



Town of Chino Valley

MEETING NOTICE TOWN COUNCIL

**REGULAR MEETING
Tuesday, September 8, 2015
6:00 P.M.**

**Council Chambers
202 N. State Route 89
Chino Valley, Arizona**

AGENDA

1. CALL TO ORDER, INVOCATION; PLEDGE OF ALLEGIANCE; ROLL CALL

2. INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS

- a.** Proclamation declaring September 7-13, 2015 as "National Patriotism Week," sponsored by the Chino Valley Elks Lodge. (Mayor Marley)

3. CALL TO THE PUBLIC

Call to the Public is an opportunity for the public to address the Council concerning a subject that is not on the agenda. Public comment is encouraged. Individuals are limited to speak for three (3) minutes. The total time for Call to the Public may be up to 30 minutes per meeting. Council action taken as a result of public comment will be limited to directing staff to study the matter, scheduling the matter for further consideration and decision at a later date, or responding to criticism.

4. RESPONSE TO THE PUBLIC

Response to the Public is an opportunity for the Mayor to inform the public about how Town officials addressed matters raised during Call to the Public at a previous meeting.

- a.** Comments regarding pool hours and fees.

5. CURRENT EVENT SUMMARIES AND REPORTS

This item is for information only. The Mayor, any Councilmember, or Town Manager may present a brief summary or report of current events, or ask a staff member to provide the same. Presentation on information requested by the Mayor and Council will be made and questions answered. No action will be taken.

- a. Status reports by Mayor and Council regarding current events.
- b. Status report by Town Manager Robert Smith regarding Town accomplishments, and current or upcoming projects.

6. CONSENT AGENDA

All those items listed below are considered to be routine and may be enacted by one motion. Any Councilmember may request to remove an item from the Consent Agenda to be considered and discussed separately.

- a. Consideration and possible action regarding application for a Series 19 Remote Tasting Room Liquor License for Del Rio Springs Vineyard, to be located at 1174 S. Highway 89, #2 in Chino Valley. (Jami Lewis, Town Clerk)
- b. Consideration and possible action to accept the July 28, 2015 regular meeting minutes. (Jami Lewis, Town Clerk)
- c. Consideration and possible action to accept the August 11, 2015 regular meeting minutes. (Jami Lewis, Town Clerk)

7. ACTION ITEMS

The Council may vote to recess the public meeting and hold an Executive Session on any item on this agenda pursuant to A.R.S. § 38-431.03(A)(3) for the purpose of discussion or consultation for legal advice with the Town Attorney. Executive sessions are not open to the public and no action may be taken in executive session.

- a. Consideration and possible action to authorize the Mayor to sign all documents related to the Grant Agreement with the Economic Development Administration in the amount of \$1.6 million dollars. (Ruth Mayday, Development Services Director)

Recommended Action: Authorize the Mayor to sign all documents related to the grant agreement.

8. EXECUTIVE SESSION

Council may vote to recess the Regular Meeting and hold an executive session, which will not be open to the public, for the following purposes.

- a. Pursuant to A.R.S. Section 38-431.03(A)(3) and (4) for discussion or consultation for legal advice with the Town Attorney and in order to consider its position and instruct the Town Attorney regarding the Town's position regarding the and the settlement of the matter of Cortez v. Town of Chino Valley. (Robert Smith, Town Manager)

9. ACTION ITEMS RESUMED

After the Executive Session, Council will reconvene the Regular Meeting.

10. ADJOURNMENT

Dated this 3rd day of September, 2015.

By: **Jami C. Lewis, Town Clerk**

The Town of Chino Valley endeavors to make all public meetings accessible to persons with disabilities. Please call 636-2646 (voice) or 711 (Telecommunications Arizona Relay Service) 48 hours prior to the meeting to request a reasonable accommodation to participate in this meeting.

Supporting documentation and staff reports furnished to the Council with this agenda are available for review on the Town website at <http://www.chinoaz.net/agendacenter> and in the Public Library and Town Clerk's Office.

CERTIFICATION OF POSTING

The undersigned hereby certifies that a copy of this notice was duly posted at Chino Valley South Campus, Chino Valley Post Office, and Chino Valley North Campus in accordance with the statement filed by the Town Council with the Town Clerk.

Date: _____ Time: _____ By: _____

Jami C. Lewis, Town
Clerk

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TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. 2. a.

Meeting Date: 09/08/2015
Contact Person: Jami Lewis, Town Clerk
Phone: 928-636-2646 x-1208
Department: Council
Estimated length 5 minutes
of Staff Presentation:
Physical location of item: N/A

AGENDA ITEM TITLE:

Proclamation declaring September 7-13, 2015 as "National Patriotism Week," sponsored by the Chino Valley Elks Lodge. (Mayor Marley)

SITUATION & ANALYSIS:

N/A

Attachments

Proclamation



PROCLAMATION

National Patriotism Week – September 7-13, 2015



***Whereas**, the Benevolent and Protective Order of Elks, through its Constitution, is a Patriotic Order; and*

***Whereas**, the Order promotes the ideals that the citizens of this nation live in freedom, won through the great sacrifices and many tribulations which have provided the foundation for a free, prosperous, and independent life; and*

***Whereas**, we realize that each generation must work to maintain this freedom; otherwise, through carelessness or indifference, the rights and liberties enjoyed may vanish; and*

***Whereas**, it is fitting and proper to recognize this freedom and to honor the nation which provides it;*

***Now, Therefore**, I, Chris Marley, Mayor of the Town of Chino Valley, do hereby proclaim **September 7-13, 2015** as **NATIONAL PATRIOTISM WEEK** in Chino Valley, Arizona, and during this event, urge all citizens to join with the Benevolent and Protective Order of Elks in expressing gratitude for the privilege of American Citizenship with appropriate celebrations and observances.*

***In Witness Whereof**, I have hereunto set my hand and caused the Seal of the Town of Chino Valley to be affixed this 8th day of September, 2015.*

Chris Marley, Mayor

ATTEST: Jami C. Lewis, Town Clerk



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. 6. a.

Meeting Date: 09/08/2015
Contact Person: Jami Lewis, Town Clerk
 Phone: 928-636-2646 x-1208
Department: Town Clerk
Item Type: Consent
Estimated length of staff presentation: None
Physical location of item: 1174 S. Highway 89, #2, Chino Valley (Marrett Plaza)

AGENDA ITEM TITLE:

Consideration and possible action regarding application for a Series 19 Remote Tasting Room Liquor License for Del Rio Springs Vineyard, to be located at 1174 S. Highway 89, #2 in Chino Valley.

RECOMMENDED ACTION:

Approve application for a Series 19 Remote Tasting Room Liquor License for Del Rio Springs Vineyard.

SITUATION AND ANALYSIS:

Issue Statement

Owner/agent Richard Skladzien holds a Series 13 Farm Winery license for Del Rio Springs Vineyard in Paulden. He has applied for a Series 19 Remote Tasting Room license under the Series 13 license to be located in Chino Valley.

Applicable "Policy"

A.R.S. § 4-205.04(F)

Satisfaction of "Policy"

The Series 19 Remote Tasting Room license application is first submitted to the city, town, or municipality where the tasting room will be located. Upon approval from the city, town, or municipality, the application will then go to the state. This is the only Arizona liquor application which first is approved by the local government.

Summary of Issues and Staff Rationale

Remote Tasting Rooms are located in Arizona and are owned and operated by a licensee that concurrently owns one of these four Arizona liquor licenses:

1. Out-of-state Farm Winery - Series 2W
2. Out-of-state Craft Distillery - Series 2D
3. In-state Farm Winery Application Kit - Series 13

4. In-state Craft Distiller Application Kit - Series 18

When tied to a Remote Tasting Room license the above license becomes the Master License and must be in "active" and good standing for the Remote Tasting Room to operate. The Remote Tasting Room is a retail location. Farm Winery licensees may have two (2) remote tasting room licenses tied to their Master License. Craft Distillery licensees may have one (1) remote tasting room license tied to their Master License.

Remote Tasting Rooms have on- and off-sale retail privileges. The licensee may serve liquor produced at the Master License premises for on- and off-sale consumption and for the purpose of sampling. The liquor sold at the remote tasting room must have all manufacturing taxes paid, must be produced/manufactured at the Master License location with this exception:

A remote tasting room may sell products from other Master Licenses of the same series not to exceed 20 percent (20%) of total sales by volume. This license is non-transferable (person-to-person or location-to-location).

Findings of Fact

- The owner/agent holds a Series 13 Liquor License and is permitted to hold two Series 19 licenses.
- The owner/agent has applied with the Town for their first Series 19 license.
- The Police and Planning Departments have reviewed the application and found no reason to deny a recommendation for approval.
- While no public hearing is required for this license, it is staff's practice to bring liquor license items of a business or permanent nature to Council for a recommendation. Temporary licenses, such as special event or temporary premises extensions, are approved by staff.

Fiscal Impact

Fiscal Impact?: Yes

If Yes, Budget Code:

Available:

Funding Source:

This is a business licensing revenue item.

Attachments

Series 19 Application

APPLICATION FOR REMOTE TASTING ROOM

Farm Winery: A.R.S. §4-205.04(F) • Craft Distillery: A.R.S. §4-205.10(D)

~~FINGERPRINT FEE~~ prices vary, card must be FBI-approved
APPLICATION FEE \$100 • ISSUANCE FEE full year = \$200/half year = \$150

A service fee of \$25 will be charged for all dishonored checks (A.R.S. §44-6852)

SECTION 1 Ownership:

1. Owner/Agent's Name: RICHARD SKLADZIEK E
(must concurrently own a series 13, 18, 2W or 2D) First Last Middle
2. Corporation, partnership, LLC: DEL RIO SPRINGS VINEYARD LLP
(Exactly as it appears on Articles of Inc./Articles of Org.)
3. Business Name: DEL RIO SPRINGS VINEYARD
(Exactly as it appears on the exterior of premises)
4. Business Address: MARRETT PLAZA #2
11745 HWY 89 CHINO VALLEY AZ 86323 YAVAPAI
(Do not use PO Box) Street City State Zip County
5. Mailing Address: 974 N GRANDVIEW PAULDEN AZ 86334
(All correspondence will be mailed to this address) Street City State Zip
- 6.a. Business Phone: (480) 495-3949 6.b. Daytime Phone: (928) 636-9046
- 7.a. Arizona Liquor Lic #: 13133043 7.b. Email Address: info@delriospringsvineyard.com
(must be a series 13, 18, 2W or 2D license)

SECTION 2 All questions must be answered:

- ☒ Yes ☐ No 1. I verify that the attached diagram of the remote tasting room includes all exits, entrances, square footage, liquor storage and service areas. [farm winery: A.R.S. §4-205.04(F), craft distillery A.R.S. §4-205.10(D)]
- ☒ Yes ☐ No 2. I verify that the location of the remote tasting room is within the incorporated limits of the city/town named in Section 1, question # 4.
- ☒ Yes ☐ No 3. I verify that the location of this remote tasting room is not within 300 feet of a church or school building. [A.R.S. §4-207]

- continued -

SECTION 2 (Continued) All questions must be answered:

- ☒ Yes ☐ No 4. I understand that the owner or agent for this remote tasting room must be a bona fide resident of Arizona and that the following documents must be completed and attached to this application:
- ☒ Yes ☐ No - owner/agent's valid Title 4 (Arizona liquor law) training Certificate of Completion,
☒ Yes ☐ No - owner/agent's completed questionnaire
☒ Yes ☐ No - owner/agent's fingerprint card and fee [A.R.S. §4-202(A)]
- ☐ Yes ☒ No 5. I have assigned a manager to oversee the day-to-day operations at the location identified in Section 1 above. The following documents are attached to this application:
- ☐ Yes ☐ No - manager's valid Title 4 (Arizona liquor law) training Certificate of Completion,
☐ Yes ☐ No - manager's completed questionnaire
☐ Yes ☐ No - manager's fingerprint card and fee [A.R.S. §4-202(C)]
- ☒ Yes ☐ No 6. I have read and am familiar with Arizona liquor laws and my responsibilities as they relate to operating a remote tasting room. [farm winery: A.R.S. §4-205.04, craft distillery A.R.S. §4-205.10]
- ☒ Yes ☐ No 7. I verify that this remote tasting room will not be used for storage of in-bond product. This premise is for retail sales only.
- ☒ Yes ☐ No 8. I understand that the renewal application and fees for this license will be due at the same time as the license identified in Section 1, question # 7.a..
- ☒ Yes ☐ No 9. I understand annual reporting to the Arizona Department of Liquor is required for the total sales from liquor produced at a location other than the license identified in Section 1, question # 7.a.. [farm winery: A.R.S. §4-205.04(C)(5), craft distillery A.R.S. §4-205.10(D)(1)]

SECTION 3 For out-of-state applicants only:

1.a. Federal ATF Permit: N/A 1.b. State License #: N/A
(series 2D or 2W license series only)

IMPORTANT NOTE TO APPLICANT: Only complete applications will be processed. A complete application includes approval from the Board of Supervisors, City Council or Designate of the city, town or municipality named in Section 1, question #4. Include and all required documents when submitting your application. The local government's recommendation is binding on the Department of Liquor.

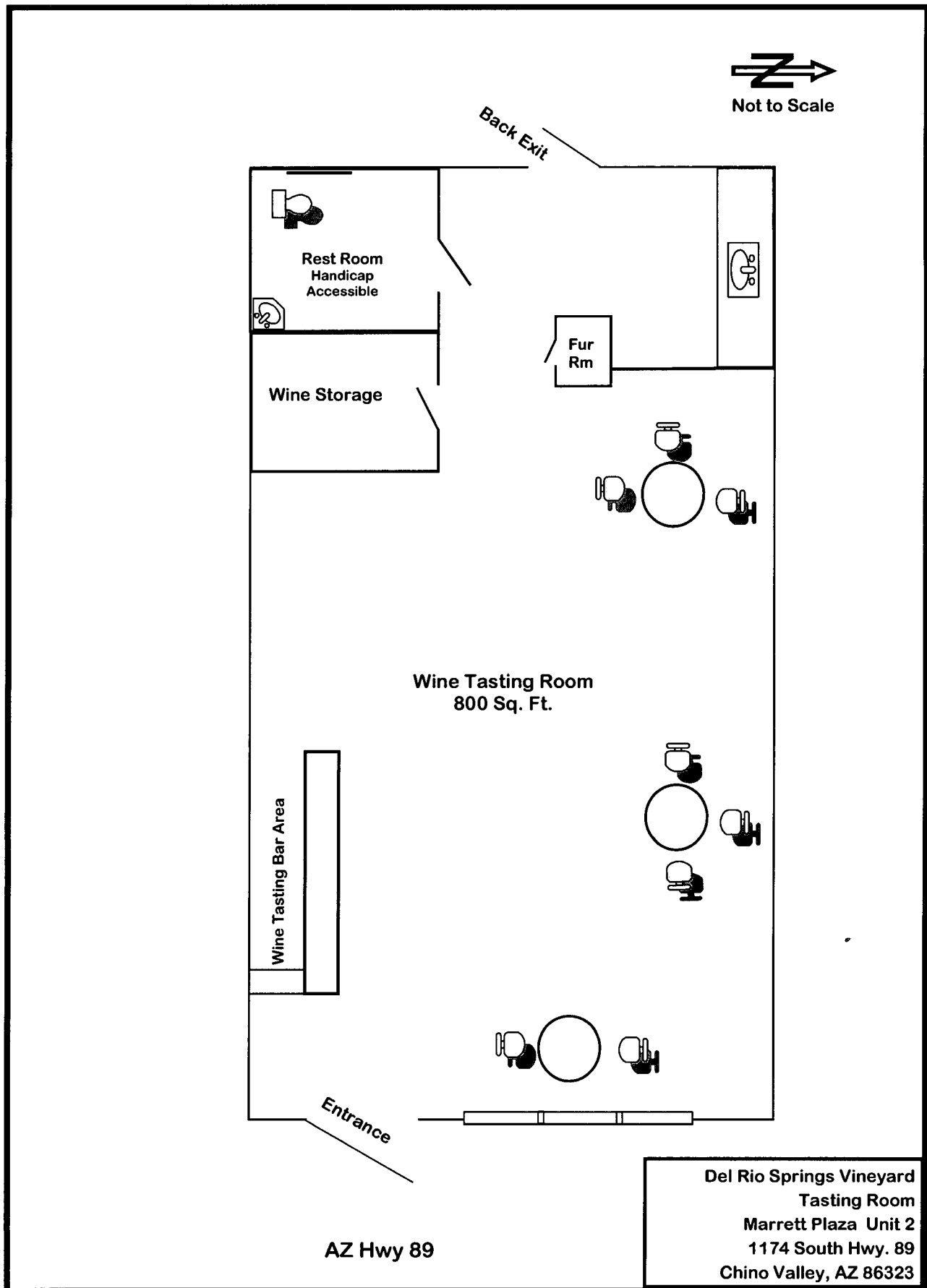
[farm winery: A.R.S. §4-205.04(F)(2)(B), craft distillery A.R.S. §4-205.10(D)(2)(b)]

SECTION 4 Diagram of Premises

In this diagram, please show only the area where liquor will be sold, served, consumed, dispensed, possessed and/or stored. It must show all entrances, exits, interior walls, bar areas and bar stools, hi-tops, dining tables and chairs, kitchen, dance floor, stage, game rooms, restrooms, etc. Do not include parking lots, living quarters. When completing the diagram, North is ____.

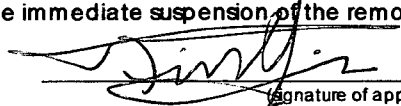
If a legible copy of a rendering or drawing of your premises is attached to this application, please write the words "diagram attached" in the box provided below.

"DIAGRAM ATTACHED"



SECTION 5 Signature, attestation, and notary:

I RICHARD E SKLADZIEK, declare that I am the APPLICANT filing this application, I have
 (printed full name)
 read this application, the contents and attest that all statements are true, correct and complete. I
 acknowledge that a license status, other than "active" on the series 13, 18, 2W or 2D license identified
 in Section 1, question # 7.a. will result in the immediate suspension of the remote tasting room license.



(signature of applicant)

NOTARY

The foregoing instrument was acknowledged before me this 17th day of Aug., 2015
 day month year

State of Arizona County of Yavapai
 state county

My commission expires on 2-10-18

(signature of NOTARY PUBLIC)
 signature of NOTARY PUBLIC



OFFICIAL SEAL
 C. WARREN
 NOTARY PUBLIC - STATE OF ARIZONA
 YAVAPAI COUNTY
 My Comm. Expires Feb. 10, 2018

For Local Government Use Only

For this remote tasting room application, the local government where the business will operate recommends:

☐ APPROVAL☐ DISAPPROVAL☐ NO RECOMMENDATION

Date: _____

printed name_____
Authorized Signature_____
Title_____
Agency

Direct daytime phone #: _____ Direct email address: _____

[farm winery: A.R.S. §4-205.04(F)(2)(B), craft distillery A.R.S. §4-205.10(D)(2)(b)]

For Department of Liquor Use Only

Date payment received: _____ CSR Name: _____

☐ Application Fee ☐ Site Inspection Fee ☐ Fingerprint Fee ☐ Issuance Fee

Investigating Officer: _____ Date of inspection: _____

Investigation ☐ Approval ☐ Disapproval_____
Director's signature, disapproval only

Pending application review by: _____ Date: _____

☐ Issue license ☐ Do not issue license ☐ Forward to Board for hearing

November 20, 2014

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Disabled individuals requiring special accommodations please call (602)542-9051

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TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. 6. b.

Meeting Date: 09/08/2015

Contact Person: Jami Lewis, Town Clerk

Phone: 928-636-2646 x-1208

Department: Town Clerk

Item Type: N/A

AGENDA ITEM TITLE:

Consideration and possible action to accept the July 28, 2015 regular meeting minutes. (Jami Lewis, Town Clerk)

RECOMMENDED ACTION:

Accept the July 28, 2015 regular meeting minutes.

Attachments

July 28, 2015 minutes

DRAFT

MINUTES OF THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF CHINO VALLEY

**TUESDAY, JULY 28, 2015
6:00 P.M.**

The Town Council of the Town of Chino Valley, Arizona, met for a Regular Meeting in the Chino Valley Council Chambers, located at 202 N. State Route 89, Chino Valley, Arizona, on Tuesday, July 28, 2015.

Present: Mayor Chris Marley; Vice-Mayor Darryl Croft; Councilmember Pat McKee; Councilmember Lon Turner; Councilmember Don Wojcik

Absent: Councilmember Mike Best

Staff: Town Manager Robert Smith; Assistant Town Manager Cecilia Grittmann; Town Attorney Phyllis Smiley; Finance Director Joe Duffy; Police Chief Chuck Wynn; Police Lieutenant Vince Schaan; Police Officer Dominic Gillo; Town Engineer/Public Works Director Ron Grittmann; Development Services Director Ruth Mayday; Senior Services Administrator Cyndi Thomas; GIS/CAD/Web Technician Jan Mazy; Deputy Town Clerk Liz Hart (recorder)

1) **CALL TO ORDER, INVOCATION; PLEDGE OF ALLEGIANCE; ROLL CALL**

Mayor Marley called the meeting to order at 6:01 p.m.

Mayor Marley gave the invocation and led the Pledge of Allegiance.

2) **INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS**

- a) Presentation of a commercial created by GIS/CAD/Web Technician Jan Mazy for the Chino Valley Library; and updates regarding Senior Center improvements and the Town's Customer Service Initiative. (Cecilia Grittmann, Assistant Town Manager)

Ms. Grittmann spoke about:

- videos made by Ms. Mazy regarding library improvements and the National Night Out event;
- Senior Center facility improvements;
- a donation by the Chino Valley Morning Lions to the Senior Center;
- the Town's Customer Service Initiative; and
- the employee Core Values program.

- b) Presentation of a donation to the Chino Valley Senior Center by the Chino Valley Morning Lions Club. (Cecilia Grittmann, Assistant Town Manager)

Lions Club representatives presented a \$1,000 check to the Senior Center for facility renovations.

3) CALL TO THE PUBLIC

Call to the Public is an opportunity for the public to address the Council concerning a subject that is not on the agenda. Public comment is encouraged. Individuals are limited to speak for three (3) minutes. The total time for Call to the Public may be up to 30 minutes per meeting. Council action taken as a result of public comment will be limited to directing staff to study the matter, scheduling the matter for further consideration and decision at a later date, or responding to criticism.

Beth Vicary with Arizona Miss Sparkles Junior Team, invited girls with special needs, ages 5 to 60 to participate in the Miss Sparkles Yavapai County Pageant being hosted by the Yavapai Fair in October.

Ilona Dean requested that the Town provide dust abatement on the unpaved section of E. Center Street during the Peavine Trail roadway construction.

4) RESPONSE TO THE PUBLIC

Response to the Public is an opportunity for the Mayor to inform the public about how Town officials addressed matters raised during Call to the Public at a previous meeting.

Mayor Marley responded to matters raised during the last meeting:

- *Opposition to Chino Meadows paving program omission of a section of Center Street* – Council reviewed the options and overrode Mr. Grittmann’s proposal to include that section at an extra cost. Town officials hoped to have Center Street paved during next year’s chip seal program.
- *Concern about Ordinance 15-797 amending Unified Development Ordinance Section 1.9.2(E) Protests* – Town staff needed three business days to make sure that protests were valid by confirming property ownership of protesters and to validate the 20% calculation. The new three-day filing requirement did not affect the 15-day public hearing notice requirement.

5) CURRENT EVENT SUMMARIES AND REPORTS

This item is for information only. The Mayor, any Councilmember, or Town Manager may present a brief summary or report of current events, or ask a staff member to provide the same. Presentation on information requested by the Mayor and Council will be made and questions answered. No action will be taken.

- a) Status reports by Mayor and Council regarding current events.

Mayor Marley reported on staff receiving 11 applications for the vacant Council position, and he read a letter of appreciation sent to the building department.

- b) Status report by Town Manager Robert Smith regarding Town accomplishments, and current or upcoming projects.

Mr. Smith presented data related to business licenses and building permits.

6) CONSENT AGENDA

All those items listed below are considered to be routine and may be enacted by one motion. Any Councilmember may request to remove an item from the Consent Agenda to be considered and discussed separately.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Lon Turner to approve consent agenda items 6a, b and c.

Vote: 5 - 0 PASSED - Unanimously

- a) Consideration and possible action to accept the June 9, 2015 regular meeting minutes. (Jami Lewis, Town Clerk)
- b) Consideration and possible action to accept the June 23, 2015 regular meeting minutes. (Jami Lewis, Town Clerk)
- c) Consideration and possible action to approve recommended budget adjustments for the Fiscal Year Ending June 30, 2015. The Contingency Budget will be reduced from \$367,000 to \$264,400. (Joe Duffy, Finance Director)

7) ACTION ITEMS

The Council may vote to recess the public meeting and hold an Executive Session on any item on this agenda pursuant to A.R.S. § 38-431.03(A)(3) for the purpose of discussion or consultation for legal advice with the Town Attorney. Executive sessions are not open to the public and no action may be taken in executive session.

- a) Council may vote to recess the regular meeting and hold an executive session pursuant to A.R.S. § 38-431.03(A)(1) for discussion or consideration of the appointment of Mark Widtfeldt, Leland Paul, Hans Vang, Eric Frayer, Corey Mendoza, Susan Keller, Dean Keller, Lillian Morales, Kathryn Napp, Mark Vucich, or Alex Harris to fill the vacancy on the Town Council. (Vice-Mayor Croft; Councilmember Best; Councilmember Turner)

Town Attorney Smiley advised that applicants Alex Harris and Lillian Morales had requested that discussion relating to them be held in public; thus, Council could not discuss them in the executive session.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Pat McKee to recess the regular meeting and hold the executive session at 6:25 p.m.

Vote: 5 - 0 PASSED - Unanimously

Mayor Marley reconvened the regular session at 6:45 p.m.

- b) Consideration and possible action to (i) review and discuss the final applicants for the vacant Council position as recommended by the Appointments Subcommittee; (ii) select an applicant to fill the vacant position; and (iii) administer the Oath of Office to said selected applicant. (Vice-Mayor Croft; Councilmember Best; Councilmember Turner)

Recommended Action: Discuss final applicants; select applicant to fill the vacant position; and

administer the Oath of Office.

The staff report by Town Clerk Jami Lewis stated that:

- On May 28, 2015, Council directed the Appointments Subcommittee to review the applications for the vacant Council seat and make a recommendation of five candidates to consider for appointment.
- The subcommittee met on July 6, 2015 to review the interview and selection process. They interviewed 11 applicants on July 14, 21, and 22; ranked the interviews on the 2nd, and voted to recommend the top five to Council.
- Staff informed the top five candidates that they should read the Open Meeting Law per A.R.S. § 38-431.01(G) so that, if appointed, the one selected could take the oath of office and be seated immediately upon appointment.

Councilmember McKee expressed interest in discussing Alex Harris' application.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Lon Turner to select Corey Mendoza as the applicant for the vacant Town Council position.

Vote: 3 - 2 PASSED

NAY: Councilmember Pat McKee
Councilmember Don Wojcik

Assistant Town Manager/Deputy Clerk Gritman administered the Oath of Office to Mr. Mendoza.

- c) (i) Public Hearing regarding application from Andrea Lewkowitz for the Acquisition of Control of an existing Series 9 (Liquor Store) Liquor License for Safeway, Inc., located at 1031 N. State Route 89, Chino Valley.
- (ii) Consideration and possible action to either allow or protest the change of ownership of the Series 9 Liquor License for Safeway, Inc. to the Arizona Department of Liquor Licenses and Control. (Jami Lewis, Town Clerk)

Recommended Action:

- (i) Hold Public Hearing.
- (ii) Take no action; OR Protest the acquisition of control of Safeway's Series 9 Liquor License.

The staff report by Town Clerk Jami Lewis stated that:

- Per A.R.S. § 4-203(F), on receipt of notice of an acquisition of control, the state director of liquor licensing forwards the notice to the local governing body. The Council may protest the acquisition of control within sixty days based on the capability, reliability and qualification of the person acquiring control. Absent a protest, the Council may take no action. Safeway, Inc. applied with the state for an Acquisition of Control of its Series 9 (Liquor Store) Liquor License.
- The Police and Planning Departments reviewed the application and offered no comments. Staff posted the establishment with the necessary notices to meet the required 20-day period from June 20, 2015 through July 28, 2015 and did not receive any written arguments in favor of or in opposition to the application.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Pat McKee to hold a public hearing.

Vote: 5 - 0 PASSED - Unanimously

No one from the public spoke.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Pat McKee to close the public hearing.

Vote: 5 - 0 PASSED - Unanimously

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Lon Turner to take no action on the liquor license.

Vote: 5 - 0 PASSED - Unanimously

- d) Consideration and possible action to adopt Resolution No. 15-1065 authorizing the application for a Clean Water State Revolving Fund (CWSRF) loan from the Water Infrastructure Finance Authority of Arizona (WIFA) for expenses related to refinancing the USDA debt and constructing the Mollie Rae sewer line extension, in an amount not to exceed \$4,560,000. (Joe Duffy, Finance Director)

Recommended Action: Adopt Resolution No. 15-1065 authorizing the loan application.

Mr. Duffy reported that:

- In 2007 and 2008, the Town entered into three loan agreements with USDA to finance sewer system improvements. The 30-year loans were at an interest rate of 4.125%. Staff proposed to refinance the debt through WIFA for 23 years at an anticipated interest rate less than 2.5%, for an estimated total cash savings of \$770,000.
- As WIFA could not refinance existing debt without lending new money, staff proposed a \$560,000 sewer line extension to Mollie Rae Subdivision. WIFA scored this project and determined that the Town was a disadvantaged community, allowing the Town to receive a subsidized interest rate of 20% on the project, and any unused funds could be re-obligated.
- Should Council authorize the debt, staff will submit the project finance application to WIFA by August 28, and the loan document would be ready for Council's consideration any time after October 26. If interest rates increased too much between now and then, Council had the option to shelve the project.

Town Engineer Grittman anticipated three to four months for the project design and three to four months for construction. He added that WIFA will prefund the project if Council so desired.

Tim Peterson, Mollie Rae developer, reported that the subdivision was debt free, and he and Mandalay Homes had built in the subdivision. The development's biggest challenge was the cost of water from Prescott. The prospect of the Town buying Prescott's water and installing sewer would make the homes more marketable. With sewer installed, he would consider developing the additional 30-plus acres on the corner of Road 1 West and Center Street.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Lon Turner to adopt Resolution No. 15-1065 authorizing the loan application.

Vote: 5 - 0 PASSED - Unanimously

- e) Consideration and possible action to amend Chino Valley Town Code Title 3 Administration, Section 30.023 by adding item (F) (5), which shall read: "Such emergency powers shall not continue for more than thirty consecutive days. Upon cessation of the declaration of emergency, the town council shall resume its regular duties." (Mayor Chris Marley)

Recommended Action: Approve Ordinance No. 15-801 amending the Town Code, Title 3 Administration, Chapter 30 Governing Body, Mayor, Section 30.023 Powers and Duties by adding item (F) (5), to limit the time of a Mayoral declared emergency to 30 consecutive days.

Mayor Marley reported that the Town Code provision for a mayoral declaration of emergency did not include any timeframes. He proposed to add paragraph F to the ordinance limiting the time of a mayoral declaration of emergency to 30 days. If an emergency needed to be extended, the mayor would have 30 days to restore the Council to make such decision.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Pat McKee to recommend and approve Ordinance No. 15-801 amending the Town Code, Title 3 Administration, Chapter 30 Governing Body, Mayor, Section 30.023 Powers and Duties by adding item (F) (5), to limit the time of a Mayoral declared emergency to 30 consecutive days.

Vote: 5 - 0 PASSED - Unanimously

8) EXECUTIVE SESSION

Council may vote to recess the Regular Meeting and hold an executive session, which will not be open to the public, for the following purposes.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Pat McKee to recess for five minutes then enter into executive session at 7:14 p.m.

Vote: 5 - 0 PASSED - Unanimously

- a) An executive session pursuant to A.R.S. § 38-431.03(A)(4) for discussion or consultation with the Town's Attorney in order to consider its position and instruct the Town's Attorney regarding the Town's position on a contract that is the subject of negotiations concerning acquisition of a portion of the City of Prescott water system. (Robert Smith, Town Manager)

9) ACTION ITEMS RESUMED

After the Executive Session, Council will reconvene the Regular Meeting.

Mayor Marley reconvened the regular meeting at 7:51 p.m.

10) ADJOURNMENT

MOVED by Councilmember Pat McKee, seconded by Vice-Mayor Darryl Croft to adjourn the meeting at 7:51 p.m.

Vote: 5 - 0 PASSED - Unanimously

Chris Marley, Mayor

ATTEST:

Jami C. Lewis, Town Clerk

CERTIFICATION:

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Meeting of the Town Council of the Town of Chino Valley, Arizona held on the 28th day of July, 2015. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 8th day of September, 2015.

Jami C. Lewis, Town Clerk



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. 6. c.

Meeting Date: 09/08/2015

Contact Person: Jami Lewis, Town Clerk

Phone: 928-636-2646 x-1208

Department: Town Clerk

Item Type: N/A

AGENDA ITEM TITLE:

Consideration and possible action to accept the August 11, 2015 regular meeting minutes. (Jami Lewis, Town Clerk)

RECOMMENDED ACTION:

Accept the August 11, 2015 regular meeting minutes.

Attachments

August 11, 2015 minutes

DRAFT

MINUTES OF THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF CHINO VALLEY

**TUESDAY, AUGUST 11, 2015
6:00 P.M.**

The Town Council of the Town of Chino Valley, Arizona, met for a Regular Meeting in the Chino Valley Council Chambers, located at 202 N. State Route 89, Chino Valley, Arizona, on Tuesday, August 11, 2015.

Present: Mayor Chris Marley; Vice-Mayor Darryl Croft; Councilmember Corey Mendoza; Councilmember Lon Turner

Absent: Councilmember Mike Best

Staff Town Manager Robert Smith; Town Attorney Phyllis Smiley; Police Lieutenant Vince Schaan;

Present: Police Sergeant Mat Gronek; Assistant Public Works Director/Town Engineer Michael Lopez; Deputy Town Clerk Liz Hart; Town Clerk Jami Lewis (recorder)

1) CALL TO ORDER, INVOCATION; PLEDGE OF ALLEGIANCE; ROLL CALL

Mayor Marley called the meeting to order at 6:01 p.m.

Vice-Mayor Croft gave the invocation; Mayor Marley led the Pledge of Allegiance.

2) INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS

- a) Proclamation declaring August 2015 as "America the Beautiful & Bag Ready Jobs Month," sponsored by the Mayors and Councils of the Quad Cities.

Mayor Marley read the proclamation and presented it to Gary Chamberlain with the Bag Ready Jobs program.

- b) Proclamation by Governor Douglas A. Ducey declaring August 2015 as "Child Support Awareness Month."

Mayor Marley read the proclamation.

3) CALL TO THE PUBLIC

Call to the Public is an opportunity for the public to address the Council concerning a subject that is not on the agenda. Public comment is encouraged. Individuals are limited to speak for three (3) minutes. The total time for Call to the Public may be up to 30 minutes per meeting. Council action taken as a result of public comment will be limited to directing staff to study the matter, scheduling the matter for further consideration and decision at a later date, or responding to criticism.

4) **RESPONSE TO THE PUBLIC**

Response to the Public is an opportunity for the Mayor to inform the public about how Town officials addressed matters raised during Call to the Public at a previous meeting.

- a) Response to the need for dust abatement on Center Street.

Mayor Marley reported that the recent rain had helped and he had contacted the Engineering Division about some type of temporary solution.

5) **CURRENT EVENT SUMMARIES AND REPORTS**

This item is for information only. The Mayor, any Councilmember, or Town Manager may present a brief summary or report of current events, or ask a staff member to provide the same. Presentation on information requested by the Mayor and Council will be made and questions answered. No action will be taken.

- a) Status reports by Mayor and Council regarding current events.

Mayor Marley reported on:

- the release of his latest Mayor's Report;
- the recent Highway 89 project ribbon cutting;
- local Horses With Heart rider, Jeremiah Schedlock, winning a gold medal at the Special Olympics World Games;
- Councilmember Don Wojcik's resignation from the Council;
- Councilmember Pat McKee's resignation from the Council; and
- a letter commending building permit staff for excellent service.

- b) Status report by Town Manager Robert Smith regarding Town accomplishments, and current or upcoming projects.

Mr. Smith reported on the September 5, 2015 Territorial Days events.

6) **CONSENT AGENDA**

All those items listed below are considered to be routine and may be enacted by one motion. Any Councilmember may request to remove an item from the Consent Agenda to be considered and discussed separately.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Lon Turner to accept the July 14, 2015 regular meeting minutes.

Vote: 4 - 0 PASSED - Unanimously

- a) Consideration and possible action to accept the July 14, 2015 regular meeting minutes. (Jami Lewis, Town Clerk)

7) ACTION ITEMS

The Council may vote to recess the public meeting and hold an Executive Session on any item on this agenda pursuant to A.R.S. § 38-431.03(A)(3) for the purpose of discussion or consultation for legal advice with the Town Attorney. Executive sessions are not open to the public and no action may be taken in executive session.

- a) Presentation by Scott Freitag, Fire Chief of the Central Yavapai and Chino Valley Fire Districts, and discussion regarding Fire Authority. (Robert Smith, Town Manager)

Chief Freitag reported that:

- In an effort to contain costs and continue providing the highest level of service, the Central Yavapai and Chino Valley Fire Districts had been looking for ways to work more closely together. After analyzing the available legal options, they determined that the best solution was for the two agencies to come together as a joint powers authority (JPA), as permitted under A.R.S. 48-805.01, and enter into an intergovernmental agreement (IGA) to create a Fire Authority.
- The Authority will create a smaller, more efficient, and sustainable government by controlling and reducing costs—estimated at an annual savings of \$377,730—and decreasing redundant positions. Chino and Central will form a third entity through the IGA, which will employ the whole staff and run operations, while each entity will retain its own authority for taxing, bonding, and elections purposes.
- Community feedback had been positive and the official start date for the JPA will be July 1, 2016.

- b) Consideration and possible action to approve the Professional Services Agreement with Civil Tec Engineering, Inc., for the preparation of engineering construction plans for the Old Home Manor Industrial Park project. in an amount not to exceed \$175,120.00. Funds to come from the grant line item and will not be expended until final Economic Development Administration (EDA) funding is secured. (Ron Gritman, Public Works Director/Town Engineer)

Recommended Action: Approve the professional services agreement with Civil Tec Engineering, Inc., for the preparation of engineering construction plans for the Old Home Manor Industrial Park project. in an amount not to exceed \$175,120.00.

Assistant Public Works Director/Town Engineer Michael Lopez reported that:

- The Town was pursuing development of an industrial park at Old Home Manor with the assistance of a series of grants from various private, state, and federal sources.
- The subject agreement will enable preparation of a bid-ready set of construction plans to meet the various requirements for each funding source. The plans will include roadway improvements, federal flood map adjustments, sewer improvements, and water main improvements.
- Layering of funding was typical with such economic development projects, and coordinating the various layers of funding could be tricky, as deadlines did not always coincide with each other. Because Congress did not approve an appropriations bill in a timely manner, the 2014 bill ran out, leaving no funding for the December 2014 round, which was canceled and forced all applications to the March 2015 round. This delayed the project three months, which conflicted with the terms of the ACA Rural Economic Development Grant (REDG) that required initiation of the project within six months of signing the REDG contract.
- Staff then petitioned the ACA for an extension and the ACA extended the contract by 60 days to an August 19, 2015 deadline. Staff will direct the significant engineering portion,

so that it will be performed upon final approval of funding by the EDA, which will also have final approval of construction plans.

- In the unlikely event that the EDA did not fund this project, the agreement could be canceled. Staff expected final notice of the award to occur between August 1 and August 19, 2015.

Mayor Marley disclosed that he lived near the project but would not be affected as his home already had sewer.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Lon Turner to approve the professional services agreement with Civil Tec Engineering, Inc., for the preparation of engineering construction plans for the Old Home Manor Industrial Park project. in an amount not to exceed \$175,120.00.

Vote: 4 - 0 PASSED - Unanimously

- c) Consideration and possible action to direct staff to schedule a Strategic Planning Retreat for the Town Council, to be scheduled by the end of October 2015. (Cecilia Grittman, Assistant Town Manager)

Recommended Action: Direct staff to work with the Mayor in scheduling a Strategic Planning Retreat for the Town Council, to be scheduled by the end of October 2015.

Town Manager Smith reported that:

- Council held a Strategic Planning Retreat in 2013 and prioritized the items developed in the retreat in May 2014. It was now appropriate for Council to revisit the Strategic Plan, include new projects and capital plan, create and prioritize tasks and goals, refine the mission statement, and communicate their vision.
- The Mayor desired that a day-long retreat be held by the end of October 2015. He also suggested that Council invite the Chamber of Commerce Board to attend the last two hours of the retreat, so that the two Boards may discuss and develop some common goals and vision.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Corey Mendoza to direct staff to work with the Mayor in scheduling a Strategic Planning Retreat for the Town Council, to be scheduled by the end of October 2015.

Vote: 4 - 0 PASSED - Unanimously

- d) Consideration and possible action to update the appointment of Councilmembers and staff to various regional and state entity committees. (Jami Lewis, Town Clerk)

Recommended Action: Appoint Councilmembers and/or staff to fill vacant positions on various entity committees and update existing appointments, as applicable.

Mrs. Lewis reported that Council needed to appoint members to agency or entity positions left vacant by Linda Hatch's resignation from the Council.

Council reviewed the open positions. Mayor Marley volunteered for the YRMC Board of Electors and Upper Verde River Watershed Protection Coalition, and Vice-Mayor Croft volunteered for the Risk Pool.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Lon Turner to appoint Councilmembers and/or staff to fill vacant positions on various entity committees and update existing appointments, as discussed.

Vote: 4 - 0 PASSED - Unanimously

- e) Consideration and possible action to fill vacancies and/or modify members on Council subcommittees (Appointments, Economic Development, Finance, Program Review, Public Safety, and Water and Utilities). (Jami Lewis, Town Clerk)

Recommended Action: Fill vacancies and modify subcommittee members as discussed.

Mayor Marley reported that the Council's six subcommittees now had vacancies due to the recent resignations of three councilmembers. Ms. Lewis stated that, at this time, the main issue was making sure each subcommittee had a quorum.

Councilmember Mendoza volunteered to fill the three slots left vacant by former Councilmember Hatch.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Lon Turner to fill vacancies and modify subcommittee members as discussed.

Vote: 4 - 0 PASSED - Unanimously

- f) Consideration and discussion regarding the procedure to appoint a councilmember to the vacant position and possible action to instruct staff to proceed with such procedure. (Mayor Marley)

Recommended Action: Instruct staff to proceed with appointment procedure per Council's discussion.

Ms. Lewis reported that:

- On August 6, 2015, Councilmember Don Wojcik submitted his resignation from the Council on August 7, 2015. In addition, Councilmember Pat McKee submitted her resignation on August 10, 2015. Mr. Wojcik's and Ms. McKee's terms end in December 2018. Pursuant to state law, because the resignations occurred more than 30 days before the nomination petition deadline for the next regularly scheduled council election in November 2016, an appointee will serve until the person elected at the November 2016 election is seated. The person elected at the November 2016 election to fill this seat will serve only the remaining two years of those terms.
- When a vacancy of the Council occurred in May 2015, the Town Attorney provided a memorandum explaining the relevant existing laws and Town policy, and offering several options regarding a procedure for appointment of a new councilmember. Staff also provided a draft timeline for recruitment. Council reviewed these materials and instructed staff to proceed with recruitment, resulting in an appointment on July 28, 2015.

- The Town Attorney recommended the same process for the new vacancies.

Vice-Mayor Croft recommended that staff retain the applications from the previous recruitment and re-advertise for the positions; and the Appointments Subcommittee interview new applicants and make a recommendation to Council.

Council asked about Councilmember Mendoza attending the subcommittee interviews. Town Attorney Smiley advised that including another councilmember would constitute a quorum of the Council and would violate the Open Meeting Law.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Lon Turner to proceed with appointment procedure per Council's discussion, which is to go back and re-advertise and go through the interview process.

Vote: 4 - 0 PASSED - Unanimously

- g) Discussion regarding the effect of modifying sections 50.56, 51.137, and 51.155 of the Town Code (Town sewer ordinance mandatory hookup requirements) (Mayor Marley)

Recommended Action: Refer to the Water & Utilities Subcommittee.

Mayor Marley reported that he opened this discussion a few meetings back and now suggested that Council refer the matter to the Water and Utilities Subcommittee.

MOVED by Vice-Mayor Darryl Croft, seconded by Councilmember Lon Turner to refer item g to the Water and Utilities Subcommittee.

Vote: 4 - 0 PASSED - Unanimously

8) EXECUTIVE SESSION

Council may vote to recess the Regular Meeting and hold an executive session, which will not be open to the public, for the following purposes.

9) ACTION ITEMS RESUMED

After the Executive Session, Council will reconvene the Regular Meeting.

10) ADJOURNMENT

MOVED by Councilmember Corey Mendoza, seconded by Vice-Mayor Darryl Croft to adjourn the meeting at 6:56 p.m.

Vote: 4 - 0 PASSED - Unanimously

Chris Marley, Mayor

ATTEST:

Jami C. Lewis, Town Clerk

CERTIFICATION:

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Meeting of the Town Council of the Town of Chino Valley, Arizona held on the 11th day of August, 2015. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 8th day of September, 2015.

Jami C. Lewis, Town Clerk



TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. 7. a.

Meeting Date: 09/08/2015
Contact Person: Ruth Mayday, Development Services Director
 Phone: 928-636-4427 x-1217
Department: Development Services
Item Type: Action Item - Presentation
Estimated length of staff presentation: 5 minutes
Physical location of item: Old Home Manor

AGENDA ITEM TITLE:

Consideration and possible action to authorize the Mayor, or in his absence, the Vice Mayor, to sign all documents related to the Grant Agreement with the Economic Development Administration in the amount of \$1.6 million dollars with a contribution by the Town of \$447,750.00. The breakdown of the match is as follows: Arizona Commerce Authority Rural Economic Development Grant: \$250,000; Town of Chino Valley \$127,500; APS \$75,000 Total: \$452,500

RECOMMENDED ACTION:

Authorize the Mayor or Vice Mayor to accept the EDA grant in the amount of \$1.6 million dollars with a Town contribution of \$447,750.00 on the terms offered by the Economic Development Administration and to sign all documents and agreements related to the grant.

SITUATION AND ANALYSIS:

Issue Statement

As the installation of infrastructure at Old Home Manor is crucial to the development of economic opportunity in the Town of Chino Valley, staff recommends authorizing the Mayor or Vice Mayor to sign all documents related to the grant agreement. By signing the documents, the Town is agreeing to accept the grant and to comply with the terms of the grant and to accept the award, subject to the terms.

These are standard terms for grants of federal funds and include accounting and audit provisions, Project scheduling requirements, reporting requirements, allowable costs, commitment of Recipient's matching share, financial requirements, procurement standards, and other standard requirements such as non-discrimination, environmental and similar matters.

Applicable "Policy"

Satisfaction of "Policy"

Summary of Issues and Staff Rationale

Findings of Fact

Fiscal Impact**Fiscal Impact?:** No**If Yes, Budget Code:****Available:****Funding Source:**

AttachmentsAward LetterStandard TermsFinancial Assistance Terms and ConditionsSpecial Award ConditionsSpecial Awards AttachmentsAcceptance Letter

**U. S. DEPARTMENT OF COMMERCE**

Economic Development Administration
915 Second Avenue, Room 1890
Seattle, WA 98174
Fax: 206.220.7669
Voice: 206.220.7660

August 24, 2015

In reply refer to:
Investment No.: 07 01 07213

The Honorable Chris Marley
Mayor of Chino Valley
Town Hall
Town of Chino Valley
202 North State Route 89
Chino Valley, Arizona 86323

Dear Mayor Marley:

I am pleased to inform you that the Economic Development Administration (EDA) has approved a Financial Assistance Award in the amount not to exceed \$1,600,074 in response to your Application for Federal Assistance to fund the construction of water and sewer lines to improve infrastructure for an industrial park.

Enclosed are three signed copies of the Financial Assistance Award. Your agreement to the terms and conditions of the award should be indicated by the signature of your principal official on each of the signed copies of the Financial Assistance Award. Two of the executed copies should be returned to: A. Leonard Smith, Regional Director, Seattle Regional Office, Economic Development Administration, 915 Second Avenue, Room 1890, Seattle, Washington 98174-1012. If not signed and returned within 30 days of receipt, EDA may declare the Award null and void.

Please, do not make any commitments in reliance on this award until you have carefully reviewed and accepted the terms and conditions. Any commitments entered into prior to obtaining the approval of EDA in accordance with its regulations and requirements will be at your own risk.

EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA implements this mission by making strategic investments in the nation's most economically distressed communities that encourage private sector collaboration and creation of higher-skill, higher wage jobs. EDA investments are results driven, embracing the principles of technological innovation, entrepreneurship, and regional development.

I share your expectations regarding the impact of this investment and look forward to working with you to meet the economic development needs of your community.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Leonard Smith".

A. Leonard Smith
Regional Director

Enclosures

c: Jacob Macias, Economic Development Representative

**U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION**

**STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS**

Title II
Public Works and Economic Development Facilities
and
Economic Adjustment Assistance Construction Components



March 12, 2013

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**U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION**

**STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS**

Title II
Public Works and Economic Development Facilities
and
Economic Adjustment Assistance Construction Components

PREFACE

Terms and Conditions of the Award. This financial assistance award on Form CD-450 or any successor form (this “Award”), executed by the Economic Development Administration (“EDA”) and the Recipient, and any properly executed amendment hereto, together with the EDA-approved project budget and scope of work, these construction standard terms and conditions, special award conditions, and all applicable federal statutory and regulatory requirements as incorporated by reference (e.g., all applicable statutes, regulations, Executive Orders, and Office of Management and Budget (OMB) Circulars), constitute the complete requirements, hereinafter referred to as the “Terms and Conditions,” applicable to the EDA investment.

The Recipient and any subrecipient must, in addition to the assurances made as part of the application for investment assistance, comply with and require each of its contractors and subcontractors employed in the completion of the project to comply with the applicable Terms and Conditions of this Award.

This Award is subject to the laws and regulations of the United States. Any inconsistency or conflict in the Terms and Conditions specified in this Award will be resolved according to the following order of precedence: public laws, regulations (including applicable notices published in the *Federal Register*), Executive Orders, OMB Circulars, EDA’s construction standard terms and conditions, and special award conditions. A special award condition may take precedence on a case-by-case basis over a construction standard term or condition when warranted by specific project circumstances.

Some of EDA’s construction terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes or regulations published in the *Federal Register* or the *Code of Federal Regulations* (“C.F.R.”), Executive Orders, OMB Circulars, or the assurances required of the Recipient (See Forms SF-424B and SF-424D). To the extent that it is a summary, such provision is not in derogation of, or an amendment to, any such statute, regulation, Executive Order, OMB Circular, or assurance.

ECONOMIC DEVELOPMENT ADMINISTRATION STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS

Title II - Public Works and Economic Development Facilities
and
Title II - Economic Adjustment Construction Components

A. General Requirements and Responsibilities.

1. Purpose.

The Economic Development Administration's ("EDA") grants for (i) public works (42 U.S.C. § 3141) and (ii) economic adjustment (42 U.S.C. § 3149) projects are designed to enhance regional competitiveness and promote long-term economic development in regions experiencing substantial economic distress. EDA provides construction, design, and engineering grants to assist distressed communities and regions revitalize, expand, and upgrade their physical infrastructure to attract new industry, encourage business expansion, diversify local economies, and generate or retain long-term private sector jobs and investment. The requirements set forth in these construction standard terms and conditions (the "Construction Standard Terms and Conditions") are applicable to construction, design, and engineering projects funded in whole or in part by EDA. Any necessary modifications of these requirements will be addressed in special award conditions to accommodate individual projects. In addition, these Construction Standard Terms and Conditions apply to construction projects of revolving loan funds ("RLFs") awarded between 1975 and 1999 under EDA's Title IX Economic Adjustment Assistance Program, as well as to RLFs funded after February 11, 1999 under section 209 of PWEDA (42 U.S.C. § 3149).

2. Authority and Policies.

EDA is a bureau within the U.S. Department of Commerce established under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 *et seq.*) ("PWEDA"). (See 13 C.F.R. § 300.1.) As a Federal agency, EDA is obligated to promulgate regulations and establish policies and procedures to:

- a. Ensure compliance with applicable federal requirements;
- b. Safeguard the public's interest in the grant assets; and
- c. Promote the effective use of grant funds in accomplishing the purpose(s) for which they were awarded.

The Department or EDA may issue changes from time to time to the regulations and other requirements and policies that apply to this Award. Such changes may upon occasion increase administrative or programmatic flexibility in administering this Award in a manner that is mutually beneficial to EDA and to the Recipient. The implementation of any such regulatory, administrative, or programmatic change in administering this Award must have prior EDA written approval.

EDA's policy is to administer all Awards uniformly; however, there may be special circumstances that warrant a variance. To accommodate these circumstances and to encourage innovative and creative ways to address economic development problems, EDA will consider requests for variances to the procedures set out in these Construction Standard Terms and Conditions if they do not conflict with applicable Federal statutory and regulatory requirements, are consistent with the goals of EDA's programs, and make sound economic and financial sense.

3. **Definitions.**

Whenever used in these Construction Standard Terms and Conditions, the following words and phrases shall have the following meanings:

- a. "Assistant Secretary" refers to the Assistant Secretary of Commerce for Economic Development;
- b. "Award" – see the definition set out in the first paragraph of the Preface above;
- c. "Closeout" or "Project Closeout" refers to the process by which the Grants Officer determines that all applicable administrative actions and all required work under the Award has been completed by the Recipient and EDA;
- d. "Department" or "DOC" refers to the U.S. Department of Commerce;
- e. "Government" or "Federal Government" refers to EDA;
- f. "Grants Officer" refers to the Regional Director in the appropriate Regional Office;
- g. "Project Officer," refers to the EDA official responsible for technical or other programmatic aspects of the Award. During the post-approval stage of the Award, EDA generally assigns this role to an EDA Engineer/Construction Manager.
- h. "Project" refers to the activity for which the EDA grant was awarded;
- i. "Recipient" refers to the undersigned grantee of U.S. government funds under the Award to which this document is made a part;
- j. "Regional Office" refers to an EDA Regional Office;
- k. "Subrecipient" or "Subgrantee" refers to the legal entity to which a subaward is made and which is accountable to the Recipient for the use of grant funds (this term does not include subcontractors with whom the Recipient enters into a contractual agreement); and
- l. "Terms and Conditions of the Award" – see the definition set out in the first paragraph of the Preface above.

Capitalized terms used but not otherwise defined in these Construction Standard Terms and Conditions have the meanings ascribed to them in EDA's regulations at 13 C.F.R. §§ 300.3, 302.20, 307.8, and 314.1.

4. **Grant Recipient as Trustee.**

The Recipient holds grant funds and any EDA-assisted Project property in trust for the purpose(s) for which the Award was made. The Recipient's obligation to the Federal Government continues for the

estimated useful life of the Project, as determined by EDA, during which EDA retains an undivided equitable reversionary interest (the “Federal Interest”) in the property improved, in whole or in part, with the EDA investment. See 13 C.F.R. § 314.2.

If EDA determines that the Recipient fails or has failed to meet this obligation, the agency may exercise any rights or remedies with respect to its Federal Interest in the Project. However, EDA’s forbearance in exercising any right or remedy in connection with the Federal Interest does not constitute a waiver thereof.

The Recipient agrees to provide EDA with information and documentation necessary for the agency to conduct due diligence to ensure the business integrity and responsibility of the Recipient and key individuals associated with the Recipient in the management or administration of this Award.

5. Reaffirmation of Application.

Recipient(s) acknowledges that Recipient’s application for this Award may have been submitted to the Government and signed by Recipient(s), or by an authorized representative of Recipient, electronically. Regardless of the means by which Recipient(s) submitted its application to the Government or whether Recipient or an authorized representative of Recipient submitted its application to the Government, Recipient(s) hereby reaffirms and state that:

- a. All data in said application and documents submitted with the application are true and correct as of the date of this Award and were true and correct as of the date of said submission;
- b. Said application was as of the date of this Award and as of the date of said application duly authorized as required by local law by the governing body of the Recipient(s) and
- c. Recipient(s) confirms that it will comply with the Assurances and Certifications submitted with, or attached to, said application.

For purposes of this provision, 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 the initial application.

B. Financial Requirements.

1. Financial Reports.

- a. While EDA generally does not advance funds under an Award, the Recipient must submit Form SF-272, “Report of Federal Cash Transactions,” for any Award where funds are to be advanced to the Recipient. Form SF-272 is due 15 business days following the end of each quarter for an Award under \$1 million, 15 business days following the end of each month for

an Award totaling \$1 million or more per year, or as otherwise specified in a special award condition. See 15 C.F.R. §§ 14.52(a)(2) or 24.41(c), as applicable.

- b. Any Recipient whose Award has not been fully disbursed is required to submit Form SF-425, “Federal Financial Report” to EDA semi-annually to report on the status of unreimbursed obligations. This report will provide information on the amount of allowable Project expenses that have been incurred, but not claimed for reimbursement by the Recipient. The reports must be submitted in accordance with the schedule outlined in the applicable Special Award Conditions. If deadlines for the submission of reports are not documented in the Special Award Conditions, the SF-425 shall be semi-annually, with the first report period ending as of March 31 of each year and submitted to EDA no later than April 30 of each year, and the second report ending as of September 30 of each year submitted to EDA no later than October 30 of each year. Instructions for completing and submitting Form SF-425 will be discussed during the project kick-off meeting. Recipients may contact their applicable EDA Project Officer with questions on how to complete or submit the report, if necessary; however Recipients are still required to submit reports on time and are encouraged to pose such questions sufficiently prior to the deadline to allow for timely submission of required reports.
- c. The Recipient must submit a final financial report using Form SF-425 within 90 calendar days of the expiration date of the Award.
- d. Noncompliance with these requirements will result in the suspension of disbursements under this Award.
- e. Financial reports are to be submitted to the Project Officer in electronic format, unless otherwise specified in the applicable special award conditions.

2. Disbursement Requests.

- a. *Method of Payment.* The Grants Officer determines the appropriate method of payment. Unless otherwise specified in a special award condition, the method of payment under this Award will be reimbursement. Payments will be made through electronic funds transfers directly to the Recipient’s bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3720B *et seq.*). The Award number shall be included on all payment-related correspondence, information, and forms.
- b. *Disbursement Requests.* The Recipient shall use Form SF-271, “*Outlay Report and Request for Reimbursement for Construction Programs*,” to request reimbursement under the Award. Substantiating invoices and/or vouchers also must be provided. Each request for the disbursement of funds shall be made to the Project Officer. Form SF-271 can be downloaded from OMB’s website at www.whitehouse.gov/omb/grants/grants_forms.html.

- c. *Initial Disbursement Request.* For the initial disbursement only, the Recipient must complete and submit Form SF-3881, “ACH Vendor/Miscellaneous Payment Enrollment Form,” along with Form SF-271, to the applicable EDA Project Officer.
- d. *Interim Disbursement Requests.* All requests for interim disbursement shall be submitted using Form SF-271 and include substantiating invoices and/or vouchers.

3. Federal and Non-Federal Cost Sharing.

- a. For the purposes of this Award, the Federal share is the amount of EDA funds invested under the Award, while the non-federal share, or “Matching Share,” means non-EDA funds and any in-kind contributions that are approved by EDA and provided by the Recipient or third parties as a condition of the Award. Awards that include the Federal and non-Federal share incorporate an estimated budget consisting of shared allowable costs. If actual allowable costs are less than the total approved estimated budget, the Federal share and Matching Share shall be calculated by applying the approved federal and non-federal cost share ratios to actual allowable costs. See 13 C.F.R. §§ 305.10 and 308.1. If actual allowable costs are greater than the total approved estimated budget, the federal share shall not exceed the total federal dollar amount authorized by this Award.
- b. The Matching Share, whether cash or in-kind, shall be paid out at the same rate as the federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the Recipient must meet its cost share commitment over the Award period.
- c. The Recipient must create and maintain sufficient records justifying the required Matching Share to facilitate questions, audits, and other inquiries necessary to meet EDA’s requirements to safeguard Federal funds, and must provide these records if requested by EDA, auditors, or other Federal parties. EDA may disallow undocumented costs. See section C.17 of these Construction Standard Terms and Conditions.
- d. The Recipient shall show that the Matching Share is committed to the Project, available as needed, and not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. See 13 C.F.R. § 301.5.

4. Budget Revisions and Transfers of Funds Among Budget Categories.

The EDA-approved budget is the budget plan for the Project. The Recipient must notify EDA of any deviation from the budget or program plans, including any change in scope of work or the objective of the Project (even if there is no associated budget revision requiring prior written approval). See 15 C.F.R. §§ 14.25 or 24.30, as applicable.

- a. Requests for budget revisions to the EDA-approved budget in accordance with the provisions provided below must be submitted through the Project Officer to the Grants Officer, who shall make the final determination on such requests and notify the Recipient in writing.
- b. Amendments to this Award require preparation of Form CD-451, "*Amendment to Financial Assistance Award*," or any successor form, for execution by both the Grants Officer and the Recipient. Form CD-451 is required for the following:
 - (i) Changes to the Project scope of work;
 - (ii) Budget revisions requiring additional EDA or non-EDA funds;
 - (iii) Budget revisions that result in cumulative transfer among direct cost categories in excess of 10 percent of the project cost and the federal share is greater than \$100,000;
 - (iv) The inclusion of costs for which EDA's prior approval is needed under the following OMB Circulars: Circular A-21, "*Cost Principles for Educational Institutions*" (2 C.F.R. part 220); Circular A-87, "*Cost Principles for State, Local, and Indian Tribal Governments*" (2 C.F.R. part 225); and Circular A-122, "*Cost Principles for Non-Profit Organizations*" (2 C.F.R. part 230), as applicable;
 - (v) Change of site location;
 - (vi) Change or addition of Recipient;
 - (vii) Time extensions; and
 - (viii) Modifications to the Terms and Conditions of the Award, other than time extensions.
- c. When an Award supports both construction and non-construction work, the Recipient must obtain prior written approval from the Grants Officer before making any fund or budget transfer from non-construction to construction or vice versa. See 15 C.F.R. §§ 14.25(j) or 24.30(c)(3), as applicable.
- d. Transfers shall not be permitted if such transfers would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the Recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior written approval. In addition, this does not prohibit the Recipient from requesting the Grants Officer's approval for revisions to the budget. See 15 C.F.R. §§ 14.25(e) and (f) or 24.30(c), as applicable.
- e. The Recipient is not authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.
- f. *Project Underrun Amounts.* Underrun amounts shall be transferred to the contingencies line item. Contingency funds are to be used to address situations resulting from unknown conditions and changes required for the fulfillment of authorized activities under this Award. EDA may approve the use of underrun funds to increase the Federal share of the Project or further improve the Project, as long as the improvements are approved by EDA and consistent with the original purpose of the approved EDA investment. See 13 C.F.R. § 308.1.

- g. *Additional EDA Funding in Case of Project Overrun Amounts.* In accepting the Award, the Recipient agrees to fund any overrun amounts. Additional EDA assistance for an approved Project may not be approved.

5. Indirect Costs and Facilities and Administrative Costs.

- a. Indirect costs, or facilities and administrative (F&A) costs for educational institutions, are generally not applicable under this Award.
- b. When indirect costs are applicable, they will not be allowable charges against the Award unless permitted under the award and specifically included as a line item in the award's approved budget.
- c. Excess indirect costs may not be used to offset unallowable direct costs.
- d. OMB established the cognizant agency concept, under which a single agency represents all others in dealing with Recipients in common areas. The cognizant agency reviews and approves Recipients' indirect cost rates. Approved rates must be accepted by other agencies, unless specific program regulations restrict the recovery of indirect costs. If indirect costs are permitted and the Recipient would like indirect costs in its budget, but the Recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate is subject to the procedures in applicable cost principles and the following subparagraphs:
 - (i) State and Local Governments: Department of Health and Human Services (HHS) serves as the cognizant agency for all States and most cities. For certain State agencies, cities and counties, OMB published a list of cognizant Federal agency assignments on January 6, 1986 (51 F.R. 552). The cognizant agency for governmental units or agencies not specifically identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. See Subsection D.1.b. of Appendix E to 2 C.F.R. part 225 (OMB Circular A-87);
 - (ii) Indian Tribes: Department of the Interior serves as the cognizant agency for all Indian tribal governments. See Subsection D.1.c. of Appendix E to 2 C.F.R. part 225 (OMB Circular A-87);
 - (iii) Educational Institutions: Department of Health and Human Services or the Department of Defense's Office of Naval Research serves as the cognizant agency for educational institutions as determined in accordance with Subsection G.11. of Appendix A to 2 C.F.R. part 220 (OMB Circular A-21);
 - (iv) Non-Profit Organizations: Cognizant agency is determined by calculating which Federal agency provides the largest dollar amount of awards to the non-profit organization in accordance with Subsection E.2. of Appendix A to 2 C.F.R. part 230 (OMB Circular A-122); and

- (v) Hospitals: Department of Health and Human Services serves as the main cognizant agency for hospitals. See Appendix E to 45 C.F.R. part 74.

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

Within 90 business days of the Award start date, the Recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review:

Office of Acquisition Management
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W., Room # 6054
Washington, DC 20230

The Recipient shall provide the Project Officer with a copy of the transmittal letter.

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

- e. When DOC is not the oversight or cognizant Federal agency, the Recipient shall provide the Project 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.
- f. If the Recipient fails to submit the required documentation to DOC within 90 business 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 good and sufficient cause to excuse the Recipient's delay in submitting the documentation, an extension of the 90-business day due date may be approved by the Grants Officer.
- g. The maximum dollar amount of allocable indirect costs for which DOC will reimburse the Recipient shall be the lesser of:
 - (i) The line item amount for the Federal share of indirect costs contained in the approved budget of the Award; or

- (ii) The Federal share of the total allocable indirect costs of the Award based on the indirect cost rate approved by a cognizant or oversight Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the Award end date.

6. Incurring Costs Prior to Award.

Project activities carried out prior to EDA's approval of this Award shall be carried out at the sole risk of the Recipient. Such activity is subject to the rejection of the application, the disallowance of costs, or other adverse consequences as a result of noncompliance with EDA or federal law, including but not limited to procurement requirements, civil rights requirements, federal labor standards, or environmental and historic preservation requirements. The Grants Officer must authorize pre-award costs in writing and such costs must also be allowable under relevant Federal cost principles and the specific Award terms and included in the EDA-approved budget. Pre-award costs not included and approved in the authorized budget are not allowable and may not be reimbursed. See 13 C.F.R. § 302.8.

7. Incurring Costs or Obligating Federal Funds Beyond the Project Expiration Date.

- a. The Recipient shall not incur costs or obligate funds for any purpose pertaining to the Project, program, or activities beyond the authorized project period documented in the Award agreement, unless a written time extension of this Award is granted by the Grants Officer. The only costs that are authorized for a period of up to 90 calendar days following that date are those strictly associated with Closeout activities. Closeout activities are generally limited to the preparation of final progress, financial, and required project audit reports unless otherwise approved in writing by the Grants Officer. The Grants Officer may approve extensions of the 90-calendar day Closeout period upon a request by the recipient as provided in 15 C.F.R. §§ 14.71 or 24.50.
- b. The Recipient shall adhere to the development time schedule and time limits set out in the Terms and Conditions of this Award. Any such Term or Condition supersedes the development time schedule and time limits set out in these Construction Standard Terms and Conditions.
- c. Neither DOC nor EDA have any obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the project period is at the sole discretion of DOC and/or EDA.

8. Time Extensions.

- a. Unless otherwise authorized in 15 C.F.R. §§ 14.25(e)(2) or 24.30, as applicable, or a special award condition, any extension of the Project period can only be authorized by the Grants

Officer in writing. A verbal or written assurance of funding from other than the Grants Officer, including Regional Office staff other than the Grants Officer, does not constitute authority to obligate funds for programmatic activities beyond the expiration date.

- b. The Recipient is responsible for implementing the Project in accordance with the development time schedule contained in this Award. As soon as the Recipient becomes aware that it will not be possible to meet the development time schedule, the Recipient must notify the Grants Officer. The Recipient's notice to EDA must contain the following:
 - (i) An explanation of the Recipient's inability to complete work by the specified date (e.g., a lengthy period of unusual weather delayed the contractor's ability to excavate the site, major re-engineering required in order to obtain State or federal approvals, unplanned environmental mitigation required);
 - (ii) A statement that no other changes to the Project are contemplated;
 - (iii) Documentation that demonstrates there is still a bona fide need for the Project; and
 - (iv) A statement that no further delay is anticipated and that the Project can be completed within the revised time schedule.

EDA reserves the right to withhold disbursements while the Recipient is not in compliance with the time schedule. EDA reserves the right to suspend or terminate this Award if the Recipient fails to proceed with reasonable diligence to accomplish the Project as intended.

9. Tax Refunds.

Refunds of Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) taxes received by the Recipient during or after the Project period must be refunded or credited to DOC where the benefits were financed with federal funds under the Award. The Recipient agrees to contact the Grants Officer immediately upon receipt of these refunds. The Recipient further agrees to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the expiration of this Award.

10. Program Income.

For Projects that create long-term rental revenue (e.g., buildings or real property constructed or improved for the purpose of renting or leasing space), the Recipient agrees to use such income generated from the rental or lease of any Project facility in the following order of priority:

- a. Administration, operation, maintenance, and repair of Project facilities for their estimated useful life (as determined by EDA) in a manner consistent with good property management practice and in accordance with established building codes. This includes, where applicable, repayment of indebtedness resulting from any EDA-approved encumbrance (e.g., approved mortgage) on the EDA-assisted facility.

- b. Economic development activities that are authorized for support by EDA, provided such activities meet the economic development purposes of PWEDA.

See 15 C.F.R. §§ 14.24 or 24.25, as applicable.

C. Programmatic Requirements.

1. Project Progress and Performance Reporting.

- a. Project progress reports must be submitted in accordance with the procedures set out in 15 C.F.R. parts 14 or 24, as applicable, and as indicated below. Failure to submit required reports in a timely manner may result in the withholding of payments under this Award; deferral of processing of new awards, amendments, or supplemental funding pending the receipt of the overdue report(s); or the establishment of an account receivable for the difference between the total federal share of outlays last reported and the amount disbursed. See 13 C.F.R. § 302.18(a).
- b. Unless otherwise specified in this Award, the Project progress report will contain the following information for each Project program, function, or activity:
 - (i) A comparison of planned and actual accomplishments according to the timetable or list of Project objectives in this Award;
 - (ii) An explanation of any delays or failures to meet the Project timetable or Project goals; and
 - (iii) Any other pertinent information including, when appropriate, analysis, and explanation of cost overruns or high unit costs.

Project progress reports shall be submitted for each calendar quarter to the Project Officer. Each Project progress report must be submitted in accordance with the deadlines outlined in the applicable special award conditions, or, in cases where report deadlines are not contained therein, Project progress reports will be due on a quarterly basis not later than January 15, April 15, July 15, and October 15 for the immediate previous quarter. The final Project progress report shall be submitted to EDA no more than 90 calendar days after the Project Closeout date. This reporting requirement begins with the Recipient's acceptance of this Award and ends when EDA approves Project Closeout. See 15 C.F.R. §§ 14.51 or 24.40, as applicable.

The Recipient shall submit quarterly Project progress reports to the EDA Project Officer electronically unless otherwise specified in the special award conditions.

2. Interim Reporting.

The Recipient must report any event that will or may have significant impact upon the Project, including delays or adverse conditions that materially may affect the ability of the Recipient to attain Project objectives within established time periods or meet the development time schedule. The

Recipient should report such events to the Project Officer in the most time-expedient way possible and then, if the initial report was not in writing, report the event to the Project Officer in writing. Such a report shall include a statement of the event or issue, a statement of the course of action contemplated to resolve the matter, and any federal assistance needed to resolve the situation. If budget changes are required, the Recipient must submit a written budget revision request. See 15 C.F.R. §§ 14.25(h) or 24.30(c)(2), as applicable.

3. Government Performance and Results Act Reporting.

In addition to quarterly Project progress reports, EDA may require the Recipient to report on Project performance beyond the Project Closeout date for Government Performance and Results Act (GPRA) purposes. In no case shall the Recipient be required to submit any report more than ten years after the Project Closeout date. Data used by the Recipient in preparing reports shall be accurate and from independent sources whenever possible. See 13 C.F.R. § 302.16.

4. Unsatisfactory Performance.

Failure to perform the work in accordance with the Terms and Conditions of the Award and maintain at least satisfactory performance at the discretion of EDA may result in the designation of the Recipient as high-risk and assignment of special award conditions or further action as specified in section C.7. of these Construction Standard Terms and Conditions. See 15 C.F.R. §§ 14.14 or 24.12, as applicable.

5. Programmatic Changes.

- a. The Recipient must report to the Project Officer and request prior approval for any programmatic change to the Award, in accordance with 15 C.F.R. §§ 14.25 or 24.30, as applicable. The Project Officer forwards requests for consideration by the Grants Officer, who must provide written approval for applicable programmatic changes.
- b. Any changes made to the Project without EDA's approval are made at the Recipient's risk of nonpayment of costs, suspension, termination, or other EDA action with respect to the Award. See 13 C.F.R. § 302.7(b).
- c. *Contract Change Orders.* After construction contracts for the Project have been executed, it may become necessary to alter them. This requires a formal contract change order that must be issued by the Recipient and accepted by the contractor. All contract change orders must be reviewed by EDA, even if EDA is not participating in the cost of the change order or the contract price is to be reduced. Work on the Project may continue pending EDA review and approval of the change order, but all such work shall be at the Recipient's risk as to whether the cost of the work is eligible for EDA participation until the Recipient receives EDA approval for the change order. See 13 C.F.R. § 305.13.

6. Other Federal Awards with Similar Programmatic Activities.

The Recipient shall immediately provide written notification to the Project Officer and the Grants Officer in the event that, subsequent to 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.

7. Noncompliance with Award Provisions.

Failure to comply with any or all of the Terms and Conditions of this Award may have a negative impact on the Recipient's ability to receive future funding from the Department, including EDA, and may be considered grounds for any or all of the following actions: (a) the establishment of an account receivable; (b) withholding payments under any EDA or DOC Award(s) to the Recipient; (c) the imposition of additional special award conditions; (d) the suspension of any active DOC Awards; or (e) the termination of any active DOC Awards.

The Recipient hereby agrees that the Government may at its option withhold disbursement of any Award funds if the Government learns or has knowledge that the Recipient has failed to comply in any manner with any Term or Condition of the Award. *See* 13 C.F.R. § 302.18. The Government may withhold funds until the violation or violations have been corrected to the Government's satisfaction. The Recipient further agrees to reimburse the Government for any ineligible costs paid from Award funds, or if the Recipient fails to reimburse the Government, the Government shall have the right to offset the amount of such ineligible costs from any undisbursed award funds held by the Government. The Recipient agrees to repay the Government for all ineligible costs incurred in connection with the Project and paid from the Award including but not limited to those costs determined to be ineligible if the Government learns of any Award violations after all Award funds have been disbursed. *See* 15 C.F.R. §§ 14.72-14.73 or 24.51-24.52, as applicable.

8. Use by Beneficiary.

In the event a beneficiary of the Project fails to comply in any manner with certifications, assurances, or agreements that such beneficiary has entered into in accordance with EDA's requirements, the Recipient will reimburse the Government the Award amount or an amount to be determined by the Government pursuant to 13 C.F.R. §§ 314.4 and 314.5. Where the Government determines that the failure of a beneficiary to comply with EDA requirements affects a portion of the property benefited by the Award, the Recipient will reimburse the Government proportionately.

9. Prohibition Against Assignment by the Recipient.

The Recipient shall not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express written approval of the Grants Officer, which may be provided in a special award condition.

10. Disclaimer Provisions; Hold Harmless Requirement.

- a. The United States expressly disclaims any and all responsibility or liability to the Recipient or third persons for the actions of the Recipient 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 or subcontract under this Award.
- b. The acceptance of this Award by the Recipient does not in any way constitute an agency relationship between the United States and the Recipient.
- c. To the extent permitted by law, the Recipient agrees to indemnify and hold the Government harmless from and against all liabilities that the Government may incur as a result of providing an Award to assist, directly or indirectly, in the preparation of the Project site or construction, renovation, or repair of any facility on the Project site, to the extent that such liabilities are incurred because of toxic or hazardous contamination or groundwater, surface water, soil, or other conditions caused by operations of the Recipient or any of its predecessors (other than the Government or its agents) on the property. *See* 13 C.F.R. § 302.19.

11. Prohibition on Use of Third Parties to Secure Award.

Unless otherwise specified in the special award conditions to this Award, the Recipient warrants that no person or selling agency has been employed or retained to solicit or secure this 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 the Recipient for the purpose of securing business. For breach or violation of this warrant, the Government has the right to annul this Award without liability, or at its discretion, to deduct from the Award sum, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

12. Payment of Attorneys' or Consultants' Fees.

No 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 for EDA investment assistance. However, ordinary and reasonable attorneys' and consultants' fees incurred for meeting Award requirements, such as, for example, conducting a title search or preparing plans and specifications, may be eligible Project costs and may be paid out of Award funds, provided such costs are otherwise eligible. *See* 13 C.F.R. § 302.10.

13. 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 the Government executes this Award, the Recipient(s) agrees that it will not employ, offer any office or employment to, or retain for professional services any person who:

- a. On the date the Government executes this Award or within the one-year period ending on that date, served as an officer, attorney, agent, or employee of the Government, and
- b. Occupied a position or engaged in activities that the Assistant Secretary determines involved discretion with respect to the award of Investment Assistance under PWEDA.

The two-year period and associated restrictions referenced above also shall apply beginning on the date the Government executes any cost amendment to this Award that provides additional funds to the Recipient(s).

14. Commencement of Construction.

- a. **Delayed Construction Starts.** If significant construction (as determined by EDA) is not commenced within two years of the Award date or by the date estimated for start of construction in this Award (or the expiration of any extension granted in writing by EDA), whichever is later, this Award will be automatically suspended and may be terminated if EDA determines, after consultation with the Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously. If significant construction has not been commenced within three years of the Award date, an extension must be approved by the Assistant Secretary.
- b. **Early Construction Starts.** The Recipient shall make a written request to EDA for early construction start permission (that is, after the date of Award, but before EDA gives formal approval for construction to commence). For Project costs to be eligible for EDA reimbursement, EDA must determine that the award of all contracts necessary for design and construction of the Project facilities is in compliance with the Terms and Conditions of this Award. If construction commences prior to EDA's determination, the Recipient proceeds at its own risk until EDA's review and concurrence. See 13 C.F.R. § 305.11.
- c. **Project Sign.** The Recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign (or signs) in a conspicuous place at the Project site indicating that the Federal Government is participating in the Project. EDA will provide specifications for the sign and may require more than one sign if site conditions so warrant. If the EDA-recommended sign specifications conflict with State or local law, the Recipient may modify such recommended specifications so as to comply with State or local law. See 13 C.F.R. § 305.12.

15. Efficient Administration of Project.

The Recipient agrees to properly and efficiently administer, operate, and maintain the Project for its estimated useful life, as required by section 504 of PWEDA (42 U.S.C. § 3194). If the Government determines, at any time during the estimated useful life of the facility, that the Project is not being properly and efficiently administered, operated, and maintained, the Government may terminate this Award and require the Recipient to repay the Federal Share. See 13 C.F.R. §§ 302.12, 302.18, and 314.2-314.5.

16. Conflicts-of-Interest Rules.

- a. An “Interested Party” is defined in 13 C.F.R. § 300.3 as “any officer, employee, or member of the board of directors or other governing board of the Recipient, 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.” An Interested Party includes the Interested Party’s “Immediate Family” (defined in 13 C.F.R. § 300.3 as a person’s spouse, parents, grandparents, siblings, children, and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person) and other persons directly connected to the Interested Party by law or through a business organization. In addition, “Immediate Family” includes an Interested Party’s “significant other” or partner.
- b. The Recipient must establish safeguards to prohibit an Interested Party from using its position for a purpose that constitutes or presents the appearance of personal or organizational conflicts-of-interest or of personal gain. See 13 C.F.R. § 302.17(a) and (b), 15 C.F.R. §§ 14.42 or 24.36(b)(3), as applicable, and Forms SF-424B (“Assurances – Non-Construction Projects”) and SF-424D (“Assurances – Construction Projects”).
- c. An Interested Party must not receive any direct or indirect financial or personal interests or benefits in connection with this Award or its use for payment or reimbursement of costs by or to the Recipient. 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. 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 also could result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field. See 13 C.F.R. § 302.17(b).

17. Record-Keeping Requirements.

- a. *Records.* The Recipient must maintain records that document compliance with the Terms and Conditions of this Award. At a minimum, the Recipient’s records must fully disclose:

- (i) The amount and disposition of EDA investment assistance;
- (ii) All Project expenditures and procurement actions;
- (iii) The total cost of the Project that the Award funds;
- (iv) Copies of all reports and disbursement requests submitted to EDA;
- (v) The benefits/impacts of the project, as reported through GPRA and other reports to EDA;
- (vi) The amount and nature of the portion of Project costs provided by non- EDA sources;
- (vii) Contractor compliance with applicable federal requirements; and
- (viii) Such other records as EDA determines will facilitate an effective audit.

b. *Records Retention.*

In general, all records pertinent to this Award must be kept retained for a period of three years from the date of submission of the final project expenditure report (the final Form SF-271 for disbursement). The only exceptions are the following:

- (i) If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final actions taken;
- (ii) Records for real property and equipment acquired with federal funds must be retained for three years after final disposition of the relevant real property or equipment; and
- (iii) When records are transferred or maintained by EDA, the three-year retention requirement is not applicable to the Recipient.

Records relating to indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations on the rate at which a particular group of costs is chargeable are subject to different retention requirements. See 15 C.F.R. §§ 14.53 or 24.42, as applicable.

The Recipient is responsible for monitoring any subrecipients and contractors to ensure their compliance with the records retention requirements. The Recipient must immediately notify the Project Officer in case records are not retained for the general retention periods noted above. See 13 C.F.R. § 302.14 and 15 C.F.R. §§ 14.50-14.53 or §§ 24.40-24.42, as applicable.

18. Termination Actions.

- a. *Termination for Cause.* If the Recipient materially fails to comply with any of the Terms and Conditions of this Award, EDA has the right to terminate for cause all or any part of its obligation hereunder, including if:

- (i) Any representation made by the Recipient to the Government in connection with the application for Government assistance is incorrect or incomplete in any material respect;
- (ii) The intent and purpose and/or the economic feasibility of the Project is changed substantially so as to affect significantly the accomplishment of the Project as intended (including an unauthorized use of property as provided in 13 C.F.R § 314.4);
- (iii) The Recipient has violated commitments it made in its application and supporting documents or has violated any of the Terms and Conditions of this Award;
- (iv) The conflicts-of-interest rules in 13 C.F.R. § 302.17 are violated; or
- (v) The Recipient fails to report immediately to the Government any change of authorized representative(s) acting in lieu of or on behalf of the Recipient.

In addition, EDA may take one or more of the actions set out in 15 C.F.R. §§ 14.62(a) or 24.43(a), as applicable.

- b. *Termination for Convenience.* The Recipient may request at any time termination for convenience of this Award upon sending to the Grants Officer written notification in a form acceptable to EDA setting forth the reasons for requesting the termination and the effective date of such termination. See 15 C.F.R. §§ 14.61 or 24.44, as applicable.

19. Project Closeout Procedures.

As noted above in section C.15, after construction is completed and the Project is closed out financially, the Recipient has an ongoing responsibility to properly administer, operate, and maintain the Project for its estimated useful life (as determined by EDA) in accordance with its original purpose. See 13 C.F.R. § 302.12. The Recipient must comply with all Award requirements and maintain records to document such compliance, which shall be made available for inspection by EDA or other Government officials as required.

- a. *Final Disbursement.* When Project construction and final inspection have been completed, or substantially completed as determined by EDA, and the Recipient has accepted the Project from the contractor, the Recipient can begin the Closeout process by submitting the following documentation to EDA:
 - (i) A request for final disbursement on an executed Form SF-271;
 - (ii) A written certification that all costs claimed are for eligible activities under this Award, for which there is documentation in the Recipient's records;
 - (iii) An executed certificate of final acceptance signed by the Recipient and the Recipient's architect/engineer;
 - (iv) The Recipient's certification that its currently valid single or program-specific audit in accordance with OMB Circular A-133, "*Audits of States, Local Governments, and Non-Profit Organizations*," if applicable, does not contain

any material findings (if the Recipient's currently valid OMB Circular A-133 audit does contain material findings, the Recipient shall submit the applicable audit preferably via e-mail to the Project Officer, who will review with the Grants Officer);

- (v) The Recipient's certification that its currently valid audit (in accordance with OMB Circular A-133), if applicable, has been submitted to the Federal Audit Clearinghouse; and
- (vi) Other documentation as may be required by EDA.

EDA shall advise the Recipient of costs determined to be eligible and ineligible. If a balance of this Award is due to the Recipient, the balance will be paid by wire transfer. If the Recipient has received an amount in excess of the amount due the Recipient, the Recipient must refund the excess to EDA. The Recipient shall contact the Project Officer for refund instructions.

As noted above, if the Recipient's currently valid OMB Circular A-133 audit contains material findings, the Recipient shall submit the audit, preferably via e-mail, to the Project Officer, who will review with the Grants Officer before final disbursement. If e-mail is unavailable, the Recipient may submit a hardcopy version of the audit to the relevant Project Officer.

- b. The Recipient shall submit, within 90 calendar days after the Project Closeout date, all financial, performance, and other reports as required by the Terms and Conditions of this Award.
- c. As required under GPRA and in accordance to a schedule that will be provided by EDA, the Recipient must submit additional Performance Measurement Reports, generally three, six, and nine years after the date of the Award to accurately and completely report the impacts of the Project, especially in terms of job creation and private investment leveraging.
- c. Unless EDA authorizes an extension, the Recipient shall liquidate all obligations incurred under this Award no later than 90 calendar days after acceptance of the Project from the contractor or before the expiration date of this Award, whichever occurs earlier.
- d. The Closeout of this Award does not affect any of the following:
 - (i) Audit requirements per OMB Circular A-133 and the related "Compliance Supplement;"
 - (ii) The right of EDA to disallow costs and recover funds on the basis of a later audit or other Project review;
 - (iii) The Recipient's obligation to return any funds due as a result of later corrections or other transactions; and
 - (iv) Requirements for property management, records retention, and performance measurement reports.

20. Freedom of Information Act.

EDA is responsible for meeting its Freedom of Information Act (FOIA) (5 U.S.C. § 522) responsibilities for its records. DOC regulations at 15 C.F.R. part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications and other information submitted by applicants and Recipients may be released in response to a FOIA request. The Recipient should be aware that EDA may make certain application and other submitted information publicly available. Accordingly, the Recipient should identify in its application any information it believes to be confidential.

D. Additional Requirements Relating to Construction Projects.

The Recipient and any subrecipient(s) must, in addition to other statutory and regulatory requirements detailed in these Construction Standard Terms and Conditions and the assurances made to EDA in connection with the Award, comply and require each of its contractors and subcontractors employed in the completion of the Project to comply with all applicable Federal, State, territorial, and local laws, and in particular, the following federal public laws (and the regulations issued thereunder), Executive Orders, OMB Circulars, and local law requirements.

1. **The Davis-Bacon Act, as amended (40 U.S.C. §§ 3141-3144, 3146, 3147; 42 U.S.C. § 3212)**
Requiring minimum wages for mechanics and laborers employed on Federal Government public works projects to be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the Project is to be performed, or in the District of Columbia if the Project is to be performed there.
2. **The Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§ 3701 – 3708)**
Providing work hour standards for every laborer and mechanic employed by any contractor or subcontractor in the performance of a federal public works project.
3. **The National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470 et seq.), and the Advisory Council on Historic Preservation Guidelines**
Requiring projects involving Federal funds to follow the requirements of the National Historic Preservation Act, which requires stewardship of historic properties.
4. **The Historical and Archeological Data Preservation Act of 1974, as amended (16 U.S.C. § 469a-1 et seq.)**
Requiring appropriate surveys and preservation efforts if a Federally-licensed project may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data.

5. **Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 et seq.),**
and the regulations issued thereunder, which prescribe standards for the design and construction of any building or facility intended to be accessible to the public or that may house handicapped employees.
6. **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 et seq.),**
and implementing regulations issued at 49 C.F.R. part 24, which establish uniform policies for the fair and equitable treatment of persons, businesses, or farm operations affected by the acquisition, rehabilitation, or demolition of real property acquired for a Project financed wholly or in part with Federal financial assistance.
7. **The Energy Conservation and Production Act (42 U.S.C. § 6834 et seq.)**
Establishing energy efficiency performance standards for the construction of new residential and commercial structures undertaken with Federal financial assistance.
8. **Requirements for New Construction.**
For new building construction projects, the Recipient will comply with current local building codes, standards, and other requirements applicable to the Project.

E. Non-Discrimination Requirements.

No person in the United States shall, 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:

1. **Statutory Provisions.**
 - a. 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, which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving federal financial assistance;
 - b. Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*), which prohibits discrimination on the basis of sex under federally assisted education programs or activities;
 - c. Pub. L. No. 92-65, 42 U.S.C. § 3123, which proscribes discrimination on the basis of sex in EDA assistance provided under PWEDA; Pub. L. No. 94-369, 42 U.S.C. § 6709, which proscribes discrimination on the basis of sex under the Local Public Works Program; and the Department's implementing regulations at 15 C.F.R. §§ 8.7-8.15;

- d. The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) (ADA), which prohibits 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;
- e. 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, which prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance;
- f. Revised ADA Standards for Accessible Design for Construction Awards: The U.S. Department of Justice has issued revised regulations implementing Title II of the ADA (28 C.F.R. part 35; 75 F.R. 56164, as amended by 76 F.R. 13285) and Title III of the ADA (28 C.F.R. part 36; 75 F.R. 56164, as amended by 76 F.R. 13286). The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design” (2010 Standards). The 2010 Standards are an acceptable alternative to the Uniform Federal Accessibility Standards (UFAS). DOC deems compliance with the 2010 Standards to be an acceptable means of complying with the Section 504 accessibility requirements for new construction and alteration projects under 15 C.F.R. § 8b.18(c), as follows:
 - (i) Public Recipients subject to Title II of the ADA may use either the 2010 Standards or UFAS where the physical construction or alternations commence on or after September 15, 2010 and before March 15, 2012 (see 28 C.F.R. § 35.151(c)(2)); and
 - (ii) Private Recipients subject to Title III of the ADA may use either the 2010 Standards or UFAS if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after September 15, 2010 and before March 15, 2012, or if no permit is required, if the start of physical construction or alterations occurs on or after September 15, 2010 and before March 15, 2012 (see 28 C.F.R. § 36.406(a)(2)).

In all cases, once a Recipient selects an applicable ADA accessibility standard (i.e., the 2010 Standards or UFAS), that standard must be applied to the entire facility.

As of March 15, 2012, all new construction and alteration projects must comply with the 2010 Standards.

- g. 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, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- h. Other applicable Federal statutes, regulations, and Executive Orders, and other applicable non-discrimination law(s).

2. Other Provisions.

- a. Parts II and III of Executive Order 11246 (30 Fed. Reg. 12319, 1965), as amended by Executive Order 11375 (32 Fed. Reg. 14303, 1967) and 12086 (43 Fed. Reg. 46501, 1978), requiring Federally-assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that Executive Order and Department of Labor regulations implementing Executive Order 11246 (41 C.F.R. § 60-1.4(b), 1991).
- b. Executive Order 13166 (August 11, 2000), “*Improving Access to Services for Persons With Limited English Proficiency*,” requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them, and DOC policy guidance issued on March 24, 2003 (68 F.R. 14180) to Federal financial assistance recipients on the Title VI prohibition against national origin discrimination affecting LEP persons.

3. 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 shall be an unlawful employment practice for an employer to discharge any individual or otherwise 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 on the basis of 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.

F. 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 Department’s Inspector General (“OIG”), or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Recipient, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. When the 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.

1. Requirement to Have an OMB Circular A-133 Audit Performed; Organization-Wide, Program-Specific, and Project Audits.

- a. Organization-wide or program-specific audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," and the related "Compliance Supplement." Recipients that expend Federal awards of \$500,000 or more in a fiscal year shall have an audit conducted for that year in accordance with the requirements contained in OMB Circular A-133. A copy of the audit shall be submitted to the Bureau of the Census, which has been designated by OMB as a central clearinghouse, by electronic submission to the Federal Audit Clearinghouse website, which may be accessed at: <http://harvester.census.gov/sac/>. Please visit the website's "Frequently Asked Questions" for more information on submitting audit materials.

If it is necessary for a Recipient to submit using paper, the address for submission is:

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, IN 47132

- b. Unless otherwise specified in the terms and conditions of the award, in accordance with 15 C.F.R. § 14.26(c) and (d), for-profit hospitals, commercial entities, and other organizations not required to follow the audit provisions of OMB Circular A-133 shall have an audit performed when the Federal share amount awarded is \$500,000 or more over the duration of the project period. Unless otherwise specified in the terms and conditions of the award, an audit is required at least once every two years using the following schedule for audit report submission:
 - (i) For awards where the project period is less than two years, an audit is required within 90 business days of the end of the project period – the award close-out period is included in the 90 business days;
 - (ii) For awards with a two- or three-year project period, an audit is required within 90 days after the end of the first year, which is the period of time when Federal funding is available for obligation by the recipient, and within 90 business days of the end of the project period – the award close-out is included in the 90 business days; or
 - (iii) For awards with a four- to five-year project period, an audit is required within 90 business days after the end of the first year and third year, and within 90

business days of the end of the project period – the award close-out period is included in the 90 business days.

Some DOC programs have specific audit guidelines that will be incorporated into the Award. When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in OMB Circular A-133, § .235. The Recipient may include a line item in the budget for the cost of the audit for approval. A copy of the program-specific audit shall be submitted to the Grants Officer as specified in the Award Terms and Conditions, and to the OIG at NonFederalAudits@OIG.DOC.GOV. If e-mail is unavailable, submission to the OIG can be made at the following address:

Office of Inspector General
U.S. Department of Commerce
Atlanta Regional Office of Audits
401 West Peachtree Street, N.W., Suite 2742
Atlanta, GA 30308

2. Requirement to Submit Audit to EDA.

If the Recipient's currently valid audit required under OMB Circular A-133 contains materials findings, the Recipient must submit the audit, preferably via e-mail, to the Project Officer, who will review with the Grants Officer. If e-mail is unavailable, the Recipient may submit a hardcopy version of the audit to the relevant Project Officer. *See also* section C.18.a. of these Construction Standard Terms and Conditions.

3. 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 EDA. 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. In accordance with the *Federal Register* notice dated January 27, 1989 (54 Fed. Reg. 4053), a Recipient whose Award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:
 - (i) Unless the OIG determines otherwise, the Recipient has 30 business days from the date of the transmittal of the "Draft Audit Report" to submit written comments and documentary evidence.
 - (ii) The Recipient has 30 business days from the date of the transmittal of the "Final Audit Report" to submit written comments and documentary evidence. There shall be no extension of this deadline.
 - (iii) EDA shall review the documentary evidence submitted by the Recipient and shall notify the Recipient of the results in an "Audit Resolution Determination

Letter.” The Recipient has 30 business days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There shall be no extension of this deadline. The appeal is the last opportunity for the Recipient to submit written comments and documentary evidence that dispute the validity of the Audit Resolution Determination Letter.

- (iv) An appeal of the Audit Resolution Determination Letter does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on such debt. If the Audit Resolution Determination Letter is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.
- (v) The DOC shall 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.

G. Debts.

1. Payment of Debts Owed the Federal Government.

Any debt determined to be owed to the Federal Government must be paid promptly by the Recipient. In accordance with 15 C.F.R. § 19.1, delinquent debt is a debt that has not been paid by the date specified in the agency’s initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. In accordance with 15 C.F.R. § 19.5 and 31 U.S.C. § 3717, failure to pay a debt by the due date, or if there is no due date, within 30 calendar days of the billing date, shall 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. DOC entities will transfer any DOC debt that is more than 180 calendar days delinquent to the Financial Management Service for debt collection services, a process known as “cross-servicing,” pursuant 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12 and 15 C.F.R. § 19.9, and may result in DOC taking further action as specified in the standard term and condition entitled “Noncompliance With Award Provisions.” Funds for payment of a debt must not come from other Federally sponsored programs. Verification that other Federal funds have not been used will be made, e.g., during on-site visits and audits.

2. Late Payment Charges.

- a. Interest shall be charged on the delinquent debt in accordance with section 3717(a) of the Debt Collection Act (see 31 U.S.C. § 3701 *et seq.* for the entire Debt Collection Act), as amended. The minimum annual interest rate to be assessed is the Department of the Treasury’s Current Value of Funds Rate (CVFR). The CVFR is available online at <http://www.fms.treas.gov/cvfr/index.html>. The CVFR is 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 shall remain fixed for the duration of the indebtedness.

- b. Penalties shall accrue at a rate of not more than 6 percent per year or such other higher rate as authorized by law.
- c. Administrative charges, that is, the costs of processing and handling a delinquent debt, shall be determined by the DOC entity collecting the debt, as directed by the Office of the Deputy Chief Financial Officer.

3. 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, the Department is not permitted to extend financial assistance in the form of a loan, loan guaranty, or loan insurance to any person delinquent on a non-tax debt owed to a federal agency. This prohibition does not apply to disaster loans.

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

Pursuant to 28 U.S.C. § 3201(e), unless waived by DOC, a debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the U.S. 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.

H. Governmentwide Debarment and Suspension (Non-procurement).

The Recipient shall comply with the provisions of subpart C of 2 C.F.R. part 1326, "*Non-Procurement Debarment and Suspension*" (published in the *Federal Register* on December 21, 2006, 71 FR 76573), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal non-procurement 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.

I. Drug-free Workplace.

The Recipient shall comply with the provisions of the Drug-Free Workplace Act of 1988 (Pub. L. No. 100-690, Title V, Sec. 5153, as amended by Pub. L. No. 105-85, Div. A., Title VIII, Sec. 809, as codified at 41 U.S.C. § 8102), and the Department's implementing regulations found at 15 C.F.R.

part 29, “Government-wide Requirements for Drug-Free Workplace (Financial Assistance,)” which require that the Recipient take steps to provide a drug-free workplace.

J. Lobbying Restrictions.

- a. *Statutory Provisions.* The Recipient must comply with the provisions of 31 U.S.C. § 1352 and the Department’s implementing regulations published at 15 C.F.R. part 28, “*New Restrictions on Lobbying.*” These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the United States government in connection with the Award and require the disclosure of the use of non-Federal funds for lobbying.
- b. *Disclosure of Lobbying Activities.* A Recipient receiving in excess of \$100,000 in federal funding must submit a completed Form SF-LLL, “*Disclosure of Lobbying Activities,*” regarding the use of non-Federal funds for lobbying. 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 Form SF-LLL from all applicable parties, including those received from subrecipients, contractors, and subcontractors, to the Project Officer.
- c. *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 Departmental 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 Award, as provided under the applicable cost principles set out in 2 C.F.R. part 225.

K. Codes of Conduct and Subaward, Contract, and Subcontract Provisions.

1. Code of Conduct for Recipients.

Pursuant to the certification in Form SF-424B, paragraph 3, the 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 personal or organizational conflicts-of-interest or personal gain in the administration of this Award.

2. Applicability of Award Provisions to Subrecipients.

- a. The Recipient shall require all subrecipients, including lower tier subrecipients, under the award to comply with the provisions of this Award, including applicable cost principles, administrative, and audit requirements, and all associated Terms and Conditions.
- b. A Recipient is responsible for subrecipient monitoring, including the following:
 - (i) *Award Identification* – At the time of the Award, identifying to the subrecipient the federal award information (e.g., Catalog of Federal Domestic Assistance (CFDA) title and number, name of the Federal agency, and the Award number) and applicable compliance requirements.
 - (ii) *During-the-Award Monitoring* – Monitoring the subrecipient's use of federal awards through reporting, site visits, regular contact, or other means to provide reasonable assurance that the subrecipient administers Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.
 - (iii) *Subrecipient Audits* – Ensuring that a subrecipient expending federal awards of \$500,000 or more during the subrecipient's fiscal year has met the audit requirements of OMB Circular A-133 and that the required audits are completed within nine months of the end of the subrecipient's audit period. In addition, the Recipient is required to issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes timely and appropriate corrective action on all audit findings. In cases of a subrecipient's continued inability or unwillingness to have the required audits, the pass-through entity shall take appropriate action using sanctions.

3. Competition and Codes of Conduct for Subawards.

- a. All subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition. The Recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to ensure objective subrecipient performance and eliminate unfair competitive advantage, subrecipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such subawards.
- b. The 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/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the Recipient shall neither solicit nor accept anything of monetary value from subrecipients. However, the Recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Recipient.

- c. 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.

4. Applicability of Provisions to Subawards, Contracts, and Subcontracts.

- a. The Recipient shall include the following notice in each request for applications or bids:

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 2 C.F.R. part 1326, subpart C, "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 C.F.R. 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.

- b. The Recipient shall include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts), that the Award is subject to subpart C of 2 C.F.R. part 1326, "Governmentwide Debarment and Suspension (Nonprocurement)."
- c. The 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 C.F.R. part 28, regarding new restrictions on lobbying. The Recipient shall further require the subrecipient, contractor, or subcontractor to submit a completed Form SF-LLL, "Disclosure of Lobbying Activities," 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 the Recipient. The 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.

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

DOC encourages Recipients to utilize small businesses, minority business enterprises, and women's business enterprises in contracts under financial assistance awards. The Minority Business Development Agency will assist Recipients in matching qualified minority owned 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
 1401 Constitution Avenue, N.W.
 Washington, D.C. 20230

6. Subaward and/or Contract to a Federal Agency.

- a. The Recipient, subrecipient, contractor and/or subcontractor shall not subgrant or subcontract any part of the approved Project to any agency or employee of DOC or other Federal department, agency, or instrumentality without the prior written approval of the Grants Officer.
- b. Requests for approval of such action must be submitted to the Project Officer who shall review and make a recommendation to the Grants Officer. The Grants Officer must forward all requests to the Federal Assistance Law Division in the Office of the Department of Commerce Assistant General Counsel for Finance and Litigation for review prior to making the final determination. The Grants Officer will notify the Recipient in writing of the final determination.

7. EDA Contracting Provisions for Construction Projects.

The Recipient shall use the "*EDA Contracting Provisions for Construction Projects*" as guidance in developing all construction contracts. The "*EDA Contracting Provisions for Construction Projects*" lists applicable EDA and other federal requirements for construction contracts.

L. Property.

1. Standards.

With respect to any property acquired or improved in whole or in part with EDA investment assistance under this Award, the Recipient shall comply with the property management standards found in the uniform administrative requirements set forth in 15 C.F.R. §§ 14.30 – 14.37 and 15

C.F.R. §§ 24.31-24.34, and EDA's regulations at 13 C.F.R. part 314. Property acquired or improved in whole or in part by the Recipient under this Award may consist of personal property, including intangible property such as money, notes, and security interests. Any inventory listings stipulated under the applicable uniform administrative requirements must be submitted to the Grants Officer through the Project Officer on Form CD-281, "*Report of Government Property in Possession of Contractor.*"

2. Retention of Title.

- a. The Government shall determine who retains title to all nonexpendable personal property in accordance with 15 C.F.R. parts 14 or 24, as applicable. Use, management, and the disposition of such property will be in accordance with the requirements set out at 15 C.F.R. parts 14 or 24, as applicable, and EDA's regulations at 13 C.F.R. part 314.
- b. Title to real property (whether acquired partly or wholly with Federal funds) will vest with the Recipient subject to the condition that the Recipient uses the real property for the authorized purpose of the Project.

3. EDA's Interest in Award Property.

- a. *General and Evidence of Title.* As stated in section A.4 of these Construction Standard Terms and Conditions, the Recipient holds all real property and tangible and intangible personal property that it acquires or improves, in whole or in part, with funds made available under the Award in trust for the public purposes for which the Award was made. 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 the Federal Interest.

Prior to the advertisement of bids or at such other time as EDA requires, the Recipient must furnish evidence, satisfactory in form or substance to the Government, that title to real property required for the Project (other than property of the United States and as provided in 13 C.F.R. § 314.7(c)) is vested in the Recipient and that such easements, rights-of-way, State or local government permits, long-term leases, or other items required for the Project have been or will be obtained by the Recipient within an acceptable time, as determined by the Government. All liens, mortgages, other encumbrances, reservations, reversionary interests, or other restrictions on title or the Recipient's interest in the property must be disclosed to EDA. With limited exceptions set forth in 13 C.F.R. § 314.6(b) or as otherwise authorized by EDA, Recipient-owned property acquired or improved in whole or in part with EDA investment assistance must not be used to secure a mortgage or deed of trust or in any way otherwise encumbered. See 13 C.F.R. § 314.6.

b. *Recording EDA's Interest in Property.*

- (i) For all Projects involving the acquisition, construction, or improvement of a building, as determined by EDA, the Recipient shall execute and furnish to the Government, prior to initial Award disbursement, a lien, covenant, or other statement, satisfactory to EDA in form and substance, of EDA's interest in the property acquired or improved in whole or in part with the funds made available under this Award. EDA may require such statement after initial Award disbursement in the event that grant funds are being used to acquire such property. The statement must specify the estimated useful life of the Project and shall include but not be limited to the disposition, encumbrance, and the Federal Share compensation requirements. *See* 13 C.F.R. §§ 314.1 and 314.8(a).
 - (ii) This lien, covenant, or other statement of the Government's interest must be perfected and placed of record in the real property records of the jurisdiction in which the property is located, all in accordance with applicable law. EDA shall require an opinion of counsel for the Recipient to substantiate that the document has been properly recorded. *See* 13 C.F.R. § 314.8(b).
 - (iii) Facilities in which the EDA investment is only a small part of a larger project, as determined by EDA, may be exempted from the requirements listed in paragraphs L.3.b.(i) and (ii) above. *See* 13 C.F.R. § 314.8(c).
- c. The Recipient acknowledges that the Government retains an undivided equitable reversionary interest in the Property acquired or improved in whole or in part with grant funds made available through this Award throughout the estimated useful life (as determined by EDA) of the Project, except in applicable instances set forth in 13 C.F.R. § 314.7(c). *See* 13 C.F.R. § 314.2(a).
- d. The Recipient agrees that in the event that any interest in property acquired or improved in whole or in part with EDA investment assistance is disposed of, encumbered or alienated in any manner, or no longer used for the authorized purpose(s) of the Award during the Project's estimated useful life without EDA's written approval, the Government will be entitled to recover the Federal Share, as defined at 13 C.F.R. § 314.5. If, during the Project's estimated useful life, the property is no longer needed for the purpose(s) of the Award, as determined by EDA, EDA may permit its use for other acceptable purposes consistent with those authorized by PWEDA and 13 C.F.R. chapter III. *See* 13 C.F.R. § 314.3(b).
- e. For purposes of any lien or security interest, the amount of the Federal Share shall be the portion of the current fair market value of any property (after deducting any actual and reasonable selling and repair expenses incurred to put the property into marketable condition) attributable to EDA's participation in the Project. *See* 13 C.F.R. § 314.5.

- f. The alienation of Award property includes sale or other conveyance of the Recipient's interest, leasing or mortgaging the property, or granting an option for any of the foregoing.

4. Insurance and Bonding.

- a. *Recipients that are Institutions of Higher Education, Hospitals, Other Non-Profit and Commercial Organizations.* The Recipient shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with federal funds as provided to property owned by the Recipient. Federally owned property need not be insured unless required by the terms and conditions of the award. See 15 C.F.R. § 14.31.
- b. *Recipients that are State and Local Governments.* If the Award exceeds the simplified acquisition threshold, EDA may accept the Recipient's or subrecipient's bonding policy and requirements if EDA determines that the Federal Interest is adequately protected. If not, the following minimum requirements shall apply:
 - (i) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the proffered bid, execute such contractual documents as may be required within the time specified;
 - (ii) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and
 - (iii) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. See 15 C.F.R. § 24.36(h)

5. Leasing Restrictions.

Leasing or renting of facilities or property is prohibited unless specifically authorized by EDA. The Recipient agrees that any leasing or renting of any facilities or property involved in this Project will be subject to the following:

- a. That said lease arrangement is consistent with the authorized general and special purpose of the Award;
- b. That said lease arrangement is for adequate consideration; and

- c. That said lease arrangement is consistent with applicable EDA requirements concerning but not limited to nondiscrimination and environmental compliance.

6. Eminent Domain.

The Recipient will use funds solely for the authorized use of the Project. Pursuant to Executive Order 13406, "*Protecting the Property Rights of the American People*," the Recipient agrees:

- a. Not to use any power of eminent domain available to the Recipient (including the commencement of eminent domain proceedings) for use in connection with the Project for the purpose of advancing the economic interests of private parties; and
- b. Not to accept title to land, easements, or other interests in land acquired by the use of any power of eminent domain for use in connection with the Project for such purposes.

The Recipient agrees that any use of the power of eminent domain to acquire land, easements, or interests in land, whether by the Recipient or any other entity that has the power of eminent domain, in connection with the Project without prior written consent of EDA is an unauthorized use of the Project. If the Recipient puts the Project to an unauthorized use, the Recipient shall compensate EDA for its fair share in accordance with 13 C.F.R. §§ 314.4 and 314.5, as same may be amended from time to time.

7. Disposal of Real Property.

- a. If EDA and the Recipient determine that property acquired or improved in whole or in part with EDA investment assistance is no longer needed for the original purpose(s) of this Award, the Recipient must obtain approval from the Government to use the property in other federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and 13 C.F.R. chapter III. See 13 C.F.R. § 314.3(b).
- b. When property is not disposed of as provided in section L.7.a. above, the Government shall determine final disposition and must be compensated by the Recipient for the Federal Share of the value of the property, plus costs and interest, as provided in 13 C.F.R. § 314.4.

M. Environmental Requirements.

Environmental impacts must be considered by Federal decision-makers in their decisions whether or not to: (i) approve a proposal for federal assistance; (ii) approve the proposal with mitigation; or (iii) approve a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate a planning process with early consideration of potential environmental impacts that Project(s) funded with federal assistance may

have on the environment. The Recipient and any subrecipients shall comply with all environmental standards, to include those prescribed under the following statutes and Executive Orders, and shall identify to the awarding agency any impact the Award may have on the environment. In some cases, the Grants Officer can withhold Award funds under a special award condition requiring the Recipient to submit additional environmental compliance information sufficient to enable the Department to make an assessment on any impacts that a Project may have on the environment.

1. The National Environmental Policy Act of 1969 (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 – 1508) require that an environmental analysis be completed for all major Federal actions significantly affecting 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. Recipients of Federal assistance are required to identify to the awarding agency any impact an award will have on the quality of the human environment and assist the agency to comply with NEPA. Recipients may also be requested to assist EDA in drafting an environmental assessment if EDA determines an assessment is required. In the event that any additional information is required during the project period in order to assess any impacts that a Project may have on the environment, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit such additional environmental compliance information sufficient to enable EDA to make the requisite assessment.

2. 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 implementing regulations (36 C.F.R. Part 800) require that Federal agencies take into account the effects of their undertakings on historic properties. Recipients of Federal funding 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. Recipients may also be requested to assist EDA in consulting with State or Tribal Historic Preservation Officers or other applicable interested parties necessary to identify, assess and resolve adverse effects to historic properties. Until such time as the appropriate NHPA consultations and documentation is complete, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to fully comply with the requirement of the NHPA. In the event that any additional information is required during the project period in order to assess any impacts that a Project may have on historic properties, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit such additional information sufficient to enable EDA to make the requisite assessment.

3. **Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. §§ 4371 – 4375)**

Federally-supported public works facilities and activities that affect the environment shall be implemented in compliance with policies established under existing law.

4. **Clean Air Act, Clean Water Act, and Executive Order 11738**

Recipients must comply with the provisions of the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Clean Water Act (42 U.S.C. § 1251 *et seq.*), and Executive Order 11738, and shall not use a facility on the Environmental Protection Agency's ("EPA") *List of Violating Facilities* (this list is incorporated into the Excluded Parties List System located at <https://www.sam.gov/portal/public/SAM/>) in performing any Award that is nonexempt under 2 C.F.R. § 1532, and shall notify the Project Officer in writing if it intends to use a facility that is on EPA's *List of Violating Facilities* or knows that the facility has been recommended to be placed on the List.

5. **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.

6. **Executive Order 11988, "Floodplain Management," (42 Fed. Reg. 26951, May 24, 1977) and Executive Order 11990, "Protection of Wetlands," (42 Fed. Reg. 26961, May 24, 1977)**

Recipients must identify proposed actions in Federally defined floodplains and wetlands to enable the agency to make a determination whether there is an alternative to minimize any potential harm.

7. **The Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4002 *et seq.*), and regulations and guidelines issued thereunder by the U.S. Federal Emergency Management Administration ("FEMA") or by EDA**

Flood insurance, when available, is required for Federally-assisted construction or acquisition in flood-prone areas.

8. **The Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1451 *et seq.*)**

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

9. The Coastal Barrier Resources Act, as amended, (16 U.S.C. § 3501 et seq.)

Restrictions are placed on Federal funding for actions within a Coastal Barrier System.

10. The Wild and Scenic Rivers Act, as amended, (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.

11. The Fish and Wildlife Coordination Act, as amended, (16 U.S.C. § 661 et seq.)

Requiring the evaluation the impacts to fish and wildlife from Federally-assisted proposed water resource development projects.

12. The Endangered Species Act of 1973, as amended, (16 U.S.C. § 1531 et seq.)

The Recipient must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that Federal awards do not adversely affect protected species or habitats and must conduct the required reviews under the Endangered Species Act.

13. The Comprehensive Environmental Response, Compensation, and Liability Act (“Superfund”)(42 U.S.C. § 9601 et seq.), and the Community Environmental Response Facilitation Act (41 U.S.C. § 11001 et seq.)

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

14. The Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. § 6901 et seq.)

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

15. Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 Fed. Reg. 7629, February 11, 1994)

This Order identifies and addresses adverse human health or environmental effects of Federal programs, policies, and activities on low-income and minority populations.

16. The Lead-Based Paint Poisoning Prevention Act, as amended, (42 U.S.C. § 4821 et seq.)

Use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government or with Federal assistance is prohibited.

17. The Farmland Protection Policy Act, as amended, (7 U.S.C. §§ 4201 – 4209)

Projects are subject to review under this Act if they may irreversibly directly or indirectly convert farmland, including forest land, pastureland, cropland, or other land, to nonagricultural use.

18. The Noise Control Act of 1972, as amended, (42 U.S.C. § 4901 et seq.)

Federally-supported facilities and activities shall comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements.

19. The Native American Graves Protection and Repatriation Act, as amended, (25 U.S.C. § 3001 et seq.)

This Act provides a process for returning certain Native American cultural items to lineal descendants, culturally affiliated Indian Tribes, and Native Hawaiian organizations.

N. Compliance with Environmental Requirements.

The Recipient agrees to notify the Grants Officer of any environmental requirement or restriction, regulatory or otherwise, with which it must comply. Before Project Closeout and final disbursement of Award funds, the Recipient further agrees to provide evidence satisfactory to the Grants Officer that any required environmental remediation has been completed: (1) in compliance with all applicable federal, State and local regulations; and (2) as set forth in the applicable Lease, Finding of Suitability to Lease (“FOSL”), Lease in Furtherance of Conveyance, Quitclaim Deed, or other conveyance instrument and any amendments, supplements, or succeeding documents. Compliance with said laws or restrictions shall be included in any contract documents for Project construction. The Recipient must certify compliance before final disbursement of grant funds.

O. Miscellaneous Requirements.

1. Criminal and Prohibited Activities.

- a. The Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812) 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).
- b. The False Claims Amendment Act and the False Statements Act (18 U.S.C. §§ 287 and 1001) provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.
- c. The Civil False Claims Act (31 U.S.C. § 3729 *et seq.*) provides that suits under this Act can be brought by the Government, or a person on behalf of the Federal Government, for false claims under federal assistance programs.
- d. The Copeland “Anti-Kickback” Act (18 U.S.C. § 874 and 40 U.S.C. § 276c), 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.

2. Foreign Travel.

- a. The Recipient shall 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 – 10.143.
- b. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed foreign air travel must use United States 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 United States flag air carrier is unavailable, or use of United States flag air carrier service will not accomplish the agency’s mission.
- c. 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 three 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/>.

- d. If a foreign air carrier is anticipated to be used, the Recipient must receive prior approval from the Grants Officer. When requesting such approval in accordance with the guidance provided by 41 C.F.R. § 301-10.142, the Recipient must provide a “certification” the Grants Officer with the following: (i) his or her name; (ii) dates of travel; (iii) the origin and destination of travel; (iv) a detailed itinerary of travel; (v) the name of the air carrier and flight number for each leg of the trip; (vi) and a statement explaining why the Recipient meets one of the exceptions to the applicable regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the Recipient must provide the Grants Officer with a copy of the agreement. The Grants Officer shall make the final determination and notify the Recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in the Recipient not being reimbursed for any transportation costs for which the Recipient improperly used a foreign air carrier.

3. American-Made Equipment and Products.

Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this Award.

4. Intellectual Property Rights.

- a. **Inventions.** The intellectual property rights to any invention made by a Recipient under a DOC Award are determined by the Bayh-Dole Act, as amended (Pub. L. No. 96-517), and codified in 35 U.S.C. § 200 *et seq.*, except as otherwise required by law. The specific rights and responsibilities are described in more detail in 37 C.F.R. part 401, and in the particular, in the standard patent rights clause in 37 C.F.R. § 401.14, which is hereby incorporated by reference into this Award.

(i) Ownership.

- (a) *Recipient.* The Recipient has the right to own any invention it makes (conceived or first reduced to practice) or that is made by its employees. A recipient that is a non-profit organization, which includes a university or other institution of higher learning, may not assign to a third party its rights to such an invention without the permission of DOC unless that assignment is to a patent management organization (i.e., a university’s Research Foundation). The Recipient’s ownership rights are subject to the Federal Government’s nonexclusive paid-up license and other rights.

- (b) *Department.* If the recipient elects not to retain title, fails to disclose the invention to the agency within the required time limits, or does not file a patent application within the time limits set forth in the standard patent rights clause, DOC may request an assignment of all rights, which is normally subject to a limited royalty free nonexclusive revocable license for the recipient. DOC owns any invention made solely by its employees, but may license the recipient in accordance with the procedures in 37 C.F.R. Part 404.
- (c) *Inventor/Employee.* If neither the Recipient nor the Department is interested in owning an invention by a Recipient employee, the Recipient, with the written concurrence of the Department's Patent Counsel, may allow the inventor/employee to own the invention subject to certain restrictions as described in 37 C.F.R. § 401.9.
- (d) *Joint Inventions.* Inventions made jointly by a Recipient and a Department employee will be owned jointly by the Recipient and DOC. However, the Department may transfer its rights to the Recipient as authorized by 35 U.S.C. § 202(e) and 37 C.F.R. § 401.10 if the Recipient is willing to patent and license the invention in exchange for a share of "net" royalties based on the number of inventors (e.g., 50-50 if there is one Recipient and Department employee). The agreement will be prepared by the Department's Patent Counsel and may include other provisions, such as a royalty free license to the Federal Government and certain other entities. The provision at 35 U.S.C. § 202(e) also authorizes the Recipient to transfer its rights to the Government, which can agree to share royalties similarly as described above.

(ii) *Responsibilities –iEdison.*

The Recipient has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The Recipient is expected to comply with all the requirements of the standard patent rights clause and 37 C.F.R. part 401. Recipients of DOC Awards are required to submit their disclosures and elections electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. The Recipient may obtain a waiver of this electronic submission requirement by providing DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.

- b. *Patent Notification Procedures.* Pursuant to Executive Order 12889, the Department is required to notify the owner of any valid patent covering technology whenever the Department or its Recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the

Recipient uses or has used patented technology under this Award without a license or permission from the owner, the Recipient must notify the Grants Officer. However, this notice does not necessarily mean that the Government authorizes and consents to any copyright or patent infringement occurring under the financial assistance.

- c. *Data, Databases, and Software.* The rights to any work produced or purchased under a DOC Award are determined by 15 C.F.R. § 24.34, for State and Local Governments, and 15 C.F.R. § 14.36, for Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations. Such works may include data, databases, or software. The Recipient owns any work produced or purchased under a DOC Award subject to the Department's right to obtain, reproduce, publish, or otherwise use the work or authorize others to receive, reproduce, publish, or otherwise use the data for Government purposes.
- d. *Copyright.* The Recipient may copyright any work produced under a DOC Award subject to the Department's royalty-free, non-exclusive, and irrevocable right to reproduce, publish or otherwise use the work or authorize others to do so for Federal Government purposes. Works jointly authored by the Department and Recipient employees may be copyrighted, but only the part authored by the Recipient is protected because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. On occasion, DOC may require the recipient to transfer to DOC its copyright in a particular work for Government purposes or when DOC is undertaking the primary dissemination of the work. Ownership of copyright by the Government through assignment is permitted by 17 U.S.C. § 105.

5. Increasing Seat Belt Use in the United States.

Pursuant to Executive Order 13043, Recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally-owned vehicles.

6. Research Involving Human Subjects.

- a. 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 special award condition or otherwise authorized in writing by the Grants Officer.
- b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

- c. The Department's regulations at 15 C.F.R. part 27 require that Recipients maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in carrying out the purpose(s) of this Award, the Recipient shall submit appropriate documentation to the Project Officer for approval. This documentation may include:
 - (i) Documentation establishing approval of the Project by an institutional review board ("IRB") approved for government-wide use under Department of Health and Human Services guidelines (see 15 C.F.R. § 27.103);
 - (ii) Documentation to support an exemption for the Project under 15 C.F.R. § 27.101(b);
 - (iii) Documentation to support deferral for an exemption or IRB review under 15 C.F.R. § 27.118; or
 - (iv) Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
- d. No work involving human subjects may be undertaken, conducted, or costs incurred or charged for human subjects research until the appropriate documentation is approved in writing by the Grants Officer. Notwithstanding this prohibition, work may be initiated or costs incurred or charged to the Project for protocol or instrument development related to human subjects research.

7. Federal Employee Expenses.

Federal agencies are generally barred from accepting funds from a Recipient to pay transportation, travel, or other expenses for any Federal employee. Use of Award funds (Federal or non-Federal) or the Recipient's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy prohibits the acceptance of gifts, including travel payments for Federal employees, from Recipients or applicants regardless of the source.

8. Minority Serving Institutions ("MSIs") Initiative.

Pursuant to Executive Order 13555 ("White House Initiative on Educational Excellence for Hispanics"), 13270 ("Tribal Colleges and Universities"), and 13532 ("Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities"), 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 in order to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC encourages all applicants and recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

9. Research Misconduct.

The Department of Commerce 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 Fed. Reg. 76260 (2000)). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Recipient organizations that conduct extramural research funded by the Department must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipient organizations also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Federal award funds expended on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the award, up to and including award termination and possible suspension or debarment. The Department requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to the Grants Officer, who will also notify the OIG of such allegation. Once the recipient organization has investigated the allegation, it will submit its findings to the Grants Officer. The DOC may accept the recipient's findings or proceed with its own investigation. The Grants Officer shall inform the recipient of the Department's final determination.

10. Publications, Videos, and Acknowledgment of Sponsorship.

- a. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording and reporting results of federally funded projects, e.g. scientific research, and expanding access to federally funded projects.
- b. Recipients must submit a copy of any publication materials, including but not limited to print, recorded or Internet materials, to their EDA Project Officer.
- c. When releasing information related to a funded project, recipients must include a statement that the project or effort undertaken was or is sponsored by DOC.
- d. Recipients are responsible for assuring that every publication of material based on, developed under, or produced under a DOC financial assistance award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer:

This [report/video] was prepared by [recipient name] 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.

11. Care and Use of Live Vertebrate Animals.

Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. No. 89-544), as amended (7 U.S.C. § 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects), and the implementing regulations at 9 C.F.R. parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. § 1531 *et seq.*); the Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Non-indigenous 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 Award unless authorized by the Grants Officer.

12. Homeland Security Presidential Directive 12.

If the performance of a grant award requires Recipient organization personnel to have routine access to Federally-controlled facilities and/or federally controlled information systems (for purpose of this term “routine access” is defined as more than 180 business 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 they are eligible for employment within the US. Any items or services delivered under a financial assistance award shall 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”, FIPS PUB 201, and OMB Memorandum M-05-24. The Recipient shall ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The Recipient shall insert the following 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:

- a. The subrecipient or contractor shall comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require*

routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.

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

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

- a. This clause applies to the extent that this Award involves access to export-controlled items.
- b. In performing this Award, the Recipient may gain access to export-controlled information or technology. The Recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The Recipient shall establish and maintain throughout performance of this Award effective export compliance procedures at non-DOC facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled information and technology.
- c. *Definitions.*
 - (i) *Export-controlled items.* Items (commodities, software, or technology), that are subject to the Export Administration Regulations (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.
 - (ii) *Deemed Export/Reexport.* The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is "deemed" to be an export to the home country of the foreign national. 15 C.F.R. § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national's home country. Licenses from DOC may be required for deemed exports or reexports.
- d. The Recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of this Award, to ensure that access is restricted, or licensed, as required by applicable Federal laws, Executive Orders, or regulations, including the EAR.

- e. As applicable, Recipient personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items.
- f. Nothing in the Terms and Conditions of this Award is intended to change, supersede or waive the requirements of applicable Federal laws, Executive Orders, or regulations.
- g. The Recipient shall include this subsection entitled “Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations,” including this subparagraph (f), in all lower-tier transactions (sub-awards, contracts, and subcontracts) under this Award that may involve access to export-controlled information technology.

14. 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 the recipient or subrecipient engages in certain activities related to trafficking in persons. The Department hereby incorporates the following award term required by 2 C.F.R. § 175.15(b).

See <http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf>.

Award Term from 2 C.F.R. § 175.15(b): Trafficking in persons.

- a. Provisions applicable to a Recipient that is a private entity.
 - (i) You as the Recipient, your employees, subrecipients under this award, and subrecipients’ employees may not—
 - a) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - b) Procure a commercial sex act during the period of time that the award is in effect; or
 - c) Use forced labor in the performance of the award or subawards under the award.
 - (ii) EDA, as the Federal awarding agency, may unilaterally terminate this award, without penalty, if the Recipient or a subrecipient that is a private entity —
 - a) Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - b) 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. EDA as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
 - (i) Is determined to have violated an applicable prohibition in Section 14 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 an applicable 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 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.
 - (i) You must inform EDA immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 - (ii) EDA’s right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - a) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - b) Is in addition to all other remedies for noncompliance that are available to us under this award.
 - (iii) 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:
 - (i) Employee means either:

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

(ii) 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.

(iii) Private entity:

- a) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25;
- b) 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 CFR 175.25(b); and (B) A for-profit organization.

(iv) “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).

15. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282, 31 USCA § 6101 Note)

- a. **Searchable Website Requirements.** The Federal Funding Accountability and Transparency Act of 2006 (FFATA) requires information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at www.USASpending.gov. Recipients and subrecipients must include the following required data elements in their application:
 - (i) Name of entity receiving award;
 - (ii) Award amount;
 - (iii) Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;
 - (iv) Location of entity, primary location of performance (City/State/Congressional District/Country; and
 - (v) Unique identifier of entity.
- b. **Subaward and Executive Compensation Data Reporting Requirements.** Prime grant recipients awarded a new Federal grant greater than or equal to \$25,000 on or after October 1, 2010, other than those funded by the Recovery Act, are subject to FFATA subaward reporting requirements as outlined in the OMB guidance issued August 27, 2010. The prime recipient

is required to file a FFATA subaward report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to \$25,000. See Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (see 31 U.S.C. 6101 note). The reporting requirements are located in Appendix A of 2 C.F.R. Part 170 and are available on GPO's FDsys website: <http://www.gpo.gov/fdsys/pkg/CFR-2011-title2-vol1/pdf/CFR-2011-title2-vol1-part170-appA.pdf>.

c. Central Contractor Registration and Universal Identifier requirements.

- (i) Requirement for Central Contractor Registration (CCR). 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 the CCR 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.
- (ii) Requirement for Data Universal Numbering System (DUNS) Numbers. If you are authorized to make subawards under this award, you:
 - a) 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 DUNS number to you.
 - b) May not make a subaward to an entity unless the entity has provided its DUNS number to you.
- (iii) Definitions for purposes of this award term:
 - a) Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management Internet site (currently at <https://www.sam.gov/portal/public/SAM/>).
 - b) Data Universal Numbering System (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>).
 - c) 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:
 - (1) A Governmental organization, which is a State, local government, or Indian Tribe;
 - (2) A foreign public entity;

- (3) A domestic or foreign nonprofit organization;
- (4) A domestic or foreign for-profit organization; and
- (5) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

d) Subaward:

- (1) 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.
- (2) 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”).
- (3) A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

e) Subrecipient means an entity that:

- (1) Receives a subaward from you under this award; and
- (2) Is accountable to you for the use of the Federal funds provided by the subaward.

16. 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.

- a. Unless there is an actual rescission of funds for specific grant obligations, recipients of 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. Recipients are advised that ongoing activities by Federal employees involved in grant 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.
- d. All award actions will be delayed during a government shutdown; if it appears that a recipient’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 recipients that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, recipients whose ability to withdraw funds is subject to prior agency approval, which in general are

recipients that have been designated high risk, recipients of construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able 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. Recipients should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Recipients whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.

- c. The ASAP system should remain operational during a government shutdown. Recipients that do not require any grant office 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 and advanced funds held for more than 30 days will have to be returned with interest.

APPENDIX

THE FOLLOWING REFERENCE MATERIALS AND FORMS ARE AVAILABLE ONLINE:

1. 2 C.F.R. part 220 (codifying OMB Circular A-21, “*Cost Principles for Educational Institutions*”)
2. 2 C.F.R. part 225 (codifying OMB Circular A-87, “*Cost Principles for State, Local and Indian Tribal Governments*”)
3. 2 C.F.R. part 230 (codifying OMB Circular A-122, “*Cost Principles for Nonprofit Organizations*”)
4. 2 C.F.R. part 1326, “*Non-Procurement Debarment and Suspension*”
5. 13 C.F.R. chapter III (EDA’s regulations)
6. 15 C.F.R. part 14, “*Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit and Commercial Organizations*” (codifying OMB Circular A-110)
7. 15 C.F.R. part 24, “*Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*”
8. 15 C.F.R. part 4, “*Disclosure of Government Information*”
9. 15 C.F.R. part 27, “*Protection of Human Subjects*”
10. 15 C.F.R. part 28, “*New Restrictions on Lobbying*”
11. 15 C.F.R. part 29, “*Government-wide Requirements for Drug-Free Workplace (Financial Assistance)*”
12. 48 C.F.R. part 31, “*Contract Cost Principles and Procedures*”
13. OMB Circular A-102, “*Grants and Cooperative Agreements with State and Local Governments*”
14. OMB Circular A-133, “*Audits of States, Local Governments and Nonprofit Organizations,*” and the related *Compliance Supplement*

To access EDA’s regulations, visit EDA’s Internet website at http://www.eda.gov/pdf/EDAs_regs-13_CFR_Chapter_III.pdf.

To access the Code of Federal Regulations (C.F.R.), visit the Government Printing Office’s Internet website at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=%2Findex.tpl>.

To access the OMB Circulars, visit OMB's Internet website at www.whitehouse.gov/omb/circulars/index.html.

To access the Davis Bacon wage rate determinations, visit the Department of Labor's Internet website at www.wdol.gov/.

EDA FORMS:

1. Form CD-281, "Report of Government Property in Possession of Contractor"
2. Form CD-451, "Amendment to Financial Assistance Award"
3. Form CD-346, "Identification - Applicant for Funding Assistance"
4. Form SF-425, "Federal Financial Report"
5. Form SF-271, "Outlay Report and Request for Reimbursement for Construction Programs"
6. Form SF-272, "Federal Cash Transaction Report"
7. Form SF-LLL, "Disclosure of Lobbying Activities"

To access Department of Commerce forms ("CD"), visit the Department's Internet website at http://ocio.os.doc.gov/ITPolicyandPrograms/Electronic_Forms/index.htm.

To access the Standard Forms ("SF"), visit the General Services Administration's Internet website at www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=SF.

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS



DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS

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PREFACE

This document sets out the standard terms and conditions generally applicable to U.S. Department of Commerce (“DOC” or “Commerce”) financial assistance awards (hereinafter referred to as the “DOC ST&Cs” or “Standard Terms”). A non-Federal entity¹ receiving a DOC financial assistance award must, in addition to the assurances made as part of the application, comply and require each of its 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, any other incorporated terms and conditions, and approved applications.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: public laws, regulations, applicable notices published in the *Federal Register*, E.O.s, OMB circulars, DOC ST&Cs, agency standard award conditions (if any), and special award conditions. A special award condition may amend or take precedence over a Standard Term on a case-by-case basis, when allowed by the DOC ST&Cs.

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

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”. 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 as 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 As set forth in 2 C.F.R. § 200.101(c), Federal agencies may apply 2 C.F.R. Part 200, subparts A through E, to for-profit entities, foreign public entities, or foreign organizations, except where the Federal awarding agency determines that the application of these subparts would be inconsistent with the international obligations of the United States or the statute or regulations of a foreign government.

A. PROGRAMMATIC REQUIREMENTS

.01 Performance (Technical) Reports

- a. Recipients must use OMB-approved governmentwide standard information collections when providing financial and performance information and, as appropriate and in accordance with the above-mentioned information collections, are required to relate financial data to the performance accomplishments of the 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 the Federal awarding agency and other non-Federal entities to improve program outcomes, share lessons learned, and spread the adoption of promising practices. As described in 2 C.F.R. § 200.210 "Information contained in a Federal award," the Federal awarding agency will identify the timing and scope of expected performance by the award recipient as related to the outcomes intended to be achieved by the Federal program.
- b. Recipients must submit performance (technical) reports, which may be Form SF-PPR "Performance Progress Report" or any successor form, or another format as required by the Federal awarding agency, electronically or in hard copy (no more than an original and two copies), in accordance with the award conditions, to the Federal Program Officer. Performance reports should be submitted in the same frequency as the Form SF-425 "Federal Financial Report", unless otherwise authorized by the Grants Officer.
- c. Performance (technical) reports shall contain the information prescribed in the OMB Uniform Guidance, specifically 2 C.F.R. § 200.328 ("Monitoring and reporting program performance"), unless otherwise specified in the award conditions.

.02 Reporting on Real Property

The Federal awarding agency or pass-through entity (as defined at 2 C.F.R. § 200.74) must require a non-Federal entity to submit reports (using Form SF-429 "Real Property Status Report" or any successor form) at least annually on the status of real property in which the Federal government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency 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 a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

.03 Unsatisfactory Performance

Failure to perform the work in accordance with the terms of the award and maintain satisfactory performance as determined by the Federal awarding agency 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”). *See also* DOC ST&C A.06 “Non-Compliance with Award Provisions.”

.04 Programmatic Changes

In accordance with 2 C.F.R. § 200.308 (“Revisions of budget and program plans”), the recipient shall report programmatic changes, including all changes to the scope of the award, to the Program Officer, who forwards the request to the Grants Officer. In addition, the recipient shall request prior approvals in accordance with 2 C.F.R. § 200.407 (“Prior written approval (prior approval)”).

.05 Other Federal Awards with Similar Programmatic Activities

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

.06 Non-Compliance with Award Provisions

Failure to comply with the provisions of an award may 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; 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. *See also* 2 C.F.R. §§ 200.339 (“Termination”) through 200.342 (“Effects of suspension and termination”). 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 recipient’s eligibility for future DOC or Federal awards.

.07 Prohibition against Assignment by the Non-Federal Entity

The non-Federal entity shall not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express written approval of the Grants Officer.

.08 Disclaimer Provisions

- a. The United States expressly disclaims any and all responsibility or liability to the non-Federal entity or third persons 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.

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 Financial Reports

- a. In accordance with 2 C.F.R. § 200.327 (“Financial reporting”), the recipient shall submit a “Federal Financial Report” (Form SF-425 or any successor form) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 days following the end of each reporting period. A final Form SF-425 shall be submitted within 90 days after the expiration of the period of performance.
- b. The reports must be submitted to the Federal awarding agency as directed by the Grants Officer electronically, or in hard copy (no more than an original and two copies), in accordance with the award conditions.

.03 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 specified in a special award condition, the advance method of payment shall be authorized. Advances shall be limited to the minimum amounts necessary to meet immediate disbursement needs. DOC policy requires that in the usual case, non-Federal entities time advance payment requests so that Federal funds are on hand for a maximum of three calendar days before being disbursed by the non-Federal entity for eligible award costs. In no case should advances exceed the amount of cash required for a 30-day period. Interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to \$500 per year may be retained by the non-Federal entity for administrative expenses.
 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 may change the method of payment to reimbursement only.
- c. Unless otherwise provided for in the award terms, payments 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 non-Federal entity’s bank account, in accordance with the requirements of the Debt Collection Improvement Act of 1996. In order to receive payments under ASAP, non-Federal entities 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.

Non-Federal entities 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 special award condition, clause, or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system.

When the Form SF-270 “Request for Advance or Reimbursement” (or successor form) is used to request payment, the non-Federal entity shall submit the request no more frequently than monthly, and advances shall be approved for periods to cover only expenses anticipated over the next 30 days. In these cases, the non-Federal entity must complete the Form SF-3881 “ACH Vendor Miscellaneous Payment Enrollment Form” (or successor form) and Form SF-270 and submit these forms to the Grants Officer. Form SF-3881 enrollment must be completed before the first award payment can be made via a Form SF-270 request.

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

.04 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 shall 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 shall not exceed the total Federal dollar amount authorized by the award.
- b. The non-Federal share, whether in cash or in-kind, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the non-Federal entity must meet its cost share commitment over the life of the award; failure to do so may result in the assignment of special award conditions or other further action as specified in Standard Term A.06 “Non-Compliance with Award Provisions”. In addition, under 2 C.F.R. § 200.306(c) “(Cost sharing or matching)”, unrecovered indirect costs, including indirect costs on cost sharing or matching, may be included as part of cost sharing or matching only with the written prior approval of the Federal awarding agency. The non-Federal entity must create and maintain sufficient records justifying all non-federal sharing requirements to facilitate questions and audits, see Section F of these Standard Terms, “Audits,” for audit requirements. See 2 C.F.R. § 200.306 for additional requirements regarding cost sharing.
- c. Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with Federal awarding agency regulations and specified

in a notice of funding opportunity. Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be explicitly described in the notice of funding opportunity. Furthermore, only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. *See also* 2 C.F.R. §§ 200.414 (“Indirect (F&A) costs”), 200.203 (“Notices of funding opportunities”), and Appendix I to 2 C.F.R. Part 200—Full Text of Notice of Funding Opportunity.

.05 Budget Changes and Transfer of Funds among Categories

- a. Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with 2 C.F.R. § 200.308 (“Revision of budget and program plans”). Requests for such budget or project changes must be submitted to the Grants Officer who shall make the final determination on such requests and notify the non-Federal entity in writing.
- 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 \$150,000 or less. For awards in which the Federal share of the project exceeds \$150,000, 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 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 (as applicable) for specific requirements concerning budget revisions and transfer of funds between budget categories.

.06 Indirect or Facilities and Administrative Costs

- a. Indirect costs (or facilities and administration (F&A)) costs 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. *See* the definition of indirect (F&A) costs at 2 C.F.R. § 200.56 (“Indirect (facilities & administrative (F&A)) costs”).

b. Excess indirect costs may not be used to offset unallowable direct costs.

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.

1. Determining the Cognizant Agency for Non-Federal Entities that are State, local, and Indian Tribal Governments; Institutions of Higher Education; Hospitals; and Non-Profit Organizations (Non-Commercial Organizations). In accordance with 2 C.F.R. § 200.19 ("Cognizant agency for indirect costs"), the cognizant agency for indirect costs is the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals on behalf of all Federal agencies. Approved rates must be accepted by other agencies, unless required by Federal statute or regulation or when approved by a Federal agency awarding head or delegate in accordance with 2 C.F.R. § 200.414(c) ("Indirect (F&A) costs").

If indirect costs are permitted and the non-Federal entity would like to include indirect costs in its budget, but the non-Federal entity has not previously established an indirect cost rate with a Federal agency, the requirements for determining the relevant cognizant agency and developing and submitting indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III – VII to 2 C.F.R. Part 200 as follows:

- i. Appendix III to 2 C.F.R. Part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);
 - ii. Appendix IV to 2 C.F.R. Part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;
 - iii. Appendix V to 2 C.F.R. Part 200 – State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans;
 - iv. Appendix VI to 2 C.F.R. Part 200 – Public Assistance Cost Allocation Plans;
 - v. Appendix VII to 2 C.F.R. Part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals.
2. Commercial Organizations. For commercial organizations, the term "cognizant Federal agency" generally is defined as the agency that provides the largest dollar amount of negotiated contracts, including options. See 48 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 the purpose of indirect cost negotiations. For those organizations for which DOC is cognizant, DOC or its designee will negotiate a rate in accordance with the provisions of 2 C.F.R. § 200.414 using the cost principles found in 48 C.F.R. Part 31, "Contract Cost Principles and Procedures." For guidance on how to put an indirect cost plan together go to:

<http://www.dol.gov/oasam/programs/boc/costdeterminationguide/main.htm>

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

- i. Within 90 days of the award start date the non-Federal entity shall submit to the Grants Officer of the relevant funding bureau any documentation (indirect cost proposal, cost allocation plan, etc.) necessary to allow the agency to perform the indirect cost rate proposal review.
 - ii. The non-Federal entity can use the fixed rate proposed in the indirect cost plan as a provisional rate until such time as the DOC provides a response to the submitted plan.
4. When DOC is not the oversight or cognizant Federal agency, the non-Federal entity shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.
- d. If the non-Federal entity fails to submit required documentation to DOC within 90 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 non-Federal entity'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 shall be 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 C.F.R. § 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.
 - g. In addition, in accordance with 2 C.F.R. § 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 C.F.R. Part 200 (specifically, a governmental department or agency that receives more than \$35 million in direct Federal funding), 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”), a non-Federal entity may charge to the Federal award only allowable costs incurred during the period of performance, which is the period established in the award document during which Federal sponsorship begins and ends and, as defined at 2 C.F.R. § 200.77, 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”.
- b. In accordance with 2 C.F.R. § 200.458 (“Pre-award costs”), pre-award costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency.
- c. The non-Federal entity shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the period of performance. The only costs that are authorized for a period of up to 90 days following the end of the period of performance are those strictly associated with close-out activities. Close-out activities are normally limited to the preparation of final progress, financial, and required project audit reports unless otherwise approved in writing by the Grants Officer. The Federal awarding agency or pass-through entity may approve extensions of the 90-day closeout period upon a request by the non-Federal entity as provided in 2 C.F.R. § 200.343 (“Closeout”).
- d. Unless otherwise authorized in 2 C.F.R § 200.343(a) or a special award condition, any extension of the period of performance can only be authorized by the Grants Officer in writing. Verbal or written assurances of funding from anyone other than the Grants Officer shall not constitute authority to obligate funds for programmatic activities beyond the end of the period of performance.
- e. 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

Refunds of Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) taxes received by the non-Federal entity during or after the period of performance must be refunded or credited to DOC where the benefits were financed with Federal funds under the award. The non-Federal entity agrees to contact the Grants Officer immediately upon receipt of these refunds and further agrees to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the period of performance ends.

C. INTERNAL CONTROLS

Consistent with 2 C.F.R. § 200.303 (“Internal controls”), each non-Federal entity must:

1. Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States (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) (available online at <http://www.coso.org/documents/Internal%20Control-Integrated%20Framework.pdf>).
2. Comply with Federal statutes, regulations, and the terms and conditions of Federal awards.
3. Evaluate and monitor the non-Federal entity’s compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.
4. Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; and
5. Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.

D. 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, real property, equipment, and intangible 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 shall comply with all use and disposition requirements and restrictions as

set forth in 2 C.F.R. §§ 200.310 through 200.316, as applicable, and in the terms and conditions of the Federal award.

- b. The Grants Officer may require a non-Federal entity to execute a security interest 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 security interest or other public notice must be acceptable in form and substance to the DOC and must be perfected and 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, shall be returned to the Grants Officer. 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.
- c. In accordance with 2 C.F.R. § 200.329 ("Reporting on real property"), the Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports (using Form SF-429 "Real Property Status Report" or any successor form) at least annually on the status of real property in which the Federal government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal Interest attached is for a period of 15 years or more, the Federal awarding agency 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 a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years). The Federal awarding agency or pass-through entity may also require a non-Federal entity to periodically submit reports (using Form SF-428 "Tangible Personal Property Report" or any successor form) concerning tangible personal property in which the Federal Government retains an interest. In addition, the Federal awarding agency or pass-through entity may require a non-Federal entity to submit Form SF-429 and/or Form SF-428 in connection with a non-Federal entity's request to acquire, encumber, dispose of, or take any other action pertaining to real property or tangible personal property acquired or improved, in whole or in part, under a DOC financial assistance award or to Federally-owned property provided under a DOC award.

.03 Intellectual Property Rights

- a. General. The rights to any work produced or purchased 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. In accordance with 2 C.F.R. § 200.315(d), the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award and authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

- b. Inventions. Unless otherwise provided by law, the rights to any invention made by a non-Federal entity under a Federal 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.*, except as otherwise required 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 and in particular, in the standard patent rights clause in 37 C.F.R. § 401.14, which is hereby incorporated by reference into this award.

1. Ownership.

- i. Non-Federal entity. The non-Federal entity has the right to elect to retain title to any invention it makes (conceived or first actually reduced to practice) or is made by its employees. A non-Federal entity that is a non-profit organization, which includes a university or other institution of higher learning, may not assign to a third party its rights to such an invention without the permission of DOC unless that assignment is to a patent management organization (e.g., a university's Research Foundation). The non-Federal entity's ownership rights are subject to the Government's nonexclusive, nontransferable, irrevocable, paid-up license and other rights.
- ii. Department. If the non-Federal entity elects not to retain title, fails to disclose the invention to the Federal awarding agency within the required time limits, or does not file a patent application within the time limits set forth in the standard patent rights clause, the DOC may request an assignment of all rights, which is normally subject to a limited royalty free nonexclusive revocable license for the non-Federal entity. The DOC owns any invention made solely by its employees, but may license the non-Federal entity in accordance with the procedures in 37 C.F.R. Part 404.
- iii. Inventor/Employee. If neither the non-Federal entity nor the DOC is interested in owning an invention by a non-Federal entity employee, the non-Federal entity, with the written concurrence of the DOC, may allow the inventor/employee to retain ownership of the invention subject to certain restrictions as described in 37 C.F.R. § 401.9.
- iv. Joint inventions. Inventions made jointly by a non-Federal entity and a DOC employee will be owned jointly by the non-Federal entity and the DOC. However, the DOC may transfer or license its rights to the non-Federal entity as authorized by 35 U.S.C. § 202(e) and 37 C.F.R. § 401.10 if the non-Federal entity is willing to patent and license the invention usually in exchange for a share of "net" royalties

based on the number of inventors (e.g., 50-50 if there is one non-Federal entity inventor and one DOC employee inventor). The agreement will be prepared by the DOC and may include other provisions, such as a royalty free license to the Government and certain other entities. The provision at 35 U.S.C. § 202(e) also authorizes the non-Federal entity to transfer its rights to the Government, which can agree to share royalties similarly as described above.

2. Responsibilities - iEdison. The non-Federal entity has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The non-Federal entity is expected to comply with all the requirements of the standard patent rights clause and 37 C.F.R. Part 401. 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 DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.
 - c. Patent Notification Procedures. Pursuant to E.O. 12889 (58 FR 69681, 1993), 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, works produced by Government employees are not copyrightable in the United States. 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 Federal awarding agency 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.

E. PROCUREMENT STANDARDS

1. 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”).
2. 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”). This 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.

F. 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, shall 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, in order 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 the purpose of 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. Organization-wide or program-specific audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by Subpart F to 2 C.F.R. Part 200, “Audits Requirements.” Non-Federal entities that are subject to the provisions of 2 C.F.R. Part 200 and that expend \$750,000 or more in a year in Federal awards shall have an audit conducted for that year in accordance with the relevant requirements. 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, a copy of the audit shall be submitted electronically to the Federal Audit Clearinghouse website at: <http://harvester.census.gov/sac/>. If it is necessary to submit by paper, the address for submission is:

Federal Audit Clearinghouse
 Bureau of the Census
 1201 E. 10th Street
 Jeffersonville, IN 47132

Within 90 days of the end of the fiscal year of a non-Federal entity subject to Subpart F of 2 C.F.R. Part 200, the entity is responsible for notifying the Grants Officer of the amount of Federal awards, including all DOC and non-DOC awards, the non-Federal entity expended during its fiscal year.

- b. Unless otherwise specified in the terms and conditions of the award, non-Federal entities that are not subject to Subpart F of 2 C.F.R. Part 200 (e.g., for-profit entities) and that expend \$750,000 or more in DOC funds during their fiscal year must have an audit conducted for that year in accordance with Subpart F of 2 C.F.R. Part 200. The audit shall be completed and submitted to the Grants Officer within the earlier of 30 calendar days of the non-Federal entity's receipt of the audit report or nine months following the end of the non-Federal entity's fiscal year.

For-profit entities that expend less than \$750,000 in DOC funds in a given fiscal year are not required to have an annual audit for that year but must make their award-related records available to DOC or other designated officials for review and audit. 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.

- c. Some DOC programs have specific audit guidelines that will be incorporated into the award. When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in 2 C.F.R. § 200.507 ("Program-specific audits"). The non-Federal entity may include a line item in the budget for the cost of the audit for approval. A copy of the program-specific audit shall be submitted to the Grants Officer.
- d. Non-Federal entities 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. 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 to a subrecipient.

.02 Audit Resolution Process

- a. An audit of the award may result in the disallowance of costs incurred by the non-Federal entity and the establishment of a debt (account receivable) due DOC. For this reason, the non-Federal entity 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. In accordance with the *Federal Register* notice dated January 27, 1989 (54 FR 4053), a non-Federal entity whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:
 1. The non-Federal entity has 30 days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.
 2. The non-Federal entity has 30 days from the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.
 3. The DOC shall review the documentary evidence submitted by the non-Federal entity and shall notify the non-Federal entity of the results in an *Audit Resolution Determination Letter*. The non-Federal entity has 30 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 non-Federal entity 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 interest on the debt. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.
 5. The DOC shall review the non-Federal entity's appeal and notify the non-Federal entity 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 non-Federal entity. No other administrative appeals are available in DOC.

G. DEBTS

.01 Payment of Debts Owed the Federal Government

- a. The non-Federal entity must promptly pay any debts determined to be owed the Federal Government. Any funds paid to the 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.
- b. DOC debt collection procedures are set out in 15 C.F.R. Part 19. In accordance with 2 C.F.R. § 200.345 and 31 U.S.C. § 3717, failure to pay a debt owed to the Federal Government shall 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 more than 180 days delinquent 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, and may result in DOC taking further action as specified in DOC ST&C A.06 "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 shall be assessed on the delinquent debt in accordance with section 3717(a) of the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701 *et seq.*). 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 <http://www.fms.treas.gov/cvfr/index.html> 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 shall remain fixed for the duration of the indebtedness.
- b. Penalties shall 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, shall 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, 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 shall not be 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.

H. GOVERNMENTWIDE DEBARMENT AND SUSPENSION

The non-Federal entity shall comply with the provisions of 2 C.F.R. Part 1326, "Nonprocurement Debarment and Suspension" (published in the *Federal Register* on December 21, 2006, 71 FR 76573), 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 sets forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

I. LOBBYING RESTRICTIONS

.01 Statutory Provisions

Non-Federal entities shall comply with 2 C.F.R. § 200.450 ("Lobbying"), which incorporates the provisions of 31 U.S.C. § 1352; the "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990); 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 on to improperly influence are unallowable. See 2 C.F.R. § 200.450(b) and (c).

.02 Disclosure of Lobbying Activities

Any non-Federal entity that receives more than \$100,000 in Federal funding shall submit a completed Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 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 non-Federal entity must submit any required Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

J. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS

.01 Conflicts of Interest and Codes of Conduct

- a. General conflicts of interest requirements. In accordance with 2 C.F.R. § 200.112 (“Conflicts of interest”), each non-Federal entity must comply with the conflicts of interest policy provided by the Grants Officer. Any non-Federal entity must disclose in writing any potential conflicts of interest to the DOC or pass-through entity. In addition, pursuant to the certification in Form SF-424B, paragraph 3 and Form SF-424D, paragraph 7, as applicable, the 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 personal or organizational conflict of interest, or personal gain in the administration of an award.
- b. Procurement-related conflicts of interest. In addition, 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* Section E. of these DOC ST&Cs entitled “Procurement Standards.”

.02 Applicability of Award Provisions to Subrecipients

- a. The recipient or pass-through entity shall require all subrecipients, including lower tier subrecipients, under the award to comply with the provisions of the award, including applicable provisions of the OMB Uniform Guidance (2 C.F.R. Part 200), and all associated terms and conditions. *See* 2 C.F.R. §§ 200.330 (“Subrecipient and contractor determinations”) through 200.332, (“Subrecipient Monitoring and Management”) and 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.
- b. In accordance with 2 C.F.R. § 200.331 (“Requirements for pass-through entities”), all pass-through entities must:
 1. Subaward identification. Clearly identify every subaward to the subrecipient at the time of the subaward, including changes in subsequent subaward modification. In accordance with 2 C.F.R. § 200.331(a), required information includes:
 - i. All Federal Award Information data elements set out at 2 C.F.R. § 200.331(a)(1);

- ii. All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;
 - iii. Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency, including identification of required financial and performance reports;
 - iv. Indirect cost rate information in accordance with 2 C.F.R. § 200.331(a)(4);
 - v. Access requirements to the subrecipient's records and financial statements in accordance with 2 C.F.R. § 200.331(a)(5); and
 - vi. Appropriate terms and conditions concerning closeout of the subaward.
2. Risk-Based Subrecipient Evaluations. Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring in accordance with 2 C.F.R. § 200.331(b).
 3. Subaward conditions. Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in 2 C.F.R. § 200.207 ("Specific conditions").
 4. Subrecipient Monitoring. In accordance with 2 C.F.R. § 200.331(d), monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal requirements; and that the subaward performance goals are achieved. Subrecipient monitoring must include:
 - i. Reviewing financial and programmatic reports required by the pass-through entity;
 - ii. Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means; and
 - iii. Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by 2 C.F.R. § 200.521 ("Management decision").
 5. Utilizing Risk-Based Monitoring Tools. In accordance with 2 C.F.R. § 200.331(e), depending on the recipient's evaluation of each subrecipient's risk, utilize appropriate monitoring tools, including training and technical assistance, performing on-site reviews, and arranging agreed-upon-procedures engagements as described in 2 C.F.R. § 200.425 ("Audit Services").

6. Subrecipient Audits. Verify that every subrecipient is audited as required by 2 C.F.R. Part 200, Subpart F “Audit requirements” when it is expected that the subrecipient’s Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 C.F.R. § 200.501 (“Audit requirements”).
7. Necessary adjustments to the pass-through entity’s records. Consider whether the results of the subrecipient’s audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity’s own records.
8. Enforcement action. Considering taking enforcement action against noncompliant subrecipients as described in 2 C.F.R. § 200.338 and in applicable program regulations.

See also 2 C.F.R. § 200.331 for the full text of requirements for pass-through entities.

.03 Competition and Codes of Conduct for Subawards

- a. The non-Federal entity must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition.
- b. The non-Federal entity shall maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, 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/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the non-Federal entity shall neither solicit nor accept anything of monetary value from subrecipients. However, the non-Federal entity 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 the recipient.
- c. 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.

.04 Applicability of Provisions to Subawards, Contracts, and Subcontracts

- a. The non-Federal entity 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 C.F.R. Part 180, "OMB Guidelines to Agencies on Government-wide 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 C.F.R. 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.

- b. The non-Federal entity shall include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts), that the award is subject to Subpart C of 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)."

- c. Required subaward and contractual provisions.

1. The non-Federal entity 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 C.F.R. Part 28, "New Restrictions on Lobbying." The non-Federal entity 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 the recipient. The recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.
2. In addition to other provisions required by the Federal agency or non-Federal entity, in accordance with 2 C.F.R. § 200.326 ("Contract provisions"), all contracts made by the non-Federal entity under the Federal award must contain the applicable provisions set out at 2 C.F.R. Part 200, Appendix II, "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards", 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 C.F.R. Part 200 for a full explanation of these requirements.

.05 Pilot Program for Enhancement of Employee Whistleblower Protections

The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. No. 112-239, enacted January 2, 2013 and codified at 41 U.S.C. § 4712) includes a pilot program of whistleblower protection. It applies to all DOC awards, subawards, or contracts under awards issued beginning July 1, 2013 through January 1, 2017. The following term implements that law:

In accordance with 41 U.S.C. § 4712, an employee of a non-Federal entity or contractor under a Federal award or subaward 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 shall 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 non-Federal entity 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

utilize 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

.07 Subaward and/or Contract to a Federal Agency

- a. The non-Federal entity, contractor, and/or subcontractor shall not sub-grant or sub-contract any part of the approved project to any agency or employee of DOC and/or other Federal department, agency, or instrumentality without the prior written approval of the Grants Officer.
- b. The non-Federal entity must submit requests for approval of such action to the Federal Program Officer who shall review and make a recommendation to the Grants Officer. The Grants Officer must forward all requests to the Federal Assistance Law Division in the Office of the Department of Commerce Assistant General Counsel for Finance and Litigation for review prior to making the final determination. The Grants Officer will notify the non-Federal entity in writing of the final determination.

K. NATIONAL POLICY REQUIREMENTS

.01 Non-Discrimination Requirements

No person in the United States shall, 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 non-Federal entity 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, 1965),³ which requires Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of E.O. 11246 and Department of Labor regulations implementing E.O. 11246 (41 C.F.R. § 60-1.4(b), 1991).
2. E.O. 13166 (65 FR 50121, 2000), “Improving Access to Services for Persons With Limited English Proficiency,” requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have

³ As amended by E.O. 11375 (32 FR 14303, 1967) and E.O. 12086 (43 FR 46501, 1978).

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 shall be 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 on the basis of 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.

.02 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 shall 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 special 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 significantly affecting 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 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. Until such time as 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 special award condition requiring the non-Federal entity to submit the appropriate 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 implementing regulations (36 C.F.R. Part 800) require that Federal agencies take into account the effects of their undertakings on 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 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 special award condition requiring the non-Federal entity to submit any information sufficient to enable DOC to make the requisite assessment under the NHPA.

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 make a determination whether there is an alternative to minimize any potential harm.

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

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, 1973), and shall not use a facility on the Environmental Protection Agency’s (EPA) List of Violating Facilities (this list is incorporated into the Excluded Parties List System located at <https://www.sam.gov/portal/public/SAM/>) in performing any award that is nonexempt under 2 C.F.R. § 1532, and shall notify the Program Officer in writing if it intends to use a facility that is on the EPA List of Violating Facilities or knows that the facility has been recommended to be placed on the List.

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

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas.

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

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 also 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 (“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.

.03 OTHER NATIONAL POLICY REQUIREMENTS

a. 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 shall be subject to imprisonment of not more than five years and shall 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.

b. Drug-Free Workplace

The non-Federal entity shall comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8102) and DOC implementing regulations published at 15 C.F.R. Part 29 “Government wide Requirements for Drug-Free Workplace (Financial Assistance),” which require that the non-Federal entity take steps to provide a drug-free workplace.

c. Foreign Travel

1. Each non-Federal entity shall 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 shall make the final determination and notify the non-Federal entity in writing. 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.

d. Increasing Seat Belt Use in the United States

Pursuant to E.O. 13043 (62 FR 19217, 1997), 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.

e. 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 special 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 conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. 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 shall submit appropriate documentation to the Federal Program Officer for approval by the appropriate DOC officials. This documentation may include:
 - i. Documentation establishing approval of the project by an Institutional Review Board (IRB) approved for Federal-wide use under Department of Health and Human Services guidelines (*see also* 15 C.F.R. § 27.103);
 - ii. Documentation to support an exemption for the project under 15 C.F.R. § 27.101(b); or
 - iii. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
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.

f. Federal Employee Expenses

Federal agencies are generally barred from accepting funds from a non-Federal entity to pay transportation, travel, or other expenses for any Federal employee. 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 prohibits the acceptance of gifts,

including travel payments for Federal employees, from non-Federal entities or applicants regardless of the source.

g. Minority Serving Institutions Initiative

Pursuant to E.O.s 13555 (“White House Initiative on Educational Excellence for Hispanics”) (75 FR 65417, 2010), 13592 (“Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities”) (76 FR 76603, 2011) , and 13532 (“Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities”) (75 FR 9749, 2010), 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 in order to advance the development of human potential, strengthen the Nation’s capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. 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. Publications, Videos, and Acknowledgment of Sponsorship

1. 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).

2. 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.
3. 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.
4. Non-Federal entities are responsible for assuring that every publication of material based on, developed under, or otherwise produced under a DOC financial assistance award, except scientific articles or papers appearing in scientific, technical, or professional journals, contains the following disclaimer or other disclaimer approved by the Grants Officer:

This [report/video/etc.] was prepared by [non-Federal entity 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.

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. Homeland Security Presidential Directive 12

If the performance of a grant 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 days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services’ (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under a financial assistance award shall comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12, “Policy for a Common Identification Standard for Federal Employees and Contractors”, FIPS PUB 201, and OMB Memorandum M-05-24. The non-Federal entity shall

ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The non-Federal entity shall insert the following term in all subawards and contracts when the subaward non-Federal entity 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 shall comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.

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

I. 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 involves access to export-controlled items.
2. In performing this financial assistance award, a non-Federal entity may gain access to 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 reexports provisions. The non-Federal entity shall establish and maintain effective export compliance procedures at DOC and non-DOC facilities throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled items, including by foreign nationals.
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.

- ii. Deemed Export/Reexport. The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is “deemed” to be an export to the home country of the foreign national (*see* 15 C.F.R. § 734.2(b)(2)(ii)). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national’s home country. Licenses from DOC may be required for deemed exports or reexports.
4. The non-Federal entity shall control access to all export-controlled items that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that access to, or release of, such items are restricted, 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.
 6. To the extent the non-Federal entity wishes to provide foreign nationals with access to export-controlled items, the non-Federal entity shall be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed reexports.
 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 of munitions items subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), including releases of such items to foreign nationals.
 9. The non-Federal entity shall include this clause, including this paragraph (i), in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve access to export-controlled items.

m. 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). See <http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf>.

Award Term from 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).

n. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282, 31 U.S.C. § 6101 note)

1. **Searchable Website Requirements.** The Federal Funding Accountability and Transparency Act of 2006 (FFATA) requires information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at www.USASpending.gov. Recipients and subrecipients must include the following required data elements in their application:

- Name of entity receiving award;
- Award amount;
- Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;
- Location of entity, primary location of performance (City/State/Congressional District/Country; and
- Unique identifier of entity.

See also 2 C.F.R. § 200.211 (“Public access to Federal award information”).

2. **Reporting Subawards and Executive Compensation.** Prime grant recipients awarded a new Federal grant greater than or equal to \$25,000 on or after October 1, 2010, other than those funded by the Recovery Act, are subject to FFATA subaward reporting requirements as outlined in the OMB guidance issued August 27, 2010. The prime recipient is required to file a FFATA subaward report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to \$25,000. *See* Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (*see* 31 U.S.C. 6101 note). The reporting requirements are located in Appendix A of 2 C.F.R. Part 170 and are available on the Government Printing Office’s (GPO’s) FDsys website: <http://www.gpo.gov/fdsys/pkg/CFR-2011-title2-vol1/pdf/CFR-2011-title2-vol1-part170-appA.pdf>.

Award Term from Appendix A of 2 C.F.R. Part 170:

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 at <http://www.ccr.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 shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

See also 2 C.F.R. § 200.300(b).

2. **Where and when to report.** You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
 - i. To the recipient.
 - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

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

e. Definitions. For purposes of this award term:

1. 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;*
 - 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.*
- 3. Central Contractor Registration (CCR) and Universal Identifier requirements. In accordance with 2 C.F.R. Part 25, recipients must obtain a DUNS number and maintain an active registration in the CCR database. In addition, recipients must notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its DUNS number to the prime recipient. The requirements are located in Appendix A of 2 C.F.R. Part 25 and are available on GOP's FDsys website at: <http://www.gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-part25.pdf>.

Award Term from Appendix A of 2 C.F.R. Part 25:

Central Contractor Registration and Universal Identifier Requirements

- a. ***Requirement for Central Contractor Registration (CCR).*** *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 the CCR 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 Data Universal Numbering System (DUNS) Numbers.*** *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 DUNS number to you.*
 - 2. *May not make a subaward to an entity unless the entity has provided its DUNS number to you.*
- c. ***Definitions for purposes of this award term:***
 - 1. *Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management Internet site (currently at <https://www.sam.gov/portal/public/SAM/>).*
 - 2. *Data Universal Numbering System (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:*
 - a. *A Governmental organization, which is a State, local government, or Indian Tribe;*
 - b. *A foreign public entity;*
 - c. *A domestic or foreign nonprofit organization;*
 - d. *A domestic or foreign for-profit organization; and*
 - e. *A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.*
4. *Subaward:*
 - a. *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.*
 - b. *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”).*
 - c. *A subaward may be provided through any legal agreement, including an agreement that you consider a contract.*
5. *Subrecipient means an entity that:*
 - a. *Receives a subaward from you under this award; and*
 - b. *Is accountable to you for the use of the Federal funds provided by the subaward.*

See also 2 C.F.R. § 200.300(b).

n. 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 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 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 and advanced funds held for more than 30 days will have to be returned with interest.

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

Public Works and Economic Development Facilities Program
under 42 U.S.C. §3141, Section 201 of the
Public Works and Economic Development Act of 1965 (Public Law 89-136),
as amended by the Economic Development Administration Reauthorization Act of 2004
(Public Law 108-373)

Project Title: Chino Valley Roadway, Water and Sewer Lines Infrastructure Improvement Project	
Recipient Name: Town of Chino Valley	Project Number: 07 01 07213

1. 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 should be consistent with this *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.

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

Ruth Mayday Development Services Director Phone: (928)636-4427 Email: rmayday@chinoaz.net	Town of Chino Valley Development Services Department 1982 North Voss Drive Chino Valley, Arizona 86323
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3. The Grants Officer is authorized to award, amend, suspend, and terminate financial assistance awards. The Grants Officer is:

A. Leonard Smith Regional Director FAX: (206) 220-7657	Economic Development Administration Seattle Regional Office 915 Second Avenue, Room 1890 Seattle, Washington 98174-1012
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4. The Federal Program Officer (Area Director) oversees the programmatic aspects of this Award. The Federal Program Officer is:

Kristine Skrinde Area Director Phone: (206) 220-7700 FAX: (206) 220-7669 Email: KSkrinde@eda.gov	Economic Development Administration Seattle Regional Office 915 Second Avenue, Room 1890 Seattle, Washington 98174-1012
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5. The EDA Project Officer is responsible for day-to-day administration and liaison with the Recipient and receives all reports and payment requests. The Project Officer is:

Brian Alvis Civil Engineer Phone: (206) 220-7688 FAX: (206) 220-7669 Email: BAlvis@eda.gov	Economic Development Administration Seattle Regional Office 915 Second Avenue, Room 1890 Seattle, Washington 98174-1012
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6. **ADDITIONAL INCLUDED DOCUMENTS:**

In addition to the regulations, documents, or authorities incorporated by reference on the Financial Assistance Award form (Form CD-450) the following additional documents are included with and considered to be part of the Award's terms and conditions:

- Authorized Scope of Work (Attachment 1)
- The March 12, 2013 Economic Development Administration Standard Terms and Conditions for Construction Projects are currently in the process of being updated to address, where appropriate: (i) the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (effective Dec. 26, 2014) as set forth at 2 C.F.R. part 200 and (ii) the amended EDA regulations (effective Jan. 20, 2015) (79 Fed. Reg. 76108) (Dec. 19, 2014). When the revised version of Economic Development Standard Terms and Conditions for Construction Projects (Revised Version) becomes available, the Revised Version will supersede the March 12, 2013 Economic Development Administration Standard Terms and Conditions for Construction Projects (attached hereto). At such time, the Recipient(s) shall execute an Amendment to Financial Assistance Award (Form CD-451) that will incorporate the Revised Version into the award that will replace the Department of Commerce Financial Assistance Standard Terms and Conditions (December 26, 2014) and superseded Economic Development Administration Standard Terms and Conditions for Construction Projects (March 12, 2013) previously incorporated into the award. Until such time as EDA and Recipient(s) execute the referenced CD-451, the two (2) attached sets of Standard Terms and Conditions shall be interpreted as one harmonious document but the Department of Commerce Financial Assistance Standard Terms and Conditions (December 26, 2014) shall control as to any inconsistencies between the two (2) attached sets of Standard Terms and Conditions. Should there be a discrepancy among these documents the Special Award Conditions (this document) and associated attachments hereto shall control. Should there be a discrepancy among these documents the Special Award Conditions (this document) and associated attachments hereto shall control.

7. **PROJECT DEVELOPMENT TIME SCHEDULE:** The Recipient agrees to the following Project development time schedule:

<u>Item</u>	<u>Submission Deadline</u>
Return of Executed Financial Assistance Award	30 calendar days after receipt of Form CD-450
Start of Construction	24 Months from Date of Award
Completion of Construction	48 Months from Date of Award
Authorized Award End Date	60 Months from Date of Award
Submission of Final Financial Report on Standard Form 425	No later than 90 calendar days after Award End Date

Project Closeout – All Project closeout documents, including final financial reports (Standard Form 425) and any required program reports, shall be submitted to EDA not more than 90 calendar days after the date the Recipient accepts the completed project from the contractor(s).

The Recipient shall diligently pursue the development of the Project so as to ensure completion within this time schedule. Moreover, the Recipient shall promptly notify EDA in writing of any event that could substantially delay meeting any of the proscribed time limits for the Project as set forth above. The Recipient further acknowledges that failure to meet the development time schedule may result in EDA's taking action to terminate the Award in accordance with the regulations set forth at 2 C.F.R. § 200.338 through § 200.342.

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

- A. AWARD DISBURSEMENTS: Reimbursable basis only:** EDA will make disbursements under this Award on a reimbursement basis only, in accord with the procedures outlined during the grant kick-off meeting.

The *Outlay Report and Request for Reimbursement for Construction Programs* (Standard Form 271) is used to request a disbursement, which shall be approved in writing by the Civil Engineer/Project Officer.

Please note that prior to the initial disbursement, Recipients must complete SF-3881, *ACH Vendor/Miscellaneous Payment Enrollment Form* and submit it to NOAA's Accounting Office by FAX to (301) 528-3675 (*FAX is required to secure confidentiality of sensitive information*). The form must be completed by the respective parties (EDA, Recipient Bank, and Recipient) at the start of each new award.

B. REPORTS:

- a. *Project Progress Reports:* The Recipient shall submit project progress reports to the Civil Engineer/Project Officer on a quarterly basis for the periods ending **December 31, March 31, June 30 and September 30**, or any portion thereof until the final grant payment is made by EDA. Reports should be submitted in accordance with the format required by the Project Officer and discussed during the project kick-off meeting. Reports are due no later than the 15th day of the month following the end of the quarterly period.
- b. *Financial Reports:* The Recipient shall submit a “*Federal Financial Report*” (Standard Form 425) on a semi-annual basis for the periods ending **March 31 and September 30**, or any portion thereof.

A Final Financial Report on Standard Form 425 must be submitted no more than 90 calendar days after the expiration date of the Award (e.g., the Award end date specified on the Form CD-450 or Form CD-451). Final Financial reports should follow the guidance outlined by the form 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 and program income (if applicable) is fully reported. Final grant rate and determinations of final balances owed to the government will be determined by the information on the final Standard Form 425, so it is imperative that this final financial form is submitted in a timely and accurate manner.

9. **ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined at the conclusion of the award period in accordance with the administrative authorities applicable pursuant to the *Financial Assistance Award* (Form CD-450), including 2 C.F.R. Part 200 - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, after Final Financial Documents are submitted.

Except as otherwise expressly provided for within these Special Award Conditions, the Investment Rate for the award (see 13 C.F.R. §§ 300.3 and 301.4) shall apply to allowable costs incurred by the Recipient in connection with the project. The Federal share in the allowable costs shall be based upon the Investment Rate (see 15 C.F.R. § 14.2(s)). In the event of an under run in total allowable costs for this project, the Federal share of allowable costs shall be determined by the Investment Rate established in the Form CD-450, or previously executed Form CD-451. The Federal share of total allowable costs shall not exceed the dollar amount of the original Award and subsequent amendments, if any, absent a determination by the Assistant Secretary (see 13 C.F.R § 308.1).

Line Item Budget:

A. Under the terms of the Award, the total approved authorized budget is:

Federal Share (EDA Funds)	\$1,600,074
Non-Federal Matching Share	<u>\$447,750</u>
Total Project Cost	\$2,047,824

B. Under the terms of this Award, the total approved line item budget is:

COST CLASSIFICATION	Proposed	Approved
Administrative and legal expenses	\$204,782	\$10,000
Land, structures, rights-of-way, etc.	\$0	\$0
Relocation expenses and payments	\$0	\$0
Architectural and engineering fees	\$85,000	\$140,000
Other architectural and engineering fees	\$13,000	\$0
Project inspection fees	\$37,750	\$40,000
Site work	\$43,500	\$0
Demolition and removal	\$119,334	\$0
Construction	\$1,419,458	\$1,700,000
Equipment	\$0	\$0
Contingencies	<u>\$125,000</u>	<u>\$157,824</u>
Total Project Costs	\$2,047,824	\$2,047,824

Explanation of Budget Changes:

Removal of "Admin & legal" except for a nominal amount.

Increase of "Construction" per construction cost estimate provided by the Applicant.

Increase of "Contingency" per construction cost estimate provided by the Applicant.

Increase of "Architectural and Engineering Fees" per industry standard.

Removal of "Site Work" and "Demolition and Removal" and added to "Construction".

10. FEDERAL SHARE: The EDA participation in total eligible project costs will be limited to the EDA grant amount or the EDA share of total allowable project costs, based on the area's grant rate eligibility at the time of award, whichever is less.

11. MATCHING SHARE: The Recipient agrees to provide the Recipient's non-Federal Matching Share contribution for eligible project expenses in proportion to the Federal share requested for such project expenses. (See 13 C.F.R. § 300.3) The Recipient also certifies that, in accepting the Financial Assistance Award, the Recipient's Matching Share of the project costs is committed and unencumbered, from authorized sources, and shall be available as needed for the project.

12. REFUND CHECKS, INTEREST, OR UNUSED FUNDS: Treasury has given EDA two options for having payments deposited to EDA's account:

- i. The first one is Pay.Gov. This option allows the payee to pay EDA through the Internet. The payee will have the option to make a one-time payment or to set up an account to make regular payments.
- ii. The second option is Paper Check conversion. All checks must identify on their face the name of the DOC agency funding the award, award number, and no more than a two-word description to identify the reason for the refund or check. A copy of the check should be provided to the EDA Project Officer. This option allows the payee to send a check to NOAA's Accounting Office, who processes EDA's accounting functions at the following address:

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Finance Office – Accounting Operations Division
Attn: EDA Grants
20020 Century Boulevard
Germantown, MD 20874

The accounting staff will scan the checks in encrypted file to the Federal Reserve Bank, and the funds will be deposited in EDA's account. While this process will not be an issue with most payees, there are occasionally issues for entities remitting funds to EDA via check. If you are remitting funds to EDA via check, please make note of the following:

Notice to Customers Making Payment by Check

If a check is sent to EDA, it will be converted into an electronic funds transfer by copying the check and using the account information to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will appear on your regular account statement.

EDA will not return your original check; the original will be destroyed and a copy will be maintained in our office. If the Electronic Funds Transfer (EFT) cannot be processed for technical reasons, the copy will be processed in place of the original check. If the EFT cannot be completed because of insufficient funds, we will charge you a one-time fee of \$25.00, which will be collected by EFT.

- 13. CONSTRUCTION COMPLETION:** In keeping with prudent grants management policy, EDA construction projects must be completed within five (5) years from the date the Form CD-450 is signed by the Recipient accepting the Award. If construction is not completed by this date and the Grants Officer determines, after consultation with the Grant Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously, the grant may be terminated. Extensions beyond the five year project period are exceedingly rare and can only be authorized by the Assistant Secretary.
- 14. USEFUL LIFE:** The useful life of this project is hereby determined to be 20 years. Nothing in this paragraph is intended to alter the Project Development Time Schedule set forth in provision 7 above.
- 15. GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION:** Department of Labor regulations set forth in 41 C.F.R. § 60-4 establish goals and timetables for participation of minorities and women in the construction industry. These regulations apply to all federally assisted construction contracts in excess of \$10,000. The Recipient shall comply with these regulations and shall obtain compliance with 41 C.F.R. § 60-4 from contractors and subcontractors employed in the completion of the Project by including such notices, clauses and provisions in the Solicitations for Offers or Bids as required by 41 C.F.R. § 60-4. The goal for the participation of women in each trade area shall be as follows: From April 1, 1981, until further notice: 6.9 percent.
- All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 C.F.R. § 60-4.6, or any successor regulations, shall hereafter be incorporated by reference into these Special Award Conditions.
- Goals for minority participation shall be as prescribed by Appendix B-80, Federal Register, Volume 45, No. 194, October 3, 1980, or subsequent publications. The Recipient shall include the “*Standard Federal Equal Employment Opportunity Construction Contract Specifications*” (or cause them to be included, if appropriate) in all Federally-assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 C.F.R. § 60-4.6.
- 16. ARCHITECT/ENGINEER AGREEMENT.** Prior to initial disbursement of funds by EDA, the Recipient must submit to the Government for approval, an Architect/Engineer Agreement that meets the requirements in the EDA’s “Summary of EDA Construction Standards,” as well as the competitive procurement standards of 2 C.F.R. § 200.318. The fee for basic Architecture/Engineering Services will be a lump sum or an agreed maximum, and no part of the fees for other services will be based on a cost-plus-a-percentage-of-cost or a cost using a multiplier.
- 17. PROCUREMENT:** The Recipient agrees that all procurement transactions shall be in accordance with Department of Commerce Regulations at 2 C.F.R. Part 200.

18. EVIDENCE OF GOOD TITLE: Prior to the initial disbursement of funds by EDA, the Recipient shall provide opinion of counsel, satisfactory to the Government, that the Recipient has acquired good and marketable title to land, free of all encumbrances, as well as rights-of-way, and easements necessary for the completion of the project, or of a long-term leasehold interest in accordance with Section L of the U.S. Department of Commerce Economic Development Administration Standard Terms and Conditions for Construction Projects (March 12, 2013).

19. NONRELOCATION: In signing this award of financial assistance, the Recipient(s) attests that the EDA funded project will not be used to induce the relocation or the movement of existing jobs from one Region to another Region by a primary beneficiary of the Award. (See 13 C.F.R. § 300.3) In the event that EDA determines that its assistance was used for such relocation purposes, EDA reserves the right to pursue all rights and remedies, including suspension of disbursements and termination of the award for convenience or cause, and disallowance of any costs attributable, directly or indirectly, to the relocation and the recovery of the Federal share thereof.

For purposes of ensuring that EDA assistance will not be used for relocation purposes, each applicant must inform EDA of all employers that constitute primary beneficiaries of the project assisted by EDA. EDA considers an employer to be a “primary beneficiary” if, in seeking EDA assistance, the applicant estimates that such employer will create or save 100 or more permanent jobs as a result of the investment assistance and specifically names the employer in its application to EDA to make the Award. In smaller communities, EDA may consider a primary beneficiary to be an employer of 50 or more jobs permanent jobs so identified.

20. FREEDOM OF INFORMATION ACT COMPLIANCE: EDA is responsible for meeting Freedom of Information Act (FOIA), Title 5 of the United States Code, Section 522 (5 U.S.C. §522) (Public Law 89-554), requirements regarding its records. The regulations governing the U.S. Department of Commerce under 15 C.F.R. part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications and other information submitted by applicants may be released in response to a written request for federal records that cites FOIA. Applicants should be aware that EDA may make certain application information publicly available. Accordingly, the applicant should notify EDA if it believes any application information to be confidential.

21. PROPERTY MANAGEMENT STANDARDS: The Recipient shall be responsible to ensure that the real property acquired or improved by this Award as an industrial park is used only for the authorized and specific purpose of an industrial park, and that the sale, lease, or conveyance parcels of the improved property within the park shall serve that purpose of the Award in accordance its terms and conditions and with 13 C.F.R. Part 314.

Since the authorized purpose of the project is to construct facilities to serve industrial or commercial parks or sites owned by the Recipient for sale or lease to private parties, such sale or lease is permitted so long as EDA requirements continue to be met. EDA requires evidence that the Recipient has title to the park or site prior to such sale or lease.

- 22. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA):** Prior to the advertisement of construction bid, the Recipient shall provide evidence satisfactory to the EDA that a NEPA public notice has been published for three consecutive days in the local newspaper with the widest distribution.
- 23. STATE AND HISTORIC PRESERVATION OFFICERS (SHPO/THPOS):** Prior to the start of any earth-disturbing activities, the Recipient shall provide evidence satisfactory to the EDA that: 1) the SHPO concurs with the findings and determination of effect of the project on cultural resources; and 2) the THPOs have been consulted with. Prior to the final ten percent (10%) disbursement of funds, the Recipient shall provide evidence satisfactory to the EDA that the railroad bed has been restored to pre-construction contours.
- 24. LETTER OF MAP REVISION (LOMR):** Prior to work in the Santa Cruz Wash floodplain, the Recipient shall provide evidence satisfactory to the EDA that the U.S. Army Corps of Engineers has concluded their Clean Water Act Section 404 process and the Federal Emergency Management Agency has issued a LOMR.
- 25. PROJECTS WITHIN STATE ROAD RIGHT-OF-WAY:** Recipients confirm and agree that (a) Recipients are committed during the Estimated Useful Life of the Project to operate, maintain and repair all improvements for the project consistent with this Award, and (b) if at any time during the Estimated Useful Life of the Project any or all of the improvements in the project within public highway(s) are relocated for any reason pursuant to requirements of the owner of the public highway, the Recipients shall be responsible for accomplishing the relocation, including as necessary expending the Recipients' own funds, so that the Project continues as authorized by this Award. Prior to soliciting bids for the improvements to be constructed with funds from this Award, Recipients shall submit to EDA all written authorization(s) (i.e. State permits) necessary for the Project to be constructed within the public highway. The authorization(s) shall have no time limits that restrict the use of the public highway for the Project during the Estimated Useful Life of the Project. It is determined and agreed that the Estimated Useful Life of this Project is 20 years.
- 26. DOCUMENTATION AND ADMINISTRATIVE REQUIREMENTS FOR DISBURSEMENT APPROVAL:** Prior to the disbursement of any of the grant award funds by EDA for reimbursement of costs the follow items must be addressed or submitted:
- A. Written approval from the Arizona Commerce Authority and Arizona Public Service Company that the proceeds of their grants may be used as matching share of cost for the EDA-funded project.

27. PERFORMANCE MEASURES: The Recipient agrees to report on program performance measures and program outcomes in such a 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.

At this time, all Awards for construction assistance require Recipients to report actual job creation/retention and private investment leverage three (3), six (6), and nine (9) years after an EDA investment. Recipients are to retain sufficient documentation so that they can submit these required reports. Failure to submit this required report can adversely impact the ability of the 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. EDA staff will contact Recipients in writing within a reasonable period prior to the time of submission of the reports with information on how this data should be submitted. Recipients should ensure adequate and sufficient records are kept to support the methodology for computing initial job and private investment estimates and all subsequent actual performance data calculations so that this information can be made available to EDA in the event of an audits or performance site visits.

Attachment 1
Authorized Scope of Work

The Recipient will carry out the construction of water, sewer, and roadway infrastructure to support utilities and transportation services to Old Home Manor Industrial Park.

Approved work to include:

- 4,500 LF 12-in sewer main w. ~9 manholes, disinfection & testing, pavement restoration, traffic control
- 5,356 LF 12-in water main w. ~13 valve assemblies, disinfection & testing, pavement restoration, traffic control
- 2,400 LF of 24-ft wide asphalt secondary road (Road 4 North), ~ 12,000 SY of base prep, 4,500 SY of haul import, ~ 2,667 SY of mill existing pavement, 1 box culvert, traffic control, 2,000 CY of aggregate base course, 2,000 SY of double chipseal

FORM CD-450
(REV. 12-14)

U.S. DEPARTMENT OF COMMERCE

☒ GRANT ☐ COOPERATIVE AGREEMENT

FINANCIAL ASSISTANCE AWARD

FEDERAL AWARD ID NUMBER

07 01 07213

RECIPIENT NAME

Town of Chino Valley

PERIOD OF PERFORMANCE

Date of Grant Officer's Signature through 60 Months

STREET ADDRESS

202 North State Route 89

FEDERAL SHARE OF COST

\$ 1,600,074.00

CITY, STATE, ZIP CODE

Chino Valley, Arizona 86323

RECIPIENT SHARE OF COST

\$ 447,750.00

AUTHORITY

42 U.S.C. 3141, Section 201 of the Public Works and Economic Development Act of 1965 (Public Law 89-136), as amended by the Economic Development Administration Reauthorization Act of 2004 (Public Law 108-373)

TOTAL ESTIMATED COST

\$ 2,047,824.00

CFDA NO. AND NAME

11.300 / Public Works and Economic Development Facilities Program

PROJECT TITLE

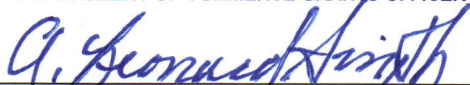
Chino Valley Roadway, Water and Sewer Lines Infrastructure Improvement Project

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 (DECEMBER 2014)
- ☐ 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): U.S. Department of Commerce Economic Development Administration Standard Terms and Conditions for Construction Projects (March 12, 2013)

Attachment 1 to Special Award Conditions

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER



A. Leonard Smith, Regional Director

DATE

8-24-2015

PRINTED NAME, PRINTED TITLE, AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL

DATE

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TOWN OF CHINO VALLEY COUNCIL AGENDA ITEM STAFF REPORT

Town Council Regular Meeting

Item No. 8. a.

Meeting Date: 09/08/2015
Contact Person: Robert Smith, Town Manager
 Phone: 928-636-2646 x-1201
Department: Town Manager
Estimated length of Staff Presentation: None
Physical location of item: N/A

AGENDA ITEM TITLE:

Pursuant to A.R.S. Section 38-431.03(A)(3) and (4) for discussion or consultation for legal advice with the Town Attorney and in order to consider its position and instruct the Town Attorney regarding the Town's position regarding the and the settlement of the matter of Cortez v. Town of Chino Valley.
 (Robert Smith, Town Manager)

SITUATION & ANALYSIS:

N/A

Attachments

No file(s) attached.