

Wallace, Meghan (PRT)

To: O'Meara, Brendan (PRT)
Subject: RE: DERA funding - SFBRR

From: Anthony Fournier [<mailto:afournier@baaqmd.gov>]
Sent: Monday, June 13, 2016 4:32 PM
To: Dailey, Peter (PRT); david@sfbayrail.com
Cc: nick@sfbayrail.com
Subject: DERA funding - SFBRR

Hi Peter and David,

Good news, EPA has issued a preliminary award notification to us for the Tier 4 locomotive project that we submitted earlier this year.

Unfortunately, they did not award us the full amount we originally requested but are proposing to provide ~70% of the original amount requested. Below is an early estimate of the current grant funding projections for the RPRC locomotives. The combination of Proposition 1B funds and the EPA DERA funds would result in a total grant award of **\$1,395,834 *** for the locomotive (see table below for details).

Only a fully executed Grant Agreement constitutes an obligation for the District to fund a project. **Please let me know if you would like to continue with the process to contract the project, and if you have any questions.**

Thanks,
Anthony

Applicant	Port of San Francisco/ SFBRR
Secondary GMP project #	1
Locomotive #/identifier	SFBR 25
Project type	Replacement
Type of locomotive	Switcher
HP range	1,006 - 2,300 hp
Build number	n/a
Build date	1945
Completion year	2016 *
Total project cost	\$ 1,735,000.00
Prop 1B Funding awards (2016 completion)	\$ 1,062,500.00 *
EPA DERA funding (proposed)	\$ 333,334.00

*** Note:** This data assumes project completion in 2016 as requested in the Prop 1B application. **If that date gets pushed into 2017, the Prop 1B funding award will be reduced to \$1,000,000.**

Anthony Fournier
Air Quality Program Manager
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
Phone: (415) 749-4961

	U.S. ENVIRONMENTAL PROTECTION AGENCY Assistance Amendment	GRANT NUMBER (FAIN): 99T42401 MODIFICATION NUMBER: 1 PROGRAM CODE: DE	DATE OF AWARD 11/16/2016
		TYPE OF ACTION No Cost Amendment	MAILING DATE 11/16/2016
		PAYMENT METHOD: Advance	ACH# 90049
		RECIPIENT TYPE: Special District	
RECIPIENT: Bay Area AQMD 375 Beale St., Suite 600 San Francisco, CA 94105 EIN: 94-1622746		PAYEE: Bay Area AQMD 375 Beale St., Suite 600 San Francisco, CA 94105	
PROJECT MANAGER Damian Breen 375 Beale St., Suite 600 San Francisco, CA 94105 E-Mail: dbreen@baaqmd.gov Phone: 415-749-5041		EPA PROJECT OFFICER Angela Latigue 75 Hawthorne Street, AIR-8 San Francisco, CA 94105 E-Mail: latigue.angela@epa.gov Phone: 415-947-4170	
EPA GRANT SPECIALIST Veronica Adams Grants Management Section, EMD-6-1 E-Mail: adams.veronica@epa.gov Phone: 415-972-3677			
PROJECT TITLE AND EXPLANATION OF CHANGES National Clean Diesel Program - Locomotive Replacement This project will target three switcher locomotives operating in goods movement service in Bay Area impacted communities by replacing and deploying three lower-emitting Tier-4 locomotives at the Port of Richmond and Port of San Francisco. This collaborative effort between the Bay Area Air Quality Management District (BAAQMD), Richmond Pacific Railroad Corporation, and the Port of San Francisco will achieve significant emission reductions in the most highly impacted communities in the Bay Area. This amendment revises the budget. The federal funding in the amount of \$1,420,263 remains the same.			
BUDGET PERIOD 09/15/2016 - 03/31/2019	PROJECT PERIOD 09/15/2016 - 03/31/2019	TOTAL BUDGET PERIOD COST \$5,698,925.00	TOTAL PROJECT PERIOD COST \$5,698,925.00
NOTICE OF AWARD			
<p>Based on your Application dated 04/20/2016 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$. EPA agrees to cost-share 24.92% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$1,420,263. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.</p>			
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS U.S. EPA, Region 9 Grants Management Section, EMD 6-1 75 Hawthorne Street San Francisco, CA 94105		ORGANIZATION / ADDRESS U.S. EPA, Region 9 Air Division, AIR-1 75 Hawthorne Street San Francisco, CA 94105	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official for Craig A. Wills - Grants Management Officer Veronica Adams - Award Official delegate			DATE 11/16/2016

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$48,226
2. Fringe Benefits	\$23,236
3. Travel	\$0
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$0
7. Construction	\$0
8. Other	\$5,599,000
9. Total Direct Charges	\$5,670,462
10. Indirect Costs: % Base	\$28,463
11. Total (Share: Recipient <u>75.08</u> % Federal <u>24.92</u> %.)	\$5,698,925
12. Total Approved Assistance Amount	\$1,420,263
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$0
15. Total EPA Amount Awarded To Date	\$1,420,263

Administrative Conditions

The EPA general terms and conditions have been revised. All other terms and conditions remain in full force and effect.

EPA General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at:

<https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-3-2016-or-later>.

These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award. The EPA repository for the general terms and conditions by year can be found at <http://www.epa.gov/grants/grant-terms-and-conditions>.

Programmatic Conditions


The programmatic term and condition (**P**) has been added to this agreement. All other programmatic terms and conditions remain in full force and effect.

P. Subaward Reporting Requirement:

The recipient must report on its subaward monitoring activities under 2 CFR 200.331(d). Examples of items that must be reported if the pass-through entity has the information available are:

- Summaries of results of reviews of financial and programmatic reports.
- Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.
- Environmental results the subrecipient achieved.
- Summaries of audit findings and related pass-through entity management decisions.
- Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.331(e), 2 CFR 200.207 and the 2 CFR Part 200.338 Remedies for Noncompliance.

-- End of Document --

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement	GRANT NUMBER (FAIN): 99T42401 MODIFICATION NUMBER: 0 PROGRAM CODE: DE	DATE OF AWARD 09/19/2016
		TYPE OF ACTION New	MAILING DATE 09/26/2016
		PAYMENT METHOD: Advance	ACH# 90049
		RECIPIENT TYPE: Special District	
RECIPIENT: Bay Area AQMD 375 Beale St., Suite 600 San Francisco, CA 94105 EIN: 94-1622746		PAYEE: Bay Area AQMD 375 Beale St., Suite 600 San Francisco, CA 94105	
PROJECT MANAGER Damian Breen 375 Beale St., Suite 600 San Francisco, CA 94105 E-Mail: dbreen@baaqmd.gov Phone: 415-749-5041		EPA PROJECT OFFICER Angela Latigue 75 Hawthorne Street, AIR-8 San Francisco, CA 94105 E-Mail: latigue.angela@epa.gov Phone: 415-947-4170	
EPA GRANT SPECIALIST Veronica Adams Grants Management Section, EMD-6-1 E-Mail: adams.veronica@epa.gov Phone: 415-972-3677			
PROJECT TITLE AND DESCRIPTION National Clean Diesel Program - Locomotive Replacement This project will target three switcher locomotives operating in goods movement service in Bay Area impacted communities by replacing and deploying three lower-emitting Tier-4 locomotives at the Port of Richmond and Port of San Francisco. This collaborative effort between the Bay Area Air Quality Management District (BAAQMD), Richmond Pacific Railroad Corporation, and the Port of San Francisco will achieve significant emission reductions in the most highly impacted communities in the Bay Area. This assistance agreement provides full federal funding in the amount of \$1,420,263. Pre-award costs have been approved back to 9/15/16.			
BUDGET PERIOD 09/15/2016 - 03/31/2019	PROJECT PERIOD 09/15/2016 - 03/31/2019	TOTAL BUDGET PERIOD COST \$5,698,925.00	TOTAL PROJECT PERIOD COST \$5,698,925.00
NOTICE OF AWARD			
<p>Based on your Application dated 04/20/2016 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$1,420,263. EPA agrees to cost-share 24.92% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$1,420,263. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.</p>			
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS U.S. EPA, Region 9 Grants Management Section, EMD 6-1 75 Hawthorne Street San Francisco, CA 94105		ORGANIZATION / ADDRESS U.S. EPA, Region 9 Air Division, AIR-1 75 Hawthorne Street San Francisco, CA 94105	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official Craig A. Wills - Grants Management Officer			DATE 09/19/2016

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 1,420,263	\$ 1,420,263
EPA In-Kind Amount	\$	\$ 0	\$ 0
Unexpended Prior Year Balance	\$	\$ 0	\$ 0
Other Federal Funds	\$	\$ 0	\$ 0
Recipient Contribution	\$	\$ 3,079,412	\$ 3,079,412
State Contribution	\$	\$ 0	\$ 0
Local Contribution	\$	\$ 0	\$ 0
Other Contribution	\$	\$ 1,199,250	\$ 1,199,250
Allowable Project Cost	\$ 0	\$ 5,698,925	\$ 5,698,925

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.039 - National Clean Diesel Funding Assistance Program (B)	Diesel Emissions Reduction Act of 2010 codified at 42 U.S.C. 16131 et seq	2 CFR 200 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
BAAQMD	1609M6S101	16	E4	09M2	102AH4	4122			1,420,263
									1,420,263

Budget Summary Page

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3. Travel	\$0
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5. Supplies	\$0
6. Contractual	\$0
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$5,670,462
10. Indirect Costs: <u>64.44%</u> Base <u>personnel only</u>	\$28,463
11. Total (Share: Recipient <u>75.08 %</u> Federal <u>24.92 %.</u>)	\$5,698,925
12. Total Approved Assistance Amount	\$1,420,263
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$1,420,263
15. Total EPA Amount Awarded To Date	\$1,420,263

Administrative Conditions

EPA General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at:

<https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-march-29-2016-or-later>. These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions or restrictions cited throughout the award. The EPA repository for the general terms and conditions by year can be found at .

<http://www.epa.gov/grants/grant-terms-and-conditions>.

A. Annual Federal Financial Report (FFR) - SF 425

For awards with cumulative project and budget periods greater than 12 months, the recipient will submit an annual FFR (SF 425) covering the period from "project/budget period start date" to September 30 of each calendar year to the U.S. EPA Las Vegas Finance Center (LVFC). The FFR will be submitted electronically to lvfc-grants@epa.gov no later than December 30 of the same calendar year. The form with instructions can be found on LVFC's website at <http://www2.epa.gov/financial/forms>.

B. Procurement

The recipient will ensure all procurement transactions will be conducted in a manner providing full and open competition consistent with 2 CFR Part 200.319. In accordance 2 CFR Part 200.323 the grantee and subgrantee(s) must perform a cost or price analysis in connection with applicable procurement actions, including contract modifications.

C. Six Good Faith Efforts 40 CFR Part 33, Subpart C

Pursuant to 40 CFR Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time

frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

D. Utilization of Disadvantaged Business Enterprises

General Compliance, 40 CFR Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR Part 33.

Fair Share Objectives, 40 CFR Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR Section 33.411 some recipients may be exempt from the fair share objective requirements as described in 40 CFR Part 33, Subpart D.

Recipients should work with their DBE coordinator if they think their organization may qualify for an exemption.

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000 or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the California State Water Resources Control Board (CSWRCB) as follows:

	MBE	WBE
Construction	2%	1%
Equipment	1%	1%
Services	1%	1%

Supplies

1%

1%

The recipient accepts the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as CSWRCB.

Negotiating Fair Share Objectives/Goals, Section 33.404

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator, Joe Ochab at Ochab.Joe@epa.gov, within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

Contract Administration Provisions, 40 CFR Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR Section 33.302.

Bidders List, 40 CFR Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR Section 33.501 (b) and (c) for specific requirements and exemptions.

E. MBE/WBE Reporting

General Compliance, 40 CFR Part 33, Subpart E – Reporting Condition

MBE/WBE reporting is required annually. Reporting is required for assistance agreements where there are funds budgeted for procuring construction, equipment, services and supplies, including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the “Other” category, that exceed the threshold amount of \$150,000, including amendments and/or modifications.

Based on EPA’s review of the planned budget, this award meets the conditions above

and is subject to Disadvantaged Business Enterprise (DBE) Program reporting requirements. Conversely, the recipient must submit to the GrantsRegion9@epa.gov a justification and budget detail within 21 days of the award date demonstrating that this award is not subject to the DBE reporting requirements.

The recipient agrees to complete and submit a "MBE/WBE Utilization under Federal Grants, Cooperative agreements" report (EPA Form 5700-52A) on an annual basis. All procurement actions that are reportable, not just that portion which exceeds \$150,000.

When completing the annual report, recipients are instructed to check the box titled "annual:" in section 1B of the form. For the final report, recipients must check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30th of each year. Final reports are due by October 30th or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on total procurements. Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

MBE/WBE reports should be sent to GrantsRegion9@epa.gov . The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at http://www.epa.gov/osbp/dbe_reporting.htm .

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Good Faith Effort requirements as described in 40 CFR Part 33, Subpart C, and Fair Share Objectives negotiation as described in 40 CFR Part 33, Subpart D.

F. Indirect Costs

If the recipient does not have a previously established indirect cost rate, it agrees that it will prepare its indirect cost rate proposal and/or cost allocation plan in accordance with the Cost Principles under 2 CFR Part 200, Subpart E. For proposal preparation, the recipient may use the appropriate completeness checklist located at: <http://www.aqd.nbc.gov/services/ICS.aspx>

The local government recipient whose cognizant federal agency has been designated by the Office of Management and Budget (OMB) must develop and submit its indirect cost rate proposal to its cognizant agency within six (6) months after the close of the governmental unit's fiscal year. If the cognizant federal agency has not been identified by the OMB, the local government recipient must still develop (and when required, submit) its proposal within that period.

The interstate agency recipient must send its proposal to its cognizant federal agency within six (6) months after the end of its fiscal year. If EPA is the cognizant federal agency of the interstate agency, local government, or special district, the recipient must send its indirect cost rate proposal within six (6) months after the end of its fiscal year to:

Regular Mail

Office of Grants and Debarment
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, MC 3903R
Washington, DC 20460
Attn: OGD Indirect Cost Rate Proposal Control Desk

Mail Courier (e.g. FedEx, UPS, etc.)

Office of Grants and Debarment
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, NW, 5th floor
Washington, DC 20004
Attn: OGD Indirect Cost Rate Proposal Control Desk

Electronic submissions of proposals may be sent via email to OGD_IndirectCost@epa.gov.

Recipients are entitled to reimbursement of indirect costs, subject to any statutory or regulatory administrative cost limitations, if they have a current rate agreement or have submitted an indirect cost rate proposal to their cognizant federal agency for review and approval. Recipients are responsible for maintaining an approved indirect cost rate throughout the life of the award. Recipients may draw down grant funds once a rate has been approved, but only for indirect costs incurred during the period specified in the rate agreement. Recipients are not entitled to indirect costs for any period in which the rate has expired.

Recipients with differences between provisional and final rates are not entitled to more than the award amount. Recipients may request EPA approval to rebudget funds from direct cost categories to the indirect cost category (to grants which have not expired or been closed out) to cover increased indirect costs.

The recipient agrees to comply with the audit requirements prescribed in 2 CFR Part 200, Subpart F, Audits of States, Local Governments, and Non-Profit Organizations.

G. Non-Federal Third-Party Contributions

This award includes \$1,199,250.00 of estimated non-federal third party contributions. Third party contributions counting towards satisfying a cost sharing or matching

requirement must be verifiable from the records of grantees and subgrantees. As applicable, these records must reflect how the value is placed on third party contributions. The value of third party contributions must be applicable to the period to which the cost sharing or matching requirement apply (2 CFR Part 200.306).

Programmatic Conditions

Refer to Attachment A for the FY2016 Clean Diesel Funding Assistance (DERA) Programmatic Terms and Conditions. In addition, the following terms and conditions apply.

FY2016 Clean Diesel Funding Assistance (DERA) Programmatic Terms and Conditions.

The recipient agrees to comply with the **FY2016 Clean Diesel Funding Assistance (DERA) Programmatic Terms and Conditions** available at: [FY2016 National Clean Diesel \(Diesel Emissions Reduction Act\) Programmatic Terms and Conditions](#). These terms and conditions are in addition to any award specific programmatic terms and conditions outlined directly on the award document.



DE99T424010_BAAQMD_Attachment A_91216.pdf

N. Voluntary Cost-Share or Overmatch:

This award in the amount of \$5,698,925, and the resulting federal funding of \$1,420,263 is based on estimated costs requested in the recipient's final approved workplan. Included in these costs is a voluntary cost-share contribution of \$4,278,662 by the recipient in the form of a voluntary cost-share or overmatch (providing more than any minimum required cost-share) that the recipient included in its final approved workplan. The recipient must provide this voluntary cost-share contribution during performance of this award unless the EPA agrees otherwise in a modification to this agreement. While actual total costs may differ from the estimates in the recipient's application, EPA's participation shall not exceed the total amount of federal funds awarded.

If the recipient fails to provide the voluntary cost-share contribution during the period of award performance, and does not provide a satisfactory explanation, the Agency may consider this factor in evaluating future proposals from the recipient. In addition, if the voluntary cost-share contribution does not materialize during the period of award performance then EPA may reconsider the legitimacy of the award; if EPA determines

that the recipient knowingly or recklessly provided inaccurate information regarding the voluntary cost-share or overmatch the recipient described in its final approved workplan, EPA may take action as authorized by 2 CFR Part 200 and/or 2 CFR Part 180 as applicable.

O. Cybersecurity:

(a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all State or Tribal law cybersecurity requirements as applicable.

(b)(1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) no later than 90 days after the date of this award and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(b)(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

-- End of Document --

EPA General Terms and Conditions

Effective March 29, 2016

1. Introduction

The recipient and any sub-recipient must comply with the applicable EPA general terms and conditions outlined below. These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions or restrictions reflected on the official assistance award document. Recipients **must** review their official award document for additional administrative and programmatic requirements. Failure to comply with the general terms and conditions outlined below and those directly reflected on the official assistance award document may result in enforcement actions as outlined in 2 CFR 200.338 and 200.339.

2. Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards

This award is subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards; Title 2 CFR, Parts 200 and 1500. 2 CFR 1500.1, Adoption of 2 CFR 200, states Environmental Protection Agency adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR 200), as supplemented by 2 CFR Part 1500, as the Environmental Protection Agency (EPA) policies and procedures for financial assistance administration. 2 CFR Part 1500 satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by 2 CFR Part 1500. This award is also subject to applicable requirements contained in EPA programmatic regulations located in 40 CFR Chapter 1 Subchapter B.

2.1. Implementing Procurement Standards. (Updated 7/26/16) Per 2 CFR 200.110, there is a two-year grace period available to non-Federal entities for implementation of the procurement standards in 2 CFR 200.317 through 200.326. As detailed in the 2015 OMB Compliance Supplement, non-Federal entities choosing to delay implementation will need to specify in their documented policies and procedures that they continue to comply with 40 CFR Part 30 or 31, as applicable, for two additional fiscal years which begins after December 26, 2014.

2.2. Effective Date and Incremental or Supplemental Funding. Consistent with the OMB Frequently Asked Questions at <https://cfo.gov/cofar> on Effective Date and Incremental Funding, any new funding through an amendment (supplemental or incremental) on or after December 26, 2014, and any unobligated balances (defined at 200.98) remaining on the award at the time of the amendment, will be subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements (2 CFR 200 and 1500).

Financial Information

3. Reimbursement Limitation

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as reflected on the award document. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk. See 2 CFR 1500.8

4. Payment Methods

The Debt Collection Improvement Act of 1996 requires that Federal payments be made by electronic funds transfer. In order to comply with the Act, a recipient must receive payments via one of two electronic methods available to them:

4.1. Automated Standard Application for Payments (ASAP) (Updated 6/27/16). The ASAP system is the preferred method of payment for EPA grantees. ASAP enrollment is highly encouraged for organizations that have multiple grants/cooperative agreements and for those with a frequent need to request funds. If the recipient uses multiple bank accounts for EPA grants/cooperative agreements, the recipient must enroll in ASAP. To enroll in ASAP, please complete the ASAP Initiate Enrollment form located at: <http://www2.epa.gov/financial/forms> and email it to LVFC-grants@epa.gov or mail it to:
USEPA LVFC
4220 S. Maryland Pkwy
Bldg C, Suite 503
Las Vegas, NV 89119

Under this payment mechanism, the recipient initiates an electronic payment request online via ASAP, which is approved or rejected based on the amount of available funds authorized by EPA in the recipient's ASAP account. Approved funds are credited to the account at the financial institution of the recipient organization identified on the recipient's ASAP enrollment application. Additional information concerning ASAP and enrollment can be obtained by contacting the EPA Las Vegas Finance Center, at 702-798-2485, or by visiting: www.fms.treas.gov/asap.

4.2. Electronic Funds Transfer (EFT).

Under this payment mechanism, the EPA Las Vegas Finance Center will obtain the recipient's banking information from the System for Award Management (SAM). Once the agreement is awarded and no restrictions are identified by the awarding office, a Las Vegas Finance Center Representative will send the recipient an email message with the EFT Control Number and payment information. Additional information concerning EFT can be obtained by contacting the EPA Las Vegas Finance Center at 702-798-2485, or by visiting: <http://www2.epa.gov/financial/grants>.

NOTE: If the banking information is not correct or changes at any time prior to the end of this agreement, the recipient must update the organization's SAM registration and notify the EPA Las Vegas Finance Center as soon as possible. This is vital to ensure proper and timely deposit of funds.

5. Payment Drawdown

The recipient agrees to draw cash only as needed for its disbursement. Failure on the part of the recipient to comply with this condition may cause the undisbursed portions of the assistance agreement to be revoked or financing method changed to a reimbursable basis.

Selected Items of Cost

6. Consultant Cap

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, available at: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in Subpart D of 2 CFR 200 are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 2 CFR 1500.9.

7. Establishing and Managing Subawards (modified 3/29/16)

If the recipient chooses to pass funds from this assistance agreement to other entities, the recipient must comply with applicable provisions of 2 CFR Part 200 and the EPA Subaward Policy, which may be found at <https://epa.gov/grants/epa-subaward-policy>.

As a pass-through entity, the recipient agrees to:

7.1. Be responsible for selecting subrecipients and as appropriate conducting subaward competitions using a system for properly differentiating between subrecipients and procurement contractors under the standards at 2 CFR 200.330 and EPA's supplemental guidance in Appendix A of the EPA Subaward Policy.

a. For-profit organizations and individual consultants, in almost all cases, are not eligible subrecipients under EPA financial assistance programs and the pass-through entity must obtain prior written approval from EPA's Award Official for subawards to these entities unless the EPA-approved budget and work plan for this agreement contain a precise description of such subawards.

b. Stipends and travel assistance for trainees (including interns) and similar individuals who are not are not employees of the pass-through entity must be classified as participant support costs rather than subawards as required by 2 CFR 200.75 and 2 CFR 200.92.

7.2. Establish and follow a system that ensures all subaward agreements are in writing and contain all of the elements required by 2 CFR 200.331(a). EPA has developed a template for subaward agreements that is available in Appendix D of the EPA Subaward Policy.

7.3. Prior to making subawards, ensure that each subrecipient has a "unique entity identifier." This identifier is required for registering in the System for Award Management (SAM) and by 2 CFR Part 25 and 2 CFR 200.331(a)(1). The unique entity identifier currently is the subrecipient's Data Universal Numbering System (DUNS) number. Information regarding obtaining a DUNS number and registering in SAM is available in the General Condition of the pass-through entity's agreement with EPA entitled "**Central Contractor Registration/System for Award Management and Universal Identifier Requirements**" T&C of the pass-through entity's agreement with the EPA.

7.4. Ensure that subrecipients are aware that they are subject to the same requirements as those that apply to the pass-through entity's EPA award as required by 2 CFR 200.331(a)(2). These requirements include, among others:

a. Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.

b. Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition pass-through entity's agreement with EPA entitled "**Reporting Subawards and Executive Compensation.**"

c. Limitations on individual consultant fees as set forth in 2 CFR 1500.9 and the General Condition of the pass-through entity's agreement with EPA entitled "**Consultant Fee Cap.**"

d. EPA's prohibition on paying management fees as set forth in General Condition of the pass-through entity's agreement with EPA entitled "**Management Fees.**"

e. The Procurement Standards in 2 CFR Part 200 including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants).

EPA provides general information on other statutes, regulations and Executive Orders on the Grants internet site at www.epa.gov/grants. Many Federal requirements are agreement or program specific and EPA

encourages pass-through entities to review the terms of their assistance agreement carefully and consult with their EPA Project Officer for advice if necessary.

7.5. Establish and follow a system for evaluating subrecipient risks of noncompliance with Federal statutes, regulations and the terms and conditions of the subaward as required by 2 CFR 200.331(b) and document the evaluation. Risk factors may include:

- a.** Prior experience with same or similar subawards;
- b.** Results of previous audits;
- c.** Whether new or substantially changed personnel or systems, and;
- d.** Extent and results of Federal awarding agency or the pass-through entity's monitoring.

7.6. Establish and follow a process for deciding whether to impose additional requirements on subrecipients based on risk factors as required by 2 CFR 200.331(c). Examples of additional requirements authorized by 2 CFR 200.207 include:

- a.** Requiring payments as reimbursements rather than advance payments;
- b.** Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- c.** Requiring additional, more detailed financial reports;
- d.** Requiring additional project monitoring;
- e.** Requiring the non-Federal entity to obtain technical or management assistance, and
- f.** Establishing additional prior approvals.

7.7. Establish and follow a system for monitoring subrecipient performance that includes the elements required by 2 CFR 200.331(d) and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.

7.8. Establish and maintain an accounting system which ensures compliance with the \$25,000 limitation at 2 CFR 200.68 on including subaward costs in Modified Total Direct Cost for the purposes of distributing indirect costs.

7.9. Work with EPA's Project Officer to obtain the written consent of EPA's Office of International and Tribal Affairs (OITA), prior to awarding a subaward to a foreign or international organization, or a subaward to be performed in a foreign country even if that subaward is described in a proposed scope of work.

7.10. Obtain written approval from EPA's Award Official for any subawards that are not described in the approved work plan in accordance with 2 CFR Part 200.308.

7.11. Obtain the written approval of EPA's Award Official prior to awarding a subaward to an individual if the EPA-approved scope of work does not include a description of subawards to individuals.

7.12. Establish and follow written procedures under 2 CFR 200.302(b)(7) for determining that subaward costs are allowable in accordance with 2 CFR Part 200, Subpart E and the terms and conditions of this award. These procedures may provide for allowability determinations on a pre-award basis, through ongoing monitoring of costs that subrecipients incur, or a combination of both approaches provided the pass-through entity documents its determinations.

7.13. Establish and maintain a system under 2 CFR 200.331(d)(3) and 2 CFR 200.521(c) for issuing management decisions for audits of subrecipients that relate to Federal awards. However, the recipient remains accountable to EPA for ensuring that unallowable subaward costs initially paid by EPA are reimbursed or mitigated through offset with allowable costs whether the recipient recovers those costs from the subrecipient or not.

7.14. As provided in 2 CFR 200.332, pass-through entities must obtain EPA approval to make fixed amount subawards. EPA is restricting the use of fixed amount subawards to a limited number of situations that are

authorized in official EPA pilot projects. Recipients should consult with their EPA Project Officer regarding the status of these pilot projects.

By accepting this award, the recipient is certifying that it either has systems in place to comply with the requirements described in Items 7.1 through 7.14 above or will refrain from making subawards until the systems are designed and implemented.

8. Management Fees

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses; unforeseen liabilities; or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

Reporting and Additional Post-Award Requirements

9. Central Contractor Registration/System for Award Management and Universal Identifier Requirements

9.1. Requirement for System for Award Management (SAM) Unless exempted from this requirement under 2 CFR 25.110, the recipient must maintain the currency of the organization's information in SAM until the submittal of the final financial report required under this award or receipt of the final payment, whichever is later. This requires that the recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in the information or another award term.

9.2. Requirement for Data Universal Numbering System (DUNS) numbers. If the recipient is authorized to make subawards under this award, the recipient:

9.2.1. Must notify potential subrecipients that no entity (definition paragraph 9.3 of this award term) may receive a subaward unless the entity has provided its DUNS number.

9.2.2. May not make a subaward to an entity unless the entity has provided its DUNS number.

9.3. Definitions. For the purposes of this award term:

9.3.1. System for Award Management (SAM) 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 (SAM) Internet site: <https://www.sam.gov>.

9.3.2. 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>).

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

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

9.3.3.2. A foreign public entity;

9.3.3.3. A domestic or foreign nonprofit organization;

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

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

9.3.4. Subaward:

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

9.3.4.2. The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200 Subpart D).

9.3.4.3. A subaward may be provided through any legal agreement, including an agreement that the recipient considers a contract.

9.3.5. Subrecipient means an entity that:

9.3.5.1. Receives a subaward from the recipient under this award; and

9.3.5.2. Is accountable to the recipient for the use of the Federal funds provided by the subaward.

10. Reporting Subawards and Executive Compensation

10.1. Reporting of first-tier subawards.

10.1.1. Applicability. Unless the recipient is exempt as provided in paragraph 10.4. of this award term, the recipient 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. 111-5) for a subaward to an entity (see definitions in paragraph 10.5 of this award term).

10.1.2. Where and when to report. (1) The recipient must report each obligating action described in paragraph 10.1.1 of this award term to www.fsrs.gov. (2) 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 any date during the month of November of a given year, the obligation must be reported by no later than December 31 of that year.)

10.1.3. What to report. The recipient must report the information about each obligating action as described in the submission instructions available at: <http://www.fsrs.gov>.

10.2. Reporting Total Compensation of Recipient Executives.

10.2.1. Applicability and what to report. The recipient must report total compensation for each of their five most highly compensated executives for the preceding completed fiscal year, if:

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

10.2.1.2. in the preceding fiscal year, the recipient received:(i.) 80 percent or more of their annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); (ii.) and \$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 CFR 170.320 (and subawards); and

10.2.1.3. 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/excomp.htm>.)

10.2.2. Where and when to report. The recipient must report executive total compensation described in paragraph 10.2.1 of this award term: (i.) As part of the registration Central System for Award Management profile available at www.sam.gov. (ii.) By the end of the month following the month in which this award is made, and annually thereafter.

10.3. Reporting of Total Compensation of Subrecipient Executives.

10.3.1. Applicability and what to report. Unless exempt as provided in paragraph 10.4. of this award term, for each first-tier subrecipient under this award, the recipient 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:

10.3.1.1. in the subrecipient's preceding fiscal year, the subrecipient received: (i.) 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 CFR 170.320 (and subawards); and (ii.) \$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

10.3.1.2. 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>.)

10.3.2. Where and when to report. The recipient must report subrecipient executive total compensation described in paragraph 10.3.1. of this award term:

10.3.2.1. To the recipient.

10.3.2.2. By the end of the month following the month during which the recipient makes 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), the recipient must report any required compensation information of the subrecipient by November 30 of that year.

10.4. Exemptions

10.4.1. If, in the previous tax year, the recipient had gross income, from all sources, under \$300,000, the recipient is exempt from the requirements to report:

10.4.1.1. subawards, and the total compensation of the five most highly compensated executives of any subrecipient.

10.5. Definitions. For purposes of this award term:

10.5.1. Entity means all of the following, as defined in 2 CFR 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.

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

10.5.3. Subaward:

10.5.3.1. 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 the recipient award to an eligible subrecipient.

10.5.3.2. The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200 Subpart D).

10.5.3.3. A subaward may be provided through any legal agreement, including an agreement that the recipient or a subrecipient considers a contract.

10.5.4. Subrecipient means an entity that:

10.5.4.1. Receives a subaward from the recipient under this award; and

10.5.4.2. Is accountable to the recipient for the use of the Federal funds provided by the subaward.

10.5.5. 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 CFR 229.402(c)(2)):

10.5.5.1. Salary and bonus.

10.5.5.2. 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.

- 10.5.5.3.** 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.
- 10.5.5.4.** Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- 10.5.5.5.** Above-market earnings on deferred compensation which is not tax-qualified.
- 10.5.5.6.** 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.

11. Recipient Integrity and Performance Matters - Reporting of Matters Related to Recipient Integrity and Performance (added 1/27/2016)

11.1. General Reporting Requirement

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

11.2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- 11.2.1.** Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- 11.2.2.** Reached its final disposition during the most recent five year period; and
- 11.2.3.** Is one of the following:
 - 11.2.3.1.** A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - 11.2.3.2.** A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - 11.2.3.3.** An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - 11.2.3.4.** Any other criminal, civil, or administrative proceeding if:
 - 11.2.3.4.1.** It could have led to an outcome described in paragraph 11.2.3.1, 11.2.3.2, or 11.2.3.3 of this award term and condition;
 - 11.2.3.4.2.** It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - 11.2.3.4.3.** The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

11.3. Reporting Procedures

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

11.4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 11.1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no

new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

11.5. Definitions

For purposes of this award term and condition:

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

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

11.5.3. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

11.5.3.1. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

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

12. Federal Financial Reporting (FFR) (Updated 7/28/16)

Pursuant to 2 CFR 200.327 and 200.343, EPA recipients must submit the Federal Financial Report (SF-425) at least annually and no more frequently than quarterly. EPA's standard reporting frequency is annual unless an EPA Region has included an additional term and condition specifying greater reporting frequency within this award document. EPA recipients must submit the SF-425 no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extension of reporting due dates may be approved by EPA upon request of the recipient. The FFR form is available on the internet at:

<http://www2.epa.gov/financial/forms>. All FFRs must be submitted to the Las Vegas Finance Center (LVFC) via email LVFC-grants@epa.gov or mail it to:

USEPA LVFC
4220 S. Maryland
Pkwy Bldg C, Suite
503
Las Vegas, NV 89119

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

13. Indirect Cost Rate Agreements

Recipients are entitled to reimbursement of indirect costs, subject to any statutory or regulatory administrative cost limitations, if they have a current Federally-approved indirect cost rate agreement or have submitted an indirect cost rate proposal to their cognizant federal agency for review and approval and a final rate has been determined by the cognizant agency. Recipients are responsible for maintaining an approved indirect cost rate for the life of the award. Recipients with differences between their provisional rates and final rates are not entitled to more than the award amount, without prior approval from EPA.

14. Audit Requirements (modified 1/27/16)

In accordance with 2 CFR 200.501(a), the recipient hereby agrees to obtain a single audit from an

independent auditor, if their organization expends \$750,000 or more in total Federal funds in their fiscal year beginning on or after December 26, 2014.

The recipient must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the recipient's fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse's Internet Data Entry System available at: [https://harvester.census.gov/facides/\(S\(3wauez2yufokbe3engv0dtek\)\)/account/login.aspx](https://harvester.census.gov/facides/(S(3wauez2yufokbe3engv0dtek))/account/login.aspx). For complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: <https://harvester.census.gov/facweb/Default.aspx>.

15. Closeout Requirements

Reports required for closeout of the assistance agreement must be submitted in accordance with this agreement. Submission requirements and frequently asked questions can also be found at <http://www2.epa.gov/grants/frequently-asked-questions-about-closeout-information>.

16. Suspension and Debarment

Recipients shall fully comply with Subpart C of 2 CFR Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business with Other Persons," as implemented and supplemented by 2 CFR Part 1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart

C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipients may access suspension and debarment information at: <http://www.sam.gov>. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

17. Disclosing Conflict of Interests

17.1. For awards to Non-federal entities and individuals (other than states and fellowship recipients under 40 CFR Part 46).

As required by 2 CFR 200.112, EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at <http://www2.epa.gov/grants/epas-financial-assistance-conflict-interest-policy>. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental and incremental funding) awarded on or after October 1, 2015. This COI term and condition supersedes prior COI terms and conditions for this award based on either EPA's May 22, 2015 Revised Interim COI Policy or December 26, 2014 Interim COI Policy.

For competitive awards, recipients must disclose any competition related COI described in section 4.0(a) of the COI Policy that are discovered after award to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of discovery of the COI. The Grant Specialist will respond to any such disclosure within 30 calendar days.

EPA's COI Policy requires that recipients have systems in place to address, resolve and

disclose to EPA COIs described in sections 4.0(b), (c) and/or (d) of the COI Policy that affect any contract or subaward regardless of amount funded under this award. The recipient's COI Point of Contact for the award must disclose any COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of the discovery of the potential COI and their approach for resolving the COI.

EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COI's described in section 4.0(b)(c) and (d) of the COI Policy regardless of the amount of the transaction. Recipients who are pass-through entities as defined at 2 CFR 200.74 must require that subrecipients being considered for or receiving subawards disclose COI to the pass-through entities in a manner that, at a minimum, is in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. Pass-through entities must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

EPA only requires that recipients and subrecipients disclose COI's that are discovered under their systems for addressing and resolving COI. If recipients or subrecipients do not discover a COI, they do not need to advise EPA or the pass-through entity of the absence of a COI.

Upon notice from the recipient of a potential COI and the approach for resolving it, the Agency will then make a determination regarding the effectiveness of these measures within 30 days of receipt of the recipient's notice unless a longer period is necessary due to the complexity of the matter. Recipients may not request payment from EPA for costs for transactions subject to the COI pending notification of EPA's determination. Failure to disclose a COI may result in cost disallowances.

Disclosure of a potential COI will not necessarily result in EPA disallowing costs, with the exception of procurement contracts that the Agency determines violate 2 CFR 200.318(c)(1) or (2), provided the recipient notifies EPA of measures the recipient or subrecipient has taken to eliminate, neutralize or mitigate the conflict of interest when making the disclosure.

17.2. For awards to states including state universities that are state agencies or

instrumentalities As required by 2 CFR 200.112, EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards.

EPA's COI Policy is posted at

<http://www2.epa.gov/grants/epas-financial-assistance-conflict-interest-policy>. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental, incremental funding) awarded on or after October 1, 2015. This COI term and condition supersedes prior COI terms and conditions for this award based on either EPA's May 22, 2015 Revised Interim COI Policy or December 26, 2014 Interim COI Policy.

For competitive awards, recipients must disclose any competition related COI described in section 4.0(a) of the COI Policy that are discovered after award to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of discovery of the COI. The Grant Specialist will respond to any such disclosure within 30 calendar days.

States including state universities that are state agencies and instrumentalities receiving funding from EPA are only required to disclose subrecipient COI as a pass-through entity as defined by 2 CFR 200.74. Any other COI are subject to state laws, regulations and policies. EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COIs described in

section 4.0(b)(c) and (d) of the COI Policy that arise after EPA made the award regardless of the amount of the transaction. States who are pass-through entities as defined at 2 CFR 200.74 must require that subrecipients being considered for or receiving subawards disclose COI to the state in a manner that, as a minimum, in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. States must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

EPA only requires that subrecipients disclose COI's to state pass-through entities that are discovered under their systems for addressing, resolving, and disclosing COI. If subrecipients do not discover a COI, they do not need to advise state pass-through entities of the absence of a COI.

Upon receiving notice of a potential COI and the approach for resolving it, the Agency will make a determination regarding the effectiveness of these measures within 30 days of receipt of the state's notice of a subrecipient COI unless a longer period is necessary due to the complexity of the matter. States may not request payment from EPA for costs for transactions subject to the COI pending notification of EPA's determination. A subrecipient's failure to disclose a COI to the state and EPA may result in cost disallowances.

Disclosure of a potential subrecipient COI will not necessarily result in EPA disallowing costs, with the exception of procurement contracts that the Agency determines violate 2 CFR 200.318(c)(1) or (2), provided the subrecipient has taken measures that EPA and the state agree eliminate, neutralize or mitigate the conflict of interest.

Programmatic General Terms and Conditions

18. Sufficient Progress

EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period and/or the availability of funds necessary to complete the project. EPA may terminate the assistance agreement for failure to ensure reasonable completion of the project within the project period.

19. Copyrighted Material and Data

In accordance with 2 CFR 200.315, EPA has the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

- the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or;
- termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

20. Patents and Inventions

Rights to inventions made under this assistance agreement are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 USC Sections 200-212.

Pursuant to the Bayh-Dole Act (set forth in 35 USC 200-212), EPA retains the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the assistance agreement holder, as defined in the Act. To streamline the invention reporting process and to facilitate compliance with the Bayh-Dole Act, the recipient must utilize the Interagency Edison extramural invention reporting system at <http://iEdison.gov>. Annual utilization reports must be submitted through the system. The recipient is required to notify the Project Officer identified on the award document when an invention report, patent report, or utilization report is filed at <http://iEdison.gov>. EPA elects not to require the recipient to provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

In accordance with Executive Order 12591, as amended, government owned and operated laboratories can enter into cooperative research and development agreements with other federal laboratories, state and local governments, universities, and the private sector, and license, assign, or waive rights to intellectual property “developed by the laboratory either under such cooperative research or development agreements and from within individual laboratories.”

21. Acknowledgement Requirements for Non-ORD Assistance Agreements

The recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this assistance agreement shall contain the following statement:

"This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient). The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document."

Recipients of EPA Office of Research Development (ORD) research awards must follow the acknowledgement requirements outlined in the research T&Cs available at: <http://www.nsf.gov/awards/managing/rtc.jsp>. A Federal-wide workgroup is currently updating the Federal-Wide Research Terms and Conditions Overlay to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards and when completed recipients of EPA ORD research must abide by the research T&Cs.

22. Electronic and Information Technology Accessibility

Recipients are subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology (“EIT”). In compliance with Section 504, EIT systems or products funded by this award must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider a recipient’s websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to grant recipients, we encourage recipients to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for

individuals with disabilities.

Recipients may wish to consult the latest Section 508 guidelines issued by the U.S. Access Board or W3C's Web Content Accessibility Guidelines (WCAG) 2.0 (see <http://www.access-board.gov/sec508/guide/index.htm>).

23. Human Subjects (added 3/29/16)

Human subjects research is any activity that meets the regulatory definitions of both research AND human subject. *Research* is a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. [40 CFR 26.102 (d)(f)]

No research involving human subjects will be conducted under this agreement without prior written approval of the EPA to proceed with that research. If engaged in human subjects research as part of this agreement, the recipient agrees to comply with all applicable provisions of EPA Regulation 40 CFR 26 (Protection of Human Subjects). This includes, at Subpart A, the Basic Federal Policy for the Protection of Human Research Subjects, also known as the Common Rule. It also includes, at Subparts B, C, and D, prohibitions and additional protections for children, nursing women, pregnant women, and fetuses in research conducted or supported by EPA.

The recipient further agrees to comply with EPA's procedures for oversight of the recipient's compliance with 40 CFR 26, as given in EPA Order 1000.17 Change A1 (Policy and Procedures on Protection of Human Research Subjects in EPA Conducted or Supported Research). As per this order, no human subject may be involved in any research conducted under this assistance agreement, including recruitment, until the research has been approved or determined to be exempt by the EPA Human Subjects Research Review Official (HSRRO) after review of the approval or exemption determination of the Institutional Review Board(s) (IRB(s)) with jurisdiction over the research under 40 CFR 26.

For HSRRO approval, the recipient must forward to the Project Officer: (1) copies of all documents upon which the IRB(s) with jurisdiction based their approval(s) or exemption determination(s), (2) copies of the IRB approval or exemption determination letter(s), (3) copy of the IRB-approved consent forms and subject recruitment materials, if applicable, and (4) copies of all supplementary IRB correspondence.

Following the initial approvals indicated above, the recipient must, as part of the annual report(s), provide evidence of continuing review and approval of the research by the IRB(s) with jurisdiction, as required by 40 CFR 26.109(e). Materials submitted to the IRB(s) for their continuing review and approval are to be provided to the Project Officer upon IRB approval. During the course of the research, investigators must promptly report any unanticipated problems involving risk to subjects or others according to requirements set forth by the IRB. In addition, any event that is significant enough to result in the removal of the subject from the study should also be reported to the Project Officer, even if the event is not reportable to the IRB of record.

24. Light Refreshments and/or Meals

Unless the event(s) and all of its components are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

- (1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);

- (2) A description of the purpose, agenda, location, length and timing for the event; and
- (3) An estimated number of participants in the event and a description of their roles.

Recipients may address questions about whether costs for light refreshments, and meals for events may be allowable to the recipient's EPA Project Officer; however, the Agency Award Official or Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours unless the recipient has provided a justification that has been expressly approved by EPA's Award Official or Grants Management Officer.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.7)

25. Tangible Personal Property

25.1 Reporting Pursuant to 2 CFR 200.312 and 200.314, property reports, if applicable, are required for Federally-owned property in the custody of a non-Federal entity upon completion of the Federal award or when the property is no longer needed. Additionally, upon termination or completion of the project, residual unused supplies with a total aggregate fair market value exceeding \$5,000 not needed for any other Federally-sponsored programs or projects must be reported. For Superfund awards under Subpart O, refer to 40 CFR 35.6340 and 35.6660 for property reporting requirements. Recipients should utilize the Tangible Personal Property Report form series (SF-428) to report tangible personal property.

25.2 Disposition

25.2.1 Most Recipients. Consistent with 2 CFR 200.313, unless instructed otherwise on the official award document or this award term, the recipient may keep the equipment and continue to use it on the project originally funded through this assistance agreement or on other federally funded projects whether or not the project or program continues to be supported by Federal funds.

25.2.2 State Agencies. Per 2 CFR 200.313(b), state agencies may manage and dispose of equipment acquired under this assistance agreement in accordance with state laws and procedures.

25.2.3 Superfund Recipients. Equipment purchased under Superfund projects is subject to specific disposal options in accordance with 40 CFR Part 35.6345.

Public Policy Requirements

26. Civil Rights Obligations

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Standard Form 424B or Standard Form 424D, as applicable.

These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.

a. Statutory Requirements

- i. In carrying out this agreement, the recipient must comply with:
 1. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on

all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at www.ecfr.gov/.

28. Hotel-Motel Fire Safety (Link updated 8/9/16)

Pursuant to 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel- Motel National Master List at <https://apps.usfa.fema.gov/hotel/> to see if a property is in compliance, or to find other information about the Act.

29. Lobbying and Litigation (modified 3/29/16)

a. All Recipients.

- i. The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The recipient shall abide by the Cost Principles available at 2 CFR 200 which generally prohibits the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities.
- ii. The recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.
- iii. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- iv. Contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non- Federal Entity Contracts Under Federal Awards.
- v. Pursuant to Section 18 of the Lobbying Disclosure Act, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act. Nonprofit organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are ineligible for EPA subawards.

30. Recycled Paper

When directed to provide paper documents, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA.

31. Resource Conservation and Recovery Act

Consistent with goals of section 6002 of RCRA (42 U.S.C. 6962), State and local institutions of higher education, hospitals and non-profit organization recipients agree to give preference in procurement

programs to the purchase of specific products containing recycled materials, as identified in 40 CFR Part 247.

Consistent with section 6002 of RCRA (42 U.S.C. 6962) and 2 CFR 200.322, State agencies or agencies of a political subdivision of a State and its contractors are required to purchase certain items made from recycled materials, as identified in 40 CFR Part 247, when the purchase price exceeds \$10,000 during the course of a fiscal year or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. Pursuant to 40 CFR 247.2 (d), the recipient may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price.

32. Trafficking in Persons

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

- i. The recipient, the recipient's employees, subrecipients under this award, and subrecipients' employees may not—
 1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 2. Procure a commercial sex act during the period of time that the award is in effect; or
 3. Use forced labor in the performance of the award or subawards under the award.
- ii. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if the recipient or a subrecipient that is a private entity—
 1. Is determined to have violated a prohibition in paragraph a of this award term; or
 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a of this award term through conduct that is either—
 - a. Associated with performance under this award; or
 - b. Imputed to the recipient or subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our Agency at 2 CFR 1532.

b. Provision applicable to a recipient other than a private entity. EPA 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 paragraph a. 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 of this award term through conduct that is either—
 1. Associated with performance under this award; or
 2. 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 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by EPA at 2 CFR 1532

c. Provisions applicable to any recipient.

- i. The recipient must inform the EPA immediately of any information received from any

- source alleging a violation of a prohibition in paragraph a of this award term.
- ii. Our right to terminate unilaterally that is described in paragraph a and b:
 1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 2. Is in addition to all other remedies for noncompliance that are available to us under this award.
 - iii. The recipient must include the requirements of paragraph a of this award term in any subaward made to a private entity.
- d. **Definitions.** For purposes of this award term:
- i. “Employee” means either:
 1. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 2. 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”:
 1. 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.
 2. 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).
 - 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).