "*Request for Advance or Reimbursement*" for the applicable period electronically to the Project Officer, who will review and process the request. Due to the unusual and compelling urgency of the project, Recipient must request disbursements at least once per calendar quarter.

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

EDA retains the right to change Recipients from Advance to Reimbursement or Agency Review status if the Grants Officer deems it necessary or prudent to ensure successful monitoring of Federal funds. In such cases, Recipients may be required to submit a complete Form SF-270, "*Request for Reimbursement*" for the applicable period electronically to the Project Officer, who will review and process the request.

B. REPORTS:

1. RLF FINANCIAL REPORT: Recipient must submit an RLF Financial Report (Form ED-209), including a Portfolio Loan List, on a semiannual basis during the period of performance of this Award and after the period of performance of this Award (during the Revolving Phase). The Report must be submitted within 30 calendar days of the midpoint and end of Recipient's fiscal year. However, after the period of performance of this Award (during the Revolving Phase), EDA may allow high-performing RLFs, as evaluated through EDA's Risk Analysis System (see paragraph 15, below), to submit the RLF Financial Report on an annual basis, generally within 90 calendar days of Recipient's fiscal year end. The Report must be submitted as long as the RLF exists (i.e., before and after the Authorized Award End Date).

2. PROJECT PROGRESS REPORTS: Recipient agrees to provide the Project Officer with project progress reports, communicating the important activities and accomplishments of the project, on a semiannual basis during the period of performance of this Award (through the Authorized Award End Date). The Report must be submitted within 30 calendar days of the midpoint and end of Recipient's fiscal year.

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

a. Provide a concise overview of the activities undertaken during the semi-annual reporting period;
b. Document accomplishments, benefits, and impacts of the project. Recipient should identify activities that have led to specific outcomes, such as job creation/retention, private investment, increased regional collaboration, engagement with historically excluded groups or regions, enhanced regional capacity, or other positive economic development benefits;
c. Identify any upcoming or potential press events or opportunities for collaborative press engagements to highlight the benefits of the EDA investment;
d. Compare progress on the project with the targeted schedule, explaining any departures, identifying how those departures will be remedied, and projecting the course of work for the next semi-annual reporting period;
e. Outline challenges impeding or that may impede progress on the project over the next semi-annual reporting period and identify ways to address those challenges;
f. Outline any areas in which EDA assistance is needed to support the project; and
g. Provide any other information that would be helpful for your EDA Project Officer to know.

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

a. Provide a high-level overview of the activities undertaken;
b. Explain how the project activities have prevented, prepared for, or responded to the coronavirus pandemic and advanced economic development;
c. Document the expected and actual economic benefits of the project as of the time the report is written;
d. Detail lessons learned during the project that may be of assistance to EDA or other communities undertaking similar efforts; and

e. Provide any other information necessary to understand the project and its impacts.

3. FEDERAL FINANCIAL REPORT: Recipient must submit the Federal Financial Report (Form SF-425) on a semiannual basis during the period of performance of this Award (through the Authorized Award End Date). The Report must be submitted within 30 calendar days of the midpoint and end of Recipient's fiscal year. Form SF-425 and instructions for completing the Form are available at: https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html.

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

7. **ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined after the final financial documents are submitted in accordance with the applicable authorities specified on the Financial Assistance Award (Form CD-450), including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. part 200. The *Authorized Budget* for this Project is set forth in Attachment 3, *Authorized Budget*.

8. **FEDERAL SHARE:** The Federal Share of total allowable project cost for this Award is 100 percent. EDA will fund 100 percent of the total allowable project costs or the grant amount shown on the Financial Assistance Award (Form CD-450), whichever is less.

9. **VOLUNTARILY CONTRIBUTED CAPITAL:** If Recipient wishes to inject additional capital into the RLF Capital Base to augment the amount of resources available to lend, Recipient must submit a written request to EDA that specifies the source of the funds to be added. Once approved by EDA, any additional capital injected into the RLF becomes an irrevocable part of the RLF Capital Base and may not be subsequently withdrawn or separated from the RLF (13 CFR § 307.12(d)).

10. **RLF PLAN:** Recipient agrees to administer this Award in accordance with an EDA-approved RLF Plan (13 CFR § 307.9), and Recipient agrees to submit an RLF Plan prior to disbursing loan funds to an RLF borrower but no later than 60 calendar days of the date of this Award.

Should there be a conflict between the terms and conditions of this Award and the RLF Plan, the terms and conditions of this Award shall control.

Recipient's RLF Plan must be updated once every five years, or sooner if necessary to adapt to changing economic conditions. However, EDA may require Recipient to update the RLF Plan at any time to incorporate new approaches, to align with an updated CEDS, or as otherwise required by EDA. Recipient must submit any updates or modifications to the RLF Plan for EDA approval, and EDA may condition such approval on any changes that EDA deems necessary (13 CFR § 307.9(c)).

11. **DISBURSEMENT PHASE AND REVOLVING PHASE:** The Disbursement Phase of this Award is the period of lending activity during which award funds have not been fully disbursed to Recipient. The end of the Disbursement Phase coincides with the earlier of the Authorized Award End Date or upon disbursement closeout after all grant funds have been disbursed to Recipient. The Revolving Phase commences at the end of the Disbursement Phase and continues as long as the RLF exists.

12. **RLF REGULATIONS & DISBURSEMENT PHASE VARIANCES:** The regulations governing RLF awards at subpart B of 13 CFR part 307 generally apply to this Award. However, to make credit more quickly and easily available to borrowers impacted by COVID-19, during the initial round of lending under this Award (the Disbursement Phase) the following three regulations do not apply to loans made under this Award:

    A. The minimum interest rate requirement (13 CFR § 307.15(b)(1)).
    B. The leveraged capital requirement (13 CFR § 307.15(c)).
    C. The requirement to demonstrate that credit is not otherwise available (13 CFR § 307.11(a)(1)(ii)(H)).

    During the Revolving Phase when RLF funds are re-lent to new borrowers the three above-listed regulations will apply to this Award.

13. **WAIVER OF PRE-DISBURSEMENT CERTIFICATIONS:** EDA imposes certain pre-disbursement requirements on new RLFs, including: (1) a certification that the recipient has an accounting system adequate to identify, safeguard, and account for the entire RLF Capital Base (13 C.F.R. § 307.11(a)(1)(i)) and (2) a certification from the recipient's legal counsel that the recipient's standard loan documents are adequate and comply with the terms and conditions of applicable state and local law (13 C.F.R. § 307.11(a)(1)(ii)). Because this Award is being made to an existing RLF recipient, EDA has concluded that the accounting system and loan document certifications are redundant and thus unnecessary. For this reason, Recipient need not submit those two certifications. Recipient must utilize the accounting system and loan

documents that Recipient uses for its existing RLF unless Recipient obtains EDA's prior written approval to do otherwise.

14. **FIDELITY BOND COVERAGE:** In accordance with 13 CFR § 307.11(a)(1)(iii), Recipient must submit in a form acceptable to EDA evidence of fidelity bond coverage for persons authorized to handle funds under the Award in an amount sufficient to protect the interests of EDA and the RLF. At a minimum, the amount of coverage must be the maximum loan amount allowed for in the EDA-approved RLF Plan. Recipient must maintain sufficient fidelity bond coverage for the duration of the RLF's operation. However, because this Award is being made to an existing RLF recipient that already maintains fidelity bond coverage, EDA has concluded that Recipient may begin lending before Recipient has made any necessary adjustments to its fidelity bond coverage. Recipient must provide evidence of adequate coverage to EDA has soon as reasonably practicable following the date of award.

15. **RISK ANALYSIS SYSTEM:** EDA will evaluate Recipient's management and operation of the RLF Award using a Risk Analysis System that measures a variety of factors, including but not limited to capital, assets, management, earnings, liquidity, and strategic results. EDA plans to provide Recipient a risk analysis rating of the RLF on at least an annual basis during the Revolving Phase of this Award (13 CFR § 307.16(a)).

16. **ALLOWABLE CASH PERCENTAGE:** The Allowable Cash Percentage is the average percentage of the RLF Capital Base maintained as RLF Cash Available for Lending by RLF Recipients in the EDA Regional Office's portfolio of RLF Grants over the previous year (13 CFR § 307.8, definition of Allowable Cash Percentage). In general, EDA will notify Recipient on an annual basis of the Allowable Cash Percentage that is applicable to lending during Recipient's ensuing fiscal year.

    During operation of the RLF following the Authorized Award End Date (i.e., the Revolving Phase), Recipient must manage its loan repayment and lending schedule in order to avoid exceeding the Allowable Cash Percentage (13 CFR § 307.17(b)). Additionally, Recipient must not hold RLF Cash Available for Lending so that it is 50 percent or more of the RLF Capital Base for 24 months without an EDA-approved extension request based on other EDA risk analysis factors or extenuating circumstances (13 CFR § 307.20(e)).

17. **ENVIRONMENTAL REVIEW:** In accordance with 13 CFR § 307.10(a) and Part II, section D)7), of the RLF Standard Terms and Conditions, Recipient must adopt and the RLF Plan must include procedures for compliance with applicable environmental laws and regulations, including to review the impacts of prospective loan proposals on the physical environment.

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

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

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

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

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

19. **PLANNING COORDINATION:** In keeping with regional economic development principles, Recipient should coordinate economic development planning and implementation projects with other economic development organizations active in the area, especially EDA-funded recipients such as State and urban planning grantees, adjoining Economic Development Districts (EDDs) and Indian Tribes, and University Centers (UCs).

20. **TECHNICAL ASSISTANCE TO BUSINESSES:** Recipient shall advertise and make accessible any technical assistance offered to businesses as intended beneficiaries under this Award as widely as is reasonably permitted under the terms of this Award. Recipient shall maintain adequate documentation of any technical assistance offered and/or provided to benefitting businesses under this Award.

21. **PROCUREMENT:** Recipient agrees that all procurement transactions shall be in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR §§ 200.317 through 200.326.

22. **BUY-AMERICAN PREFERENCES:** Consistent with Executive Order 13858, "*Strengthening Buy-American Preferences for Infrastructure Projects*," Recipient is

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.

23. **NONRELOCATION:** By accepting this Award of financial assistance, Recipient attests that EDA funding is not intended by Recipient to assist efforts to induce the relocation or the movement of existing jobs from one region to another region in competition with those jobs. In the event that EDA determines that its assistance was used for such purposes, EDA reserves the right to pursue appropriate enforcement actions, including suspension of disbursements, termination of this Award for convenience or cause (which may include the establishment of a debt requiring Recipient to reimburse EDA), and disallowance of any costs attributable, directly or indirectly, to the relocation.

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

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

25. **STAFFING CHANGES:** The *Authorized Staffing Plan* for this Award is set out in Attachment 4. In the event of a change in the professional staff positions primarily funded with the EDA grant, Recipient shall provide the name of the individual selected to fill the position to the Project Officer and a copy of his or her resume within 30 business days of the selection.

26. **REAFFIRMATION OF APPLICATION:** Recipient acknowledges that Recipient's application for this Award may have been submitted to the Government and signed by Recipient, or by an authorized representative of Recipient, electronically. Regardless of the means by which Recipient submitted its application to the Government or whether Recipient or an authorized representative of Recipient submitted its application to the Government, Recipient hereby reaffirms and states that:

    A. All data in the application and documents submitted with the application are true and correct as of the date the application was submitted and remain true and correct as of the date of this Award;

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

C. Recipient has read, understood, and will comply with all terms of this Award, including the Assurances and Certifications submitted with, or attached to, the application.

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

27. **GRANT ADMINISTRATION PLAN:** Within 60 calendar days of the date of Award, Recipient shall provide to the Project Officer a Grant Administration Plan, not to exceed three pages, that outlines how Recipient will implement the *Authorized Scope of Work*. The plan must include the following information:

A. A list of tasks that Recipient will undertake to implement the *Authorized Scope of Work* at a sufficient level of detail to allow EDA to monitor Recipient's progress in implementing the project. The list of tasks must be consistent with the *Authorized Scope of Work* and the Project Narrative submitted as part of Recipient's application;

B. An explanation of the primary tasks to be undertaken by each individual identified in the *Authorized Staffing Plan*;

C. A timeline for implementing the tasks identified; and

D. If Recipient intends to hire additional staff to implement the project, a hiring plan including target start dates for new staff.

Upon approval by EDA, the Grant Administration Plan shall be incorporated into and become an enforceable part of these Specific Award Conditions. Subsequent changes to the Grant Administration Plan shall require the Project Officer's prior written approval, which shall not be unreasonably withheld.

28. **SUBAWARDS:** Recipient shall not subaward any portion of this award without EDA's prior written approval. Before any subawardee undertakes any work to be funded through this award, the Recipient shall provide to EDA for review and approval a subaward agreement between the Recipient and the subawardee that meets the requirements of 2 C.F.R. § 200.331(a) and includes a requirement that the subawardee comply with all of the terms and conditions of this Financial Assistance Award, including but not limited to the Standard and Specific Award conditions and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. part 200). Any work performed by the subawardee prior to EDA's approval of the subaward agreement shall be at the Recipient's and

subawardee's own risk and EDA may disallow costs related to that work. The Recipient shall be responsible for monitoring the subawardee's performance under any subaward in accordance with the requirements of 2 C.F.R. § 200.331.

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

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

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

    - false claims for materials and labor,
    - bribes related to the acquisition of materials and labor,
    - product substitution,
    - mismarking or mislabeling on products and materials, and
    - time and materials overcharging.

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

30. **NON-DUPLICATION OF FEDERAL SUPPORT:** Recipient shall adopt procedures to detect and prevent RLF borrowers from obtaining funding from multiple federal funding sources (including federal grants, federal loans, and federally guaranteed loans) for identical expenses. At a minimum, Recipient shall require loan applicants (1) to disclose any other federal funding sources that the applicant has applied for or received for purposes related to the purpose for which the RLF loan is being sought and (2) to certify that no RLF loan proceeds will be used to fund expenses for which the applicant has received other federal funding.

Should the Recipient determine that a borrower has received federal funding from multiple sources for identical expenses, the Recipient shall demand immediate repayment of the portion of the RLF loan allocable to those expenses and may take any other action against the borrower permitted by the loan documents, the RLF plan, and applicable law, as the Recipient deems appropriate for prudent management of the loan portfolio.

ATTACHMENT 1

Authorized Scope of Work

The Scope of Work for this Award is to capitalize a Revolving Loan Fund (RLF) to alleviate sudden and severe economic dislocation caused by the coronavirus (COVID-19) pandemic, to provide permanent resources to support economic resiliency, and to further the long-term economic adjustment objectives of the region served by this Award.

The RLF capitalized pursuant to this Award may lend to borrowers in the following geographic region: Charleston County

The Scope of Work for this Award includes administrative and other activities to manage and expedite RLF lending including one or more of the following activities:

- Administration of the RLF and other EDA-funded RLFs managed by Recipient, including advertising the availability of lending, processing loan applications, originating loans, servicing loans, and engaging in loan collection efforts
- Professional services, including legal and accounting services, to update or revise RLF policies, procedures, or standard loan documents
- Required reporting, including audit costs
- Technical assistance to borrowers and prospective borrowers related to loan applications or loan repayment
- Organizational capacity support, including technology costs, training, and personnel costs

ATTACHMENT 2

Project Contact Information

RECIPIENT INFORMATION:

Mayor John J. Tecklenburg Phone: 843-720-3837 Email: steve@charlestonldc.org	City of Charleston 116 Meeting Street Charleston, SC 29403

EDA INFORMATION:

EDA Project Team	Roles and Responsibilities
H. Philip Paradice, Jr. Regional Director Email: hparadice@eda.gov	Grants Officer: Authorized to award, amend, suspend, and terminate financial assistance awards.
Priscilla A. Kittles Administrative Director Email: pkittles@eda.gov	Program Officer: Oversees the programmatic aspects of this Award.
Karen Temple Lynch RLF Administrator Email: klynch@eda.gov	Project Officer: Responsible for day-to-day administration of this Award; liaises with Recipient and receives all reports and payment requests.

ATTACHMENT 3

Authorized Budget

Project Budget	
Federal Share (EDA)	$935,000.00
Non-Federal Matching Share	$0.00
Total Project Cost	$935,000.00
Federal Grant Rate	100%

Personnel	$64,073.20
Fringe Benefits	$0.00
Travel	$0.00
Equipment	$0.00
Supplies	$0.00
Contractual	$0.00
Construction	$0.00
Other	$870,926.80
Total Direct Charges	$935,000.00
Indirect Charges	$0.00
Total Project Budget	**$935,000.00**

Indirect Cost Calculator	
Cost Base	$0.00
Rate	0.00%
Allowable Indirect Cost	$0.00

ATTACHMENT 4

Authorized Staffing Plan

Staffing Plan - Budget					
Name	Annual Rate	% of Annual Hours	Annual $ from Award	Number of Years	Total Cost by Employee
Cindi Rourk	$82,353	10%	$8,235	2.00	$16,471
Paul Featheringill	$70,705	10%	$7,071	2.00	$14,141
Allison Morris	$73,183	10%	$7,318	2.00	$14,637
Dwayne Jubar	$94,125	10%	$9,413	2.00	$18,825
Total Personnel Costs					**$64,073**
Total Fringe Costs (Please Provide the Basis for Fringe Calculations)				0.00%	**$0**

Staffing Plan - Explanation		
Name	Title	Project Responsibilities
Cindi Rourk	Director of Business Development & Loan Officer	Outreach to prospective borrowers, intake, and loan underwriting
Paul Featheringill	Loan Officer	Intake of borrowers and loan underwriting
Allison Morris	Director of Compliance & Asset Management	Portfolio Management and Loan servicing
Dwayne Jubar	Director of Finance	Financial management, oversight, and reporting

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

REVOLVING LOAN FUND
STANDARD TERMS AND CONDITIONS

April 30, 2019

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PART I:
GENERAL PROVISIONS

A) RLF Award.

This financial assistance award, executed by the Economic Development Administration (EDA) and the recipient (Recipient), is awarded for the purpose of establishing a Revolving Loan Fund (the RLF Award).

B) Authorities.

1) In General.

Recipient must administer the RLF Award in conformance with the terms of the RLF Award, including any properly executed amendment thereto, the EDA-approved budget and scope of work, these RLF Standard Terms and Conditions, and any Special Award Conditions or Specific Award Conditions; relevant policies issued by EDA; applicable Federal statutes, regulations, and Executive Orders; and the provisions of the Office of Management and Budget *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* codified at 2 CFR part 200 (OMB Uniform Guidance).

2) PWEDA.

The RLF Program is authorized under section 209 of the Public Works and Economic Development Act of 1965 (42 U.S.C. § 3149) (PWEDA).

3) EDA Regulations.

The regulations implementing PWEDA are contained in chapter III of 13 CFR, and apply in full to this RLF Award. The regulations specific to the RLF Program can be found at subpart B of 13 CFR part 307.

4) Conflicts Among Authorities.

Any inconsistency or conflict among the authorities governing Recipient's administration of the RLF Award will be resolved in the following order of precedence: public laws, regulations (including the OMB Uniform Guidance), applicable notices published in the *Federal Register*, Executive Orders, these RLF Standard Terms and Conditions, Special Award Conditions and Specific Award Conditions, and any written policy guidance issued by EDA. However, a Special Award Condition or Specific Award Condition may amend or take precedence over a provision of the RLF Standard Terms and Conditions on a case-by-case basis, when warranted by the specific circumstances of the RLF Award. In the event of a conflict between Part I or Part II of these RLF Standard Terms and Conditions and Part III, Department of Commerce Standard Terms and Conditions, Part I and Part II will control.

C) Updates to Authorities.

1) Updates to Regulations.
EDA may issue changes from time to time to the regulations in chapter III of 13 CFR and OMB may issue changes from time to time to the regulations at 2 CFR part 200. Recipient must adhere to any such regulatory change in administering the RLF Award as of the effective date of such change. However, RLF loans made by Recipient prior to the effective date of the change are not affected unless so required by law. In the event of a conflict between these RLF Standard Terms and Conditions and the regulations in chapter III of 13 CFR or 2 CFR part 200, the regulations will control.

2) Effective Date of RLF Standard Terms & Conditions.
These RLF Standard Terms and Conditions are effective as of the date of execution of the RLF Award or, if attached to the RLF Award by amendment, as of the date of execution of such amendment.

D) Recipient as Trustee.
Recipient holds RLF Award funds in trust to serve the purposes of the RLF Award. Recipient's obligation to the Federal Government continues as long as the Federal assets continue to exist. The Federal assets may include cash, receivables, Personal Property, Real Property, and notes or other financial instruments acquired through the use of RLF Award funds. If EDA determines that Recipient has failed to meet any of its obligations under this RLF Award, the agency may assert its equitable reversionary interest, or the Federal Interest, in the RLF assets. However, EDA's non-assertion of its Federal Interest does not constitute a waiver thereof.

E) Additional Funding.
EDA has no obligation to provide any additional funding in connection with the RLF Award. Any amendment of the RLF Award to increase funding or to extend the period of performance is at the sole discretion of EDA and must be memorialized in writing.

F) Definitions.
Capitalized terms used but not otherwise defined in these RLF Standard Terms and Conditions have the meanings ascribed to them at 13 CFR §§ 300.3, 307.8, and 314.1. "Days" as used herein means calendar days unless expressly stated otherwise.

PART II:
RECIPIENT'S OPERATION OF THE RLF

A) RLF Plan.

1) General Requirements.
Recipient must administer the RLF in accordance with an EDA-approved RLF Plan. Recipient must develop an RLF Plan and submit it to EDA for approval. EDA will evaluate the RLF Plan, and EDA may require changes before approving the RLF Plan. Recipient may not make RLF loans prior to EDA approval of Recipient's initial RLF Plan.

2) Format and Content. (13 CFR § 307.9(a))

a) Title Page: The RLF Plan must begin with a title page that includes the name of Recipient and the date that the Plan was adopted by Recipient.

b) Part I: The RLF Plan must include a Part I entitled "Revolving Loan Fund Strategy," which summarizes the following:
(i) the Comprehensive Economic Development Strategy (CEDS) or EDA-approved economic development plan for the region in which the RLF operates;
(ii) the business development objectives of the RLF; and
(iii)the financing strategy, policy, and portfolio standards of the RLF.

c) Part II: The RLF Plan must include a Part II entitled "Operational Procedures," to serve as the internal operating manual for the RLF and include procedures to ensure Recipient and borrowers comply with applicable laws and regulations, including but not limited to 13 CFR part 307. Part II must also include the following:
(i) administrative procedures for operating the RLF consistent with "Prudent Lending Practices," as defined at 13 CFR § 307.8;
(ii) environmental review and compliance procedures as set forth at 13 CFR § 307.10; and
(iii)conflicts of interest rules set forth at 13 CFR § 302.17.

3) EDA Evaluation of RLF Plan. (13 CFR § 307.9(b))
In evaluating an RLF Plan, EDA will ensure that the RLF Plan:

a) Demonstrates consistency with the CEDS or EDA-approved development plan for the region in which the RLF is located;

b) Does not contravene EDA's conflict of interest rules;

c) Identifies the strategic purpose of the RLF and the considerations influencing the selection of its financing strategy and lending criteria, including:
(i) An analysis of the local capital market and the financing needs of the targeted businesses; and
(ii) Financing policies and portfolio standards which are consistent with EDA's policies and requirements;

d) Demonstrates an adequate understanding of commercial loan portfolio management procedures, including loan processing, underwriting, closing, disbursement, servicing, collection, monitoring, and foreclosure; and

e) Provides sufficient administrative procedures to prevent conflicts of interest, require accountability, safeguard RLF assets, and ensure compliance with Federal, State, and local laws.

4) Updates and Modifications. (13 CFR § 307.9(c))
Recipient's RLF Plan must be updated once every five years, or sooner if necessary to adapt to changing economic conditions. However, EDA may require Recipient to update the RLF Plan at any time to incorporate new approaches, align with an updated CEDS, or as otherwise required by EDA. Recipient must submit any updates or modifications to the RLF Plan for EDA approval, and EDA may condition such approval on any changes that EDA deems necessary.

B) Pre-Disbursement Requirements.

1) Accounting Certification. (13 CFR § 307.11(a)(1)(i))
Within 60 days before the initial disbursement of EDA funds, Recipient must provide in a form acceptable to EDA a certification signed by an authorized representative of Recipient certifying that Recipient's accounting system is adequate to identify, safeguard, and account for the entire RLF Capital Base, outstanding RLF loans, and other RLF operations. Recipient is required to maintain the adequacy of the RLF's accounting system for the duration of the RLF's operation.

2) Loan Document Certifications. (13 CFR § 307.11(a)(1)(ii))
Within 60 days before the initial disbursement of EDA funds, Recipient must provide in a form acceptable to EDA a certification signed by an authorized representative of Recipient that standard RLF loan documents reasonably necessary or advisable for lending are in place, and a certification from Recipient's legal counsel that the standard RLF loan documents are adequate and comply with the terms and conditions of the RLF Award, RLF Plan, and applicable State and local law. Recipient is required to maintain and appropriately update standard RLF loan documents at all times for the duration of the RLF's operation. The standard loan documents must include, at a minimum, the following:

(i) Loan application;
(ii) Loan agreement;
(iii) Board of directors' meeting minutes approving the RLF loan;
(iv) Promissory note;
(v) Security agreement(s);
(vi) Deed of trust or mortgage (as applicable);
(vii) Agreement of prior lien holder (as applicable); and
(viii) Evidence demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed.

3) **Fidelity Bond Coverage.** (13 CFR § 307.11(a)(1)(iii))
Within 60 days before the initial disbursement of EDA funds, Recipient must provide in a form acceptable to EDA evidence of fidelity bond coverage for persons authorized to handle funds under the RLF Award in an amount sufficient to protect the interests of EDA and the RLF. At a minimum, the amount of coverage must be the maximum loan amount allowed for in the EDA-approved RLF Plan. Recipient must maintain sufficient fidelity bond coverage as described in this Subsection for the duration of the RLF's operation.

C) Disbursement of RLF Funds.

1) **Purpose of Disbursements.** (13 CFR § 307.11(b))
RLF Award funds disbursed by EDA to Recipient may only be used by Recipient to close a loan or otherwise disburse loan funds to a borrower.

2) **Amount of Disbursement.** (13 CFR § 307.11(c))
EDA will only disburse to Recipient an amount of RLF Award funds equal to the amount required to meet the Federal Share requirement of a new RLF loan. Recipient need not apply RLF Income earned or principal repaid to new RLF loans during the Disbursement Phase of the RLF Award, unless otherwise specified in the terms of the RLF Award.

3) **Interest-bearing Account.** (13 CFR § 307.11(d))
Recipient must hold in an interest-bearing account all RLF Award funds that have been disbursed by EDA to Recipient but that have not yet been disbursed to a borrower by Recipient. (RLF Cash Available for Lending must also be held in an interest-bearing account, as discussed further in Section E, Financial Administration of the RLF.)

4) **Delays.** (13 CFR § 307.11(e))
All RLF Award funds disbursed by EDA to Recipient must in turn be disbursed by Recipient to a borrower within 30 days of Recipient's receipt of the RLF Award funds. Recipient must refund to EDA any RLF Award funds not disbursed to a borrower within the 30-day period, pursuant to the procedures set forth at 13 CFR § 307.11(e). However,

RLF Award funds returned to EDA pursuant to this Subsection may be available to Recipient for future draw-downs.

5) **Local Share.** (13 CFR § 307.11(f))
Recipient's matching funds required pursuant to the RLF Award are known as the Local Share. Recipient must maintain the Local Share committed to the RLF Award, available as needed, and not conditioned or encumbered in any way that precludes its use consistent with the RLF Award.

Recipient must use its cash Local Share of the RLF Award for lending purposes only. Recipient's cash Local Share must be used either in proportion to the RLF Award funds or at a faster rate than the RLF Award funds. Any in-kind share provided by Recipient as part of the RLF Award must be treated in accordance with the procedures set forth at 13 CFR § 307.11(f)(2).

6) **Disbursement Schedule.** (13 CFR § 307.11(g))
Recipient must draw down RLF Award funds in accordance with the terms of RLF Award, including any draw-down schedule in the Special Award Conditions or Specific Award Conditions. If Recipient fails to adhere to any of these terms, EDA may de-obligate part or all of the non-disbursed balance of the RLF Award. Factors that EDA may consider in choosing whether to de-obligate part or all of the non-disbursed balance are set forth at 13 CFR § 307.11(g)(2). Additionally, the procedure for Recipient to request an extension to draw down the RLF Award and the factors that EDA will consider in evaluating such a request are set forth at 13 CFR § 307.11(h).

7) **Method of Disbursement.**
EDA will determine the method by which RLF Award funds will be disbursed to Recipient. EDA generally disburses RLF funds using an Electronic Funds Transfer rather than the ASAP system discussed at Section B., Financial Requirements, Subsection .02, Award Payments, of the DOC Standard Terms and Conditions (incorporated into these RLF Standard Terms and Conditions in Part III). Recipient must include the RLF Award number on all payment-related correspondence, information, and forms.

8) **DOC Standard Terms and Conditions.**
See the DOC Standard Terms and Conditions, Section B., Financial Requirements, Subsection .02, Award Payments (incorporated into these RLF Standard Terms and Conditions in Part III), for additional information related to disbursement, including special disbursement procedures for States and procedures for requesting disbursements.

D) Lending.

1) **Prudent Lending Practices.** (13 CFR § 307.8)
Recipient must administer the RLF in accordance with Prudent Lending Practices, which means generally accepted underwriting and lending practices for public loan programs based on sound judgment to protect Federal and Recipient interests. Prudent Lending Practices must be applied to loan processing, documentation, loan approval, servicing, administrative procedures, collateral protection, collections, and recovery actions, as well as compliance with local laws and filing requirements to perfect and maintain a security interest in RLF collateral.

2) **Lending Area.** (13 CFR § 307.18(a))

   a) General Requirement. Recipient may make loans only within the EDA-approved lending area, as set forth and defined in the RLF Award and the RLF Plan.

   b) Modification of Lending Area. Recipient may add an additional lending area to its existing lending area to create a new lending area only with EDA's prior written approval and subject to the provisions and conditions set forth at 13 CFR § 307.18(a).

3) **Interest Rates.** (13 CFR § 307.15(b))

   a) Recipient may make loans to eligible borrowers at interest rates and under conditions determined by Recipient to be appropriate in achieving the goals of the RLF, subject to the minimum interest rate requirement in Subsection b), below.

   b) The minimum interest rate that Recipient may charge is four (4) percentage points below the lesser of the current money center prime rate quoted in the *Wall Street Journal* or the maximum interest rate allowed under State law. In no event shall an interest rate be less than the lower of four (4) percent or 75 percent of the prime interest rate listed in the *Wall Street Journal*. However, should the prime interest rate listed in the *Wall Street Journal* exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if doing so compromises the ability of Recipient to implement its financing strategy.

4) **Purpose of Loans and Use of RLF Cash Available for Lending.** (13 CFR § 307.17(c))

   a) Recipient shall not use RLF Award funds to:
   (i) Acquire an equity position in a private business.
   (ii) Subsidize interest payments on an existing RLF loan.
   (iii) Provide a loan to a borrower for the purpose of meeting the requirements of equity contributions under another Federal agency's loan program.

(iv) Enable a borrower to acquire an interest in a business either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF.

(v) Provide funds to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit, or any investment unrelated to the RLF.

(vi) Refinance existing debt, unless:

(a) Recipient sufficiently demonstrates in the loan documentation a "sound economic justification" for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities). For this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification; or

(b) RLF funds will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan. RLF funds may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF's costs plus a reasonable portion of the outstanding RLF loan within a reasonable time frame approved by EDA following the date of refinancing.

(vii) Serve as collateral to obtain credit or any other type of financing without EDA's prior written approval (e.g., loan guarantees).

(viii) Support operations or administration of the RLF Recipient.

(ix) Undertake any activity that would violate EDA Property regulations found at 13 CFR part 314.

(x) Finance gambling activity, performances or products of a prurient sexual nature, or any illegal activity, including the cultivation, distribution, or sale of marijuana that is illegal under Federal law.

b) Nonrelocation. Recipient must not use RLF Award funds to induce the relocation of existing jobs within the U.S. that are located outside of Recipient's jurisdiction to within its jurisdiction in competition with other U.S. jurisdictions for those same jobs. In the event that EDA determines that RLF Award funds were used for such purposes, EDA may pursue appropriate enforcement action, including suspension of disbursements and termination of the RLF Award, which may include the establishment of a debt requiring the Recipient to reimburse EDA.

c) Each loan agreement must clearly and in detail state the purpose of each loan.

5) **Credit Not Otherwise Available.**
Recipient must explicitly determine and demonstrate in the loan documentation for each RLF loan that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed.

6) **RLF Leveraging.** (13 CFR § 307.15(c))

   a) Unless otherwise specified in the terms of the RLF Award, Recipient must leverage additional investment of at least two (2) dollars for every one (1) dollar of RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to individual loans and is effective for the duration of the RLF's operation. To be classified as leveraged, additional investment must be made within twelve months of approval of an RLF loan closing, as part of the same business development project, and may include:

      (i) Capital invested by the borrower or others;
      (ii) Financing from private entities;
      (iii) The non-guaranteed portions and ninety (90) percent of the guaranteed portions of any Federal loan; or
      (iv) Loans from other State and local lending programs.

   b) Accrued equity in a borrower's assets may not be included in the calculation of leveraged additional investment.

7) **Environmental Impact.** (13 CFR § 307.10(a))
Recipient must adopt and the RLF Plan must include procedures for compliance with applicable environmental laws and regulations, including to review the impacts of prospective loan proposals on the physical environment. Recipient must also comply with, and ensure that potential borrowers comply with, applicable environmental laws and regulations. See the DOC Standard Terms and Conditions, Section G., National Policy Requirements, Subsection .04, Environmental Requirements (incorporated into these RLF Standard Terms and Conditions in Part III), for additional information related to environmental requirements.

8) **Protection of RLF Assets.** (13 CFR § 307.10(b))
Recipient must ensure that prospective borrowers, consultants, and contractors are aware of and comply with the Federal, State, and local statutory and regulatory requirements that apply to activities carried out with RLF loans. RLF loan agreements must include applicable Federal, State, and local requirements to ensure compliance, and Recipient must adopt procedures to diligently correct instances of non-compliance, including loan call stipulations.

9) **Hold Harmless Provision.** (13 CFR § 307.10(c))
All RLF loan documents and procedures must protect and hold the Federal Government harmless from and against all liabilities that the Federal Government may incur as a result of providing an award to assist (directly or indirectly) in site preparation or construction, as well as the direct or indirect renovation or repair of any facility or site. These protections apply to the extent that the Federal Government may become potentially liable as a result of ground water, surface, soil or other natural or man-made conditions on the property caused by operations of Recipient or any of its borrowers, predecessors or successors.

10) **Requirements Relating to RLF Loans Funding Construction.**

a) Davis-Bacon. In accordance with section 602 of PWEDA (42 U.S.C. § 3212), all laborers and mechanics employed by contractors or subcontractors on construction-related projects receiving investment assistance under PWEDA shall be paid wages not less than those prevailing on similar construction in the locality, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. See 13 CFR § 302.13. Therefore, Recipient must comply with, and must further ensure that any borrower, contractor, or subcontractor complies with Davis-Bacon prevailing wage rates where construction work is financed in whole or in part with RLF Award funds. Where the land facilitating construction is purchased in part or in whole with RLF Award funds, this requirement extends to construction work, including that which is not directly paid for with RLF Award funds.

b) The Contract Work Hours and Safety Standards Act. Recipient must ensure that any borrower, contractor, or subcontractor complies with the Contract Work Hours and Safety Standards Act (40 U.S.C. § 3701, et seq.), which provides work hour standards for every laborer and mechanic employed by a contractor or subcontractor in the performance of certain work financed at least in part with Federal funds.

E) Financial Administration of the RLF.

1) **General Requirements.**
Recipient is responsible for the administrative costs associated with operating the RLF. Any future funding to recapitalize the RLF Award is dependent upon the successful management of the RLF Award from both a programmatic and financial perspective, future Congressional appropriations to support the program, and Recipient securing a competitive award of EDA funds.

2) **RLF Cash Available for Lending.** (13 CFR § 307.17(a))

   a) Defined. RLF Cash Available for Lending means the portion of the RLF Capital Base that is held as cash and available to make loans. RLF Cash Available for Lending does not include cash committed to loans that have been approved but have not yet been funded.

   b) General Requirements. Recipient must deposit and hold all RLF Cash Available for Lending in an interest-bearing account. (RLF funds that have been disbursed by EDA to Recipient but that have not yet been disbursed to a borrower by Recipient must also be held in an interest-bearing account, as discussed further in Section C, Disbursement of RLF Funds). RLF Cash Available for Lending must be used only for the purpose of making RLF loans, or such other purpose as approved in writing by EDA.

3) **RLF Income.** (13 CFR § 307.12(a))

   a) Defined. RLF Income means interest earned on outstanding loan principal and accounts holding RLF funds, all fees and charges received by the RLF, and other income generated from RLF operations.

   b) Use of RLF Income. Recipient may use RLF Income to pay for RLF administrative costs, provided the RLF Income is earned and the administrative costs are accrued in the same fiscal year of Recipient. Recipient must add to the RLF Capital Base any RLF Income that is not used for administrative costs during the same fiscal year of Recipient that it was earned.

   c) Administrative Costs Exceeding RLF Income. Recipient shall not use funds from the RLF Capital Base to pay for or reimburse administrative costs unless EDA has approved such use in writing.

4) **Cost Principles.** (13 CFR § 307.12(b))
   When charging costs against RLF Income, Recipient must comply with the cost principles of the OMB Uniform Guidance set forth at 2 CFR part 200 subpart E – Cost Principles.

5) **Priority of Payments on Defaulted RLF Loans.** (13 CFR § 307.12(c))

   a) When Recipient receives proceeds on a defaulted or written off RLF loan, Recipient must apply such proceeds in the following order of priority:
   (i) First, towards any costs of collection;
   (ii) Second, towards outstanding penalties and fees;

(iii) Third, towards any accrued interest to the extent due and payable; and
(iv) Fourth, towards any outstanding principal balance.

6) **Voluntarily Contributed Capital.** (13 CFR § 307.12(d))
If Recipient wishes to inject additional capital into the RLF Capital Base to augment the amount of resources available to lend, Recipient must submit a written request to EDA which specifies the source of the funds to be added. Once approved by EDA, any additional capital injected into the RLF becomes an irrevocable part of the RLF Capital Base and may not be subsequently withdrawn or separated from the RLF. Upon termination, the Federal Share will be calculated by applying the Investment Rate to the entire RLF Capital Base, including any such additional capital, unless otherwise approved by the EDA Grants Officer.

7) **Accounting Principles.** (13 CFR § 307.15(a))

a) Recipient must operate the RLF in accordance with generally accepted accounting principles (GAAP) as in effect in the United States and the provisions outlined in the audit requirements set out as subpart F to 2 CFR part 200 and the Compliance Supplement, which is appendix XI to 2 CFR part 200, as applicable.

b) In accordance with GAAP, a loan loss reserve may be recorded in Recipient's financial statements to show the fair market value of the RLF's loan portfolio, provided this loan loss reserve is non-funded and represented by a non-cash entry. However, a loan loss reserve may not be used to reduce the value of the RLF in the Schedule of Expenditures of Federal Awards (SEFA) required as part of Recipient's audit requirements under 2 CFR part 200 or in reporting to EDA in the RLF Financial Report (Form ED-209).

8) **Audits.** (13 CFR § 307.12(b)(3))

a) In General. Recipient must comply with the audit requirements set out as subpart F to 2 CFR part 200, which applies to audits of Recipient's fiscal years beginning on or after December 26, 2014. In addition, the Compliance Supplement, which is appendix XI to 2 CFR part 200, applies as appropriate. Generally, if Recipient expends $750,000 or more in Federal awards during Recipient's fiscal year, Recipient must have a single or program-specific audit conducted for that fiscal year.

b) Audit Requirement if Recipient is under the $750,000 Threshold.
(i) If Recipient was not otherwise required to arrange for a single or program-specific audit for the fiscal year preceding the effective date of these RLF Standard Terms and Conditions, either because Recipient expends less than $750,000 in Federal awards annually or for any other reason, Recipient is hereby required to submit to EDA a program-specific independent audit that fulfills the requirements of 2 CFR

§ 200.507 and adheres to the Compliance Supplement in appendix XI to 2 CFR part 200 for the fiscal year preceding the effective date of these RLF Standard Terms and Conditions, unless such requirement is waived by EDA.

(ii) In lieu of the program-specific audit required under Subsection (i) of this Section, Recipient may submit an organization-wide independent audit to EDA. EDA will inform Recipient whether such audit fulfills Recipient's obligations under this Section. If EDA determines that Recipient's organization-wide audit is not an adequate substitute for the program-specific audit, Recipient must submit a program-specific audit that meets the requirements of Subsection (i) of this Section.

(iii) EDA may require a program-specific audit that meets the requirements of Subsection (i) of this Section as frequently as once per Recipient fiscal year, or less frequently as EDA determines appropriate.

(iv) Such program-specific audit or organization-wide audit must be submitted to EDA within the earlier of 30 days after receipt of the auditor's report, or nine months after the end of the audit period (i.e., Recipient's fiscal year).

(v) RLF Income may be used to pay for a program-specific audit required under Subsection (i) of this Section. If Recipient has insufficient RLF income to pay for such an audit, Recipient may seek EDA approval to use RLF Capital Base funds to cover such audit costs, and EDA approval will not be unreasonably withheld.

c) DOC Standard Terms and Conditions. See the DOC Standard Terms and Conditions, Section D., Audits (incorporated into these RLF Standard Terms and Conditions in Part III), for additional information related to audit requirements.

F) RLF Reports. (13 CFR § 307.14)

1) Frequency of Reports.
Recipient must complete and submit an RLF report, using Form ED-209, at a frequency as required by EDA. EDA may allow high-performing RLFs, as evaluated through the Risk Analysis System outlined in Section G, to report on an annual basis, with Form ED-209 generally due within 90 days of Recipient's fiscal year end. Other RLFs will generally report on a semiannual basis, with Form ED-209 generally due within 30 days of Recipient's fiscal year end and again six months later.

2) Report Certification.
Recipient must certify to EDA as part of the RLF report that the information provided is complete and accurate, and that the RLF is operating in accordance with the applicable EDA-approved RLF Plan. This certification is included on Form ED-209.

3) Government Performance and Results Act Reporting.
Recipient must report to EDA on RLF performance for Government Performance and Results Act (GPRA) purposes as required by EDA. Recipient shall provide required data

on a standardized form provided by EDA. Data used by Recipient in preparing such reports must be accurate and from independent sources whenever possible.

4) **DOC Standard Terms and Conditions.**
See the DOC Standard Terms and Conditions, Section A., Programmatic Requirements, Subsection .01, Reporting Requirements (incorporated into these RLF Standard Terms and Conditions in Part III), for additional information related to reporting requirements. In particular, note that the Federal Financial Report (Form SF-425) must be submitted regularly during the Disbursement Phase of the RLF Award.

G) EDA Evaluation and Oversight of the RLF Award.

1) **Allowable Cash Percentage.** (13 CFR § 307.17(b))

   a) In General. EDA will notify Recipient on an annual basis of the Allowable Cash Percentage that is applicable to lending during Recipient's ensuing fiscal year. During the Revolving Phase, Recipient must manage its loan repayment and lending schedule in order to avoid exceeding the Allowable Cash Percentage.

   b) Noncompliance. Recipient must not hold RLF Cash Available for Lending so that it is 50 percent or more of the RLF Capital Base for 24 months without an EDA-approved extension request based on other EDA risk analysis factors or extenuating circumstances.

2) **Risk Analysis System.** (13 CFR § 307.16(a))
EDA will evaluate Recipient’s management and operation of the RLF Award using a Risk Analysis System that measures a variety of factors, including but not limited to capital, assets, management, earnings, liquidity, and strategic results. EDA plans to provide to Recipient a risk analysis rating of the RLF on at least an annual basis.

3) **Corrective Action.** (13 CFR § 307.16(b))
Recipient will generally be allowed a reasonable period of time to increase its performance relative to risk factors identified by EDA through the Risk Analysis System. However, persistent noncompliance with risk factors identified through the Risk Analysis System will result in EDA seeking appropriate remedies for noncompliance, including those set forth at 13 CFR § 307.21.

4) **Noncompliance.** (13 CFR §§ 307.20, 307.21)
Recipient must operate the RLF in accordance with the terms of the RLF Award, these RLF Standard Terms and Conditions, the RLF Plan, and any other requirements that may apply to the RLF. If Recipient fails to operate the RLF accordingly, including through one of the types of noncompliance set forth at 13 CFR § 307.20, EDA may pursue one or more of the remedies for noncompliance set forth at 13 CFR § 307.21, including

suspension or termination of the RLF Award (discussed in more detail in paragraphs 5) and 6) below).

5) **Suspension.** (13 CFR § 307.21(c))
EDA may suspend an RLF Award when EDA determines that circumstances warrant temporarily stopping all activity under the RLF Award, including making payments to Recipient, until Recipient takes corrective action as specified by EDA. Upon suspension, Recipient would be prohibited from engaging in new lending activity, although normal loan servicing and collection efforts would continue. Recipient might also be subject to restrictions on the use of RLF Income and directed to take specific actions to protect the RLF assets, as appropriate.

6) **Termination.** (2 CFR § 200.339)
The RLF Award may be terminated in whole or in part as follows:

a) Termination by EDA for Recipient's Failure to Comply with the Terms of the RLF Award. EDA may terminate the RLF Award, in whole or in part, if Recipient fails to materially comply with the terms of the RLF Award, including, but not limited to, persistent noncompliance with risk factors identified through the Risk Analysis System or the types of noncompliance described at 13 CFR § 307.20.

b) Termination by EDA for Cause. EDA may terminate the RLF Award for cause, including if required by a circumstance beyond EDA's control, such as a Congressional mandate.

c) Termination by Recipient. Recipient may terminate the RLF Award in whole or in part upon sending the EDA Grants Officer for the RLF Award written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if EDA determines in the case of partial termination that the reduced or modified portion of the RLF Award will not accomplish the purposes for which the RLF Award was made, EDA may terminate the RLF Award in its entirety.

d) Termination Upon Mutual Agreement. EDA and Recipient may mutually agree to terminate the RLF Award in whole or in part. In such cases, EDA and Recipient must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

e) If the RLF Award is wholly or partially terminated, Recipient remains responsible for compliance with the Closeout and Post-closeout adjustments and continuing responsibilities requirements as described at 2 CFR §§ 200.343 and 200.344.

H) Consolidation and Merger of RLF Awards. (13 CFR § 307.18(b))

1) Consolidation of Recipient's Awards.
With EDA's prior written approval, and provided Recipient satisfies the conditions set forth at 13 CFR § 307.18(b)(1), Recipient may consolidate two or more of its EDA-funded RLFs into one surviving RLF.

2) Merger of Recipient and Other Recipients' Awards.
With EDA's prior written approval, and provided that the conditions set forth at 13 CFR § 307.18(b)(2) are satisfied, Recipient may merge its RLF Award(s) with another recipient's EDA-funded RLF award(s), resulting in one surviving RLF.

I) Conflicts of Interest.

1) Definitions. (13 CFR § 300.3)
An "Interested Party" is any officer, employee or member of the board of directors or other governing board of Recipient, including any other parties that advise, approve, recommend or otherwise participate in the business decisions of Recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. An Interested Party also includes such a person's "Immediate Family" (defined as a person's spouse, significant other or partner in a domestic relationship, parents, grandparents, siblings, children and grandchildren, but not distant relatives, such as cousins, unless the distant relative lives in the same household as the person) and other persons directly connected to that person by law or through a business arrangement.

2) Conflicts of Interest Generally. (13 CFR § 302.17(a))

a) 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 or there is an appearance that an Interested Party's objectivity in performing his or her responsibilities under the Project is impaired.

b) An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, an Interested Party is unable or potentially unable to render impartial assistance, services, or advice to the Recipient. It also could result from non-financial gain to an Interested Party, such as benefit to reputation or prestige in a professional field.

3) Conflicts of Interest Rules Specific to RLFs. (13 CFR § 302.17(c))
Recipient must adhere to EDA conflicts of interest rules set forth at 13 CFR § 302.17, including the following rules specific to RLFs:

a) An Interested Party of Recipient shall not receive, directly or indirectly, any personal or financial interest or benefit resulting from the disbursement of RLF loans. A financial interest or benefit may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward.

b) Recipient shall not lend RLF funds to an Interested Party.

c) Former board members of Recipient and members of their Immediate Family may not receive a loan from the RLF for a period of two years from the date that the board member last served on the board of directors.

4) Duty to Disclose. (2 CFR § 200.112)
Recipient must, in a timely fashion, disclose to EDA in writing any actual or potential conflict of interest.

5) Written Standards of Conduct.

a) Recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of a personal or organizational conflict of interest or personal gain in the administration of the RLF Award.

b) Recipient must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. See Section K, Other EDA Requirements, Subsection 4., Codes of Conduct and Sub-Award, Contract and Subcontract Provisions, Subsection d), Competition and Codes of Conduct for Subawards.

6) DOC Standard Terms and Conditions.
Recipient must also adhere to the requirements for conflicts of interest set forth in the DOC Standard Terms and Conditions, Section F., Conflict of Interest, Code of Conduct and other Requirements Pertaining to DOC Financial Assistance Awards, Including Subawards and Procurements Actions, Subsection .01, Conflict of Interest and Code of Conduct (incorporated into these RLF Standard Terms and Conditions in Part III).

7) Other Conflicts of Interest Rules.
Recipient must adhere to any state or local conflicts of interest rules, as well as any industry-specific conflicts of interest rules.

J) Records and Retention.

1) **Closed Loan Files and Related Documents.** (13 CFR § 307.13(a))
Recipient must maintain closed loan files and all related documents, books of account, computer data files and other records over the term of the closed loan and for a three-year period from the date of final disposition of the closed loan. The date of final disposition of a closed loan is the date:

   a) Principal, interest, fees, penalties, and all other costs associated with the closed loan have been paid in full; or

   b) Final settlement or discharge and cessation of collection efforts of any unpaid amounts associated with the closed loan have occurred.

2) **Administrative Records.** (13 CFR § 307.13(b))

   a) Recipient must maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF income expended for eligible RLF administrative costs.

   b) Recipient must retain records of administrative costs incurred for activities and equipment relating to the operation of the RLF for three years from the actual submission date of the report that covers the fiscal year in which such costs were claimed.

   c) For the duration of RLF operations, Recipient must maintain records to demonstrate:
   (i) The adequacy of the RLF's accounting system to identify, safeguard, and account for the entire RLF Capital Base, outstanding RLF loans, and other RLF operations;
   (ii) That standard RLF loan documents reasonably necessary or advisable for lending are in place; and
   (iii) Evidence of fidelity bond coverage for persons authorized to handle funds under the RLF Award in an amount sufficient to protect the interests of EDA and the RLF. At a minimum, the amount of coverage shall be the maximum loan amount allowed for in the EDA-approved RLF Plan.

   d) Recipient must make retained records available for inspection to the parties set forth at 13 CFR § 302.14(b), including those retained for longer than the required period. Records must be made available in a timely and reasonable manner. See 2 CFR § 200.336. The record retention periods described in this Section are minimum periods and such prescription does not limit any other record retention obligation required by law or agreement. EDA will not question any claimed administrative costs that are more than three years old, unless fraud is at issue.

3) Other Records Requirements. (2 CFR § 200.333)

a) If any litigation, claim, or audit is started before the expiration of the record retention period, Recipient shall retain all records related to or necessary for such action until all litigation, claims, or audit findings involving the records have been resolved and final actions taken.

b) If Recipient is notified in writing by EDA, the cognizant agency for either audit or indirect costs, or the oversight agency for audit, Recipient must retain the records as directed.

c) If Recipient obtains real property or equipment with RLF funds, Recipient must retain records related to such property or equipment for three years after the final disposition of such real property or equipment. Equipment is defined as set forth at 2 CFR § 200.33: tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by Recipient for financial statement purposes, or $5,000.

d) When records are transferred to EDA or maintained by EDA, the three-year retention requirement is not applicable to Recipient.

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

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

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

f) Recipient is responsible for monitoring any subrecipients and contractors to ensure their compliance with the records retention requirements. Recipient must immediately notify EDA if records are lost, destroyed, or are otherwise no longer available, or if

Recipient anticipates that it will not be able to comply with the record retention requirements under the RLF Award for the general retention periods noted above.

K) Other EDA Requirements.

1) Other Award Requirements.

a) Unauthorized Use of RLF Award Funds. Recipient must promptly notify EDA if Recipient or a borrower expends RLF Award funds for an Unauthorized Use, including a use that violates the terms of the RLF Award or the certifications and assurances of a loan agreement. (This does not apply to routine loan defaults where such defaults are due to business reasons and RLF Award funds have not been expended for an Unauthorized Use.) If directed by EDA, Recipient must restore funds to the RLF Capital Base or compensate the Federal Government for the Federal Share of the RLF Award funds expended for an Unauthorized Use. See 13 CFR §§ 314.4 and 314.5.

b) Prohibition on Use of Third Parties to Secure Award. Unless otherwise specified in any Special Award Condition or Specific Award Condition of the RLF Award, Recipient warrants that no person or selling agency has been employed or retained to solicit or secure the RLF Award upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Recipient for the purpose of securing business. For breach or violation of this warrant, EDA has the right to terminate the RLF Award without liability, or at its discretion, to deduct from the RLF Award sum, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

c) Payment of Attorneys' or Consultants' Fees. No RLF Award funds shall be used, directly or indirectly, to reimburse attorneys' or consultants' fees incurred in connection with obtaining investment assistance under PWEDA, such as, for example, preparing the Application. See 13 CFR § 302.10(a). However, ordinary and reasonable attorneys' and consultants' fees incurred for meeting RLF Award requirements (e.g., conducting a title search) may be eligible costs and may be paid out of RLF Award funds, provided such costs are otherwise eligible. See 2 CFR § 200.459.

d) Recipient's Duty to Refrain from Employing Certain Government Employees. Pursuant to section 606(2) of PWEDA (42 U.S.C. § 3216), for the two-year period beginning on the date EDA executes the RLF Award, if Recipient is a nonprofit organization, District Organization, or for-profit entity, Recipient agrees that it will not employ, offer any office or employment to, or retain for professional services any person who:

(i) On the date EDA executes the RLF Award or within the one-year period ending on that date, served as an officer, attorney, agent, or employee of the Department of Commerce, and

(ii) Occupied a position or engaged in activities that the Assistant Secretary for Economic Development determines involved discretion with respect to the awarding of investment assistance under PWEDA.

2) Freedom of Information Act.

EDA must comply with the Freedom of Information Act (FOIA) (5 U.S.C. § 552). DOC regulations at 15 CFR part 4 set forth the requirements and procedures that EDA must follow in order to make requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of the Application and other information submitted by Recipient may be released in response to a FOIA request. Recipient should be aware that EDA may make certain Application and other submitted information publicly available. Accordingly, as set forth in 15 CFR § 4.9, Recipient should identify any "business information" it believes to be protected from disclosure pursuant to 5 U.S.C. § 552(b)(4).

3) Lobbying Restrictions.

a) In General. Recipient must comply with the lobbying restrictions described in the DOC Standard Terms and Conditions, Section G., National Policy Requirements, Subsection .03, Lobbying Restrictions (incorporated into these RLF Standard Terms and Conditions in Part III).

b) Special Provisions Relating to Indian Tribes. As set out in 31 U.S.C. § 1352, there are special provisions applicable to Indian Tribes, tribal organizations, or other Indian organizations eligible to receive Federal contracts, grants, loans, or cooperative agreements. In accordance with DOC policy, EDA recognizes Tribal Employment Rights Ordinances (TEROs), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference in contracting, hiring, firing, and the payment of a TERO fee generally are allowable provisions under Federal awards granted to American Indian and Alaska Native tribal governments. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for proper and efficient performance and administration" of an RLF Award, as provided at 2 CFR § 200.403.

4) Codes of Conduct and Sub-Award, Contract and Subcontract Provisions.

a) In General. Recipient may subaward RLF Award funds only with prior EDA approval pursuant to 13 CFR § 309.2(a) and subject to the conditions at 13 CFR § 309.2(b). A subaward includes any award from Recipient or another pass-through entity to a

subrecipient for the subrecipient to carry out part of the RLF Award. Beneficiaries of the RLF Award, including loan borrowers, are not subrecipients. See 2 CFR § 200.92.

b) Applicability of RLF Award Provisions to Subrecipients. Recipient shall require any subrecipients under the RLF Award, including lower tier subrecipients, to comply with the provisions of the RLF Award, including applicable provisions of the OMB Uniform Guidance, and all associated terms and conditions. See 2 CFR § 200.101(b)(1), which describes the applicability of the OMB Uniform Guidance to various types of Federal awards and 2 CFR §§ 200.330 through 200.332, which describes subrecipient monitoring and management.

c) Competition and Codes of Conduct for Subawards.

(i) Recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition.

(ii) Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he or she serves as an officer or which employs or is about to employ any of the parties mentioned in this Subsection, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of Recipient shall neither solicit nor accept anything of monetary value from subrecipients. However, Recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of Recipient.

(iii) 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. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

d) Applicability of Provisions to Subawards, Contracts, and Subcontracts.

(i) Recipient shall include the following notice in each request for applications or bids for a subaward, contract, or subcontract, as applicable:

Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under $25,000 not requiring the consent of a DOC official) are subject to subpart C of 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)." In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than $100,000 of Federal funds at any tier are subject to 15 CFR part 28, "New Restrictions on Lobbying."

Applicants/bidders should familiarize themselves with these provisions, including the certification requirement. Therefore, Applications for a lower tier covered transaction must include a Form CD-512, "Certification Regarding Lobbying–Lower Tier Covered Transactions," completed without modification.

(ii) Recipient shall include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts) requiring lower tier participants to comply with subpart C of 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)."

(iii) Required subaward and contractual provisions:

(a) Recipient shall include a statement in all lower tier covered transactions (subawards, contracts, and subcontracts) exceeding $100,000 in Federal funds that the subaward, contract, or subcontract is subject to 31 U.S.C. § 1352, as implemented at 15 CFR part 28 ("New Restrictions on Lobbying"). Recipient shall further require the subrecipient, contractor, or subcontractor to submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 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 Form SF-LLL shall be submitted from tier to tier until received by Recipient. Recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Project Officer within 30 days following the end of the calendar quarter.

(b) In addition to other provisions required by the Federal agency or Recipient, in accordance with 2 CFR § 200.326, all contracts made by Recipient under this Award must contain the applicable provisions set out in Appendix II to 2 CFR part 200, which address various contractual requirements including remedies, termination for cause and convenience, Equal Employment Opportunity, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, rights to inventions, environmental quality, energy efficiency, debarment and suspension, the Byrd Anti-Lobbying Amendment, and procurement of recovered materials. See Appendix II to 2 CFR part 200 for a full explanation of these requirements.

5) **Property Management.**
With respect to any Property acquired or improved in whole or in part with RLF Award funds, Recipient shall comply with the Property Standards set forth at 2 CFR §§ 200.310 through 200.316 and EDA's regulations at 13 CFR part 314. Property acquired or improved in whole or in part by Recipient under this RLF Award may consist of real property; personal property, including equipment and supplies; and intangible property, such as money, notes, and security interests. Any property reports required under 2 CFR §§ 200.310 through 200.316, such as periodic inventories and requests for disposition instructions, must be submitted to the Grants Officer through the Project Officer on Form SF-428 and/or SF-429, as applicable. For the purposes of this Section only, these requirements do not apply to Property acquired or improved by a borrower with RLF Award funds, including loan collateral to which Recipient has taken title pursuant to collection activities on a defaulted loan.

6) **American-Made Equipment and Products.**
Recipient is hereby notified that Recipient is encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under the RLF Award.

PART III:
DEPARTMENT OF COMMERCE
STANDARD TERMS & CONDITIONS

The Department of Commerce Standard Terms and Conditions dated April 30, 2019, are incorporated herein as Part III of these RLF Standard Terms and Conditions.

In the event of a conflict between Part I or Part II of these RLF Standard Terms and Conditions and the Part III Department of Commerce Standard Terms and Conditions, Part I and Part II will control.

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS

30 April 2019

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS

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PREFACE

This document sets out the standard terms and conditions (ST&Cs) applicable to this U.S. Department of Commerce (DOC or Commerce) financial assistance award (hereinafter referred to as the DOC ST&Cs or Standard Terms). A non-Federal entity[1] receiving a DOC financial assistance award must, in addition to the assurances made as part of the application, comply and require each of its subrecipients, contractors, and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (E.O.s), Office of Management and Budget (OMB) circulars, provisions of the OMB *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (codified at 2 C.F.R. Part 200) (OMB Uniform Guidance), provisions of these Standard Terms, and any other terms and conditions incorporated into this DOC financial assistance award. In addition, unless otherwise provided by the terms and conditions of this DOC financial assistance award, Subparts A through E of 2 C.F.R. Part 200 and the Standard Terms are applicable to for-profit entities, foreign public entities and to foreign organizations that carry out a DOC financial assistance award.[2]

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in terms and conditions specified in the award will be resolved according to the following order of precedence: federal laws and regulations, applicable notices published in the *Federal Register*, E.O.s, OMB circulars, DOC ST&Cs, agency standard award conditions (if any), and specific award conditions.[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).

[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).

Compliance with EDA Disaster Assistance Program Requirements

Fraud Awareness Training

U.S. ECONOMIC DEVELOPMENT ADMINISTRATION

For EDA's CARES ACT Assistance noncompetitive letter invite EDD, Tribe, and UC grantees: You must successfully complete this training and submit the signed completion certificate(s) via the GrantsOnline website within 60 days of grant award.

For all other EDA's CARES ACT Assistance grantees, including noncompetitive letter invite RLF grantees and all competitive grantees: You must successfully complete this training and submit the signed completion certificate(s) to the EDA Project Officer listed in the Specific Award Conditions within 60 days of grant award.

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

OVERVIEW

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

INTRODUCTION: EDA DISASTER RECOVERY

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

INTRODUCTION: EDA DISASTER RECOVERY

EDA's CARES Act Recovery Assistance Program

- On March 27, 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136 (CARES Act), which appropriated $1,500,000,000 in supplemental funds to the Department of Commerce, Economic Development Administration (EDA) to "prevent, prepare for, and respond to coronavirus . . . including for necessary expenses for responding to economic injury as a result of coronavirus." Congress appropriated the funds pursuant to section 703 of the Public Works and Economic Development Act of 1965 (PWEDA), 42 U.S.C. § 3233, which is EDA's statutory authority for responding to emergencies or disasters. The funds are required to be awarded through EDA's Economic Adjustment Assistance program 42. U.S.C. § 3149, under which EDA responds to "sudden and severe economic dislocation[s]." On May 7, 2020, EDA published a supplemental addendum to its FY20 Public Works and Economic Adjustment Assistance Notice of Funding Opportunity to announce the availability of funding under EDA's CARES Act Recovery Assistance Program (NOFO Addendum).

- The NOFO Addendum sets out the application requirements, instructions, and process for competitive awards.

- Because of the unusual and compelling urgency of the economic dislocations caused by the coronavirus pandemic, EDA has determined that the public interest will be served by using a portion of its supplemental CARES Act funding to make non-competitive awards through a standardized letter invite process for existing EDA grant recipients with unique capacities to respond rapidly to the situation—current Partnership Planning, University Center, and Revolving Loan Fund grantees in good standing.

INTRODUCTION: EDA DISASTER RECOVERY

Connection with Coronavirus Pandemic

- To be eligible for funding under EDA's CARES Act Recovery Assistance, applicants must, among other things, explain clearly in their application how the proposed project would **"prevent, prepare for, and respond to coronavirus" or respond to "economic injury as a result of coronavirus."**

- This explanation is required to assist reviewers in understanding how a proposed project aligns with the goals of EDA's CARES Act Recovery Assistance.

INTRODUCTION: EDA DISASTER RECOVERY

Economic Adjustment Assistance

- EDA's CARES Act Recovery Assistance grants are being awarded through its Regional Offices and Headquarters under the agency's Economic Adjustment Assistance (EAA) Program. The EAA Program enables EDA to make awards that support a wide range of activities.

- EAA investments are designed to help communities catalyze public-private partnerships to foster collaboration, attract investment, create jobs, and foster economic resiliency and prosperity.

- Catalog of Federal Domestic Assistance (CFDA) 11.307
  - Located at https://beta.sam.gov
  - Contains overview of the EAA Program
  - Contains eligibility, application, and compliance requirements, etc.

ELIGIBILITY

- Eligible applicants under the EAA Program and EDA's CARES Act Recovery Assistance Competitive Process include:
  - District Organizations
  - Indian Tribe or a consortium of Indian Tribes
  - State,* county, city, or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions
  - Institution of higher education or a consortium of institutions of higher education
  - Public or private non-profit organization or association acting in cooperation with officials of a political subdivision of a State
- Eligible applicants under the EAA Program and EDA's CARES Act Recovery Assistance Non-Competitive Process include current Partnership Planning, University Center, and Revolving Loan Fund grantees in good standing
- **EDA is not authorized to provide EAA grants to individuals or for-profit entities. Requests from such entities will not be considered for funding.**

**Includes Puerto Rico and other U.S. Territories*

ELIGIBILITY

EDA's CARES Act Recovery Assistance Project Eligibility

- Projects under competitive process: Successful applications will enable affected communities to respond to the impacts of the coronavirus pandemic by supporting affected businesses and communities, including by providing technical assistance to retain existing and hire new employees; by providing a range of skills-training and workforce development projects to help employees compete for high-quality jobs; and by developing and implementing strategies to diversify regional economies to create jobs in new or existing industries.

- Projects under noncompetitive process: Please see your letter invitation for the program-specific authorized scope of work.

ELIGIBILITY

Project Area

Projects under competitive process: Applicants must self-define the appropriate region geographically. The geographic area comprising a region need not be contiguous or defined by political boundaries but should constitute a cohesive area capable of undertaking self-sustained economic development.

Projects under noncompetitive process: Existing territory of Economic Development District, Indian Tribe, University Center, or Revolving Loan Fund.

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

DOC – OFFICE OF INSPECTOR GENERAL

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

This includes oversight of EDA Assistance Programs

DOC – OFFICE OF INSPECTOR GENERAL

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

WHISTLEBLOWER PROTECTIONS

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

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

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

Whistleblower complaints may be submitted to the OIG via the hotline: https://www.oig.doc.gov/Pages/Online-Hotline-Complaint-Form.aspx

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

DOC-OIG Whistleblower Protection Coordinator contact information:

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

FRAUD IN EDA ASSISTANCE PROGRAMS

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

FRAUD IN EDA ASSISTANCE PROGRAMS

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

FRAUD IN EDA ASSISTANCE PROGRAMS

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

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

FRAUD IN EDA ASSISTANCE PROGRAMS (CONTINUED)

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

COMPLIANCE REQUIREMENTS

RECIPIENTS MUST COMPLY WITH:

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

COMPLIANCE REQUIREMENTS

2 CFR § 200.338 – REMEDIES FOR NONCOMPLIANCE

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

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

COMPLIANCE REQUIREMENTS

Eligibility

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

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

CASE EXAMPLE

Eligibility

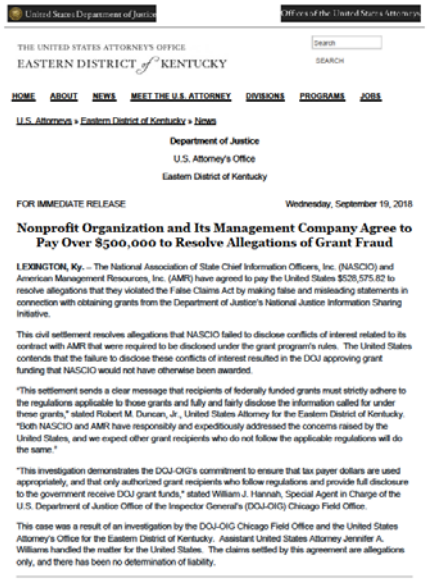
Allegations Included:

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

Outcome:

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

Double-click below for more information



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FOR IMMEDIATE RELEASE Wednesday, September 19, 2018

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

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

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

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

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

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

Duplication of Benefits is Prohibited

2 CFR § 200.53 – Improper Payment

Improper payment includes any payment to an ineligible party, any payment for an ineligible good or service, **any duplicate payment**, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

Other Federal Awards with Similar Programmatic Activities

"The Recipient shall immediately notify the Project Officer and the Grants Officer in writing if, after receipt of this Award, other financial assistance is received to support or fund any portion of the scope of work incorporated into this Award. EDA will not pay for costs that are funded by other sources." *EDA Standard Terms and Conditions for Construction Projects, February 12, 2016*

CASE EXAMPLE

Duplication of Benefits

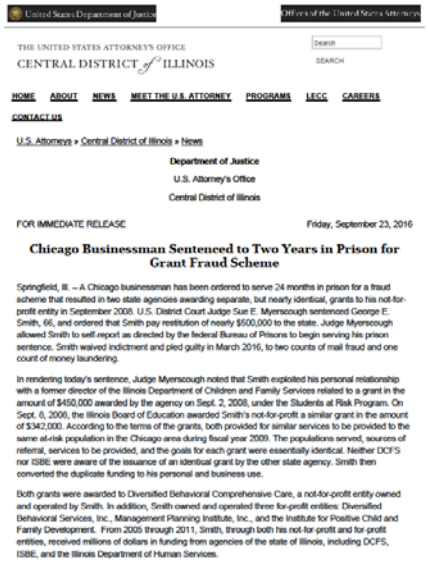
Double-click below for more information

Allegations Included:

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

Outcome:

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



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FOR IMMEDIATE RELEASE — Friday, September 23, 2016

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

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

In rendering today's sentence, Judge Myerscough noted that Smith exploited his personal relationship with a former director of the Illinois Department of Children and Family Services related to a grant in the amount of $450,000 awarded by the agency on Sept. 2, 2008, under the Students at Risk Program. On Sept. 6, 2008, the Illinois Board of Education awarded Smith's not-for-profit a similar grant in the amount of $342,000. According to the terms of the grants, both provided for similar services to be provided to the same at-risk population in the Chicago area during fiscal year 2009. The populations served, sources of referral, services to be provided, and the goals for each grant were essentially identical. Neither DCFS nor ISBE were aware of the issuance of an identical grant by the other state agency. Smith then converted the duplicate funding to his personal and business use.

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

COMPLIANCE REQUIREMENTS

Matching Funds

- Under EDA's CARES Act Recovery Assistance, noncompetitive projects will be funded at a100% grant rate.

- For EDA's CARES Act Recovery Assistance competitive projects, EDA generally expects to fund at least 80%, and up to 100%, of eligible project costs. In determining whether to fund a project's Federal share above 80%, EDA's Grants Officers in the applicable Regional Office will consider on a case-by-case basis whether the circumstances of the proposed project warrant a Federal share in excess of 80%, including whether the applicant has exhausted its effective taxing or borrowing capacity, the extent of the impact of the coronavirus pandemic on the region, or whether the region meets other thresholds for elevated need based on the relative economic distress of the region. Additionally, EDA may establish a maximum investment rate of up to 100% for projects of Indian Tribes.

COMPLIANCE REQUIREMENTS

Matching Funds

- The remaining portion of the EDA approved scope of work must be borne by the recipient or provided to the recipient by a third party as a contribution for the purposes of and subject to the terms of the award.

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

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

CASE EXAMPLE

Matching Funds

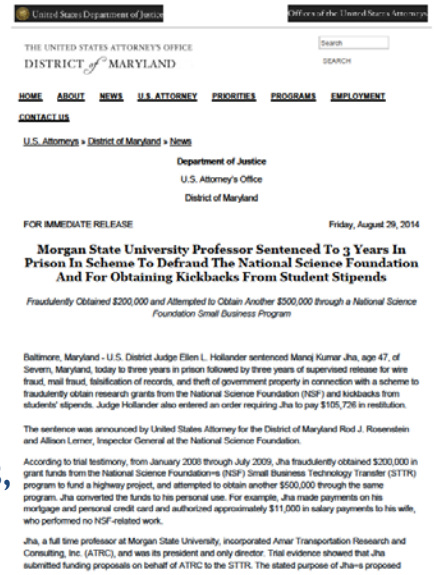
Double-click below for more information

Allegations Included:

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

Outcome:

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



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FOR IMMEDIATE RELEASE Friday, August 29, 2014

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

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

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

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

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

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

COMPLIANCE REQUIREMENTS

Mandatory Disclosure of Fraud

2 CFR § 200.113 - Mandatory disclosures

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

Failure to disclose could result in the remedies detailed in 2 CFR § 200.338 (slide 19 of this presentation).

CONSEQUENCES OF COMMITTING FRAUD

Criminal Prosecution

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

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

Fines for organizations may be as high as $500K

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

CONSEQUENCES OF COMMITTING FRAUD (CONTINUED)

Civil Prosecution

In addition to or in lieu of criminal prosecution

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

- Liability includes up to treble damages (3x actual damages) and a civil penalty of up to $22,363 for each false claim
- False claims liability may include payments received when the government relied upon false information in the award proposal, in a certification of current cost or pricing data, in a request for payment, or in progress reports
- Although the statute requires knowledge that the claim was false, knowledge includes "deliberate ignorance" or "reckless disregard of the truth"
- Whistleblowers can receive up to 30% of the recovery amount for reporting fraud via *qui tam* provisions of the False Claims Act

CONSEQUENCES OF COMMITTING FRAUD (CONTINUED)

Administrative Remedies

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

RECOMMENDATIONS

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

Status checks include:

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

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

RECOMMENDATIONS

Good Records: Key to Protecting Yourself

Documentation

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

Updates on the project status, including successes/failures

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

Records Retention Time Frames and other Requirements

- See 2 CFR § 200.333

IMPORTANT TO REMEMBER!

RECORD RETENTION AND ACCESS

§ 200.333 - Retention requirements for records.

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

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

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

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

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

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

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

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

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

IMPORTANT TO REMEMBER!

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

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

ADDITIONAL RESOURCES

EDA CARES Act Recovery Assistance website
https://www.eda.gov/coronavirus

13 CFR Chapter III – Economic Development Administration (Parts 300-315)
https://gov.ecfr.io/cgi-bin/text-idx?SID=8fbf6f5b896d79be9a11dd18cee58dea&mc=true&tpl=/ecfrbrowse/Title13/13chapterIII.tpl

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
https://gov.ecfr.io/cgi-bin/text-idx?SID=be9b8216bc70dcf927fd18af1b339149&mc=true&node=pt2.1.200&rgn=div5

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

Department of Commerce – Grants and Cooperative Agreement Manual
http://www.osec.doc.gov/oam/grants_management/policy/documents/Grants%20Manual%20-%2024%20October%202016.pdf

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

CERTIFICATE OF TRAINING COMPLETION

- **For EDA's CARES ACT Assistance noncompetitive letter invite EDD, Tribe, and UC grantees: You must successfully complete this training and submit the signed completion certificate(s) via the GrantsOnline website within 60 days of grant award.**

- **For all other EDA's CARES ACT Assistance grantees, including noncompetitive letter invite RLF grantees and all competitive grantees: You must successfully complete this training and submit the signed completion certificate(s) to the EDA Project Officer listed in the Specific Award Conditions within 60 days of grant award.**

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

CERTIFICATE OF TRAINING COMPLETION

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

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the GrantsOnline website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Award (CD-450).

EDA Award Number _____ **Certificate One**

CERTIFICATE OF TRAINING COMPLETION

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

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the GrantsOnline website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Award (CD-450).

EDA Award Number _____ **Certificate Two**

CERTIFICATE OF TRAINING COMPLETION

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

_____ _____

Signature **Date**

_____

Name

_____

Entity Name

_____

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the GrantsOnline website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Award (CD-450).

EDA Award Number _____ **Certificate Three**