

ARLINGTON COUNTY, VIRGINIA

OFFICE OF THE COUNTY ATTORNEY

2100 CLARENDON BOULEVARD, SUITE 403
ARLINGTON, VIRGINIA 22201
(703) 228-3100 • FAX (703) 228-7106

COUNTY ATTORNEY
MINHCHAU N. CORR

DEPUTY COUNTY ATTORNEY
RYAN C. SAMUEL

NOTICE OF DISAGREEMENT

May 21, 2025

Dear Mr. Rose,

By way of reintroduction, I am an Assistant County Attorney with the Arlington County, Virginia (“County”), County Attorney’s Office. I am writing this Notice of Disagreement (“Notice”) in response to the United States Environmental Protection Agency (“EPA”) Assistance Amendment attached hereto as “Attachment A” (“Amendment”). This Notice is the County’s Notice of Disagreement pursuant to the language of the Amendment. The Amendment purports to “stop work; terminate the agreement [*i.e.*, EPA Cooperative Agreement No. 5C-95337501, attached hereto as “Attachment B” (“Grant”)]; reduce performance period duration; curtail scope of work; and waive certain reporting requirements.” At 1. Additionally, the Amendment adds terms and conditions but contradictorily purports to terminate the Grant. *Id.* The Amendment was provided to the County in addition to a memorandum titled “Termination of EPA Assistance Agreement 5B-95337501 under 2 CFR 200.340” (“Termination Memorandum”) on or around May 1, 2025. *See* Attachment C. This Notice aims to not only prevent EPA’s termination of the Grant but also to reaffirm the merits of the Grant.¹ I appreciate your consideration of the issues raised in this Notice and look forward to resolving this issue soon.

I. BASES OF THIS NOTICE

Bases for this Notice include, without limitation, the following:

a. The Grant Is Aligned with Federal Priorities, Including the President’s Make America Healthy Again Agenda

The Amendment does not contain any information discussing EPA’s rationale behind terminating the Grant. Consequently, it is up to the County to speculate as to why EPA issued the Amendment. The Termination Memorandum provides the best hints as to why EPA is attempting to terminate the Grant through the Amendment. *See* Attachment C. The hints in the Termination Memorandum include: (1) that “the remaining portion of the Federal award will not accomplish the EPA funding priorities for achieving program goals,” and (2) that “[t]he objectives of the award are no longer consistent with EPA funding priorities.” Attachment C at 1. The “priorities”

¹ The County’s submission of this Notice in no way admits the validity of EPA’s attempt to terminate or amend the Grant.

mentioned in the Termination Memorandum are ostensibly “ensuring that the Agency’s grants do not conflict with the Agency’s policy of prioritizing merit, fairness, and excellence in performing [EPA’s] statutory functions.” *Id.* Beyond these references, there are no allegations of any County wrongdoing, failure to meet other “policies,” or breach that may have led to EPA’s decision to terminate the Grant. *Id.*

If the above information is accurate and complete regarding EPA’s basis for terminating the Grant, then this matter is tantamount to a policy misunderstanding. In other words, the Grant is in fact aligned with Federal priorities contrary to the Termination Memorandum’s claims. For example, the President’s Executive Order 14212 “Establishing the President’s Make America Healthy Again Commission” (“EO 14212”) contains the following instructive language:

- “It shall be the policy of the Federal Government to aggressively combat the critical health challenges facing our citizens, including . . . chronic diseases.”
- “[H]ealth-related research funded by the Federal Government should prioritize research on the root causes of why Americans are getting sick.”
- “The initial mission of the [Make America Healthy Again Commission (“MAHA Commission”)] shall: . . . study the scope of the childhood chronic disease crises and any potential contributing causes, including . . . absorption of toxic material, . . . [and] environmental factors”
- “Within 100 days of the date of this order, the [MAHA] Commission shall submit to the President, through the Chair and the Executive Director, the Make Our Children Healthy Again Assessment, which shall: . . . identify and evaluate existing Federal programs and funding intended to prevent and treat childhood health issues for their scope and effectiveness.”
- “Within 180 days of the date of this order, the [MAHA] Commission shall submit to the President, through the Chair and the Executive Director, a Make Our Children Healthy Again Strategy (Strategy), based on the findings from the Make Our Children Healthy Again Assessment described in subsection (a) of this section. The Strategy shall address appropriately restructuring the Federal Government’s response to the childhood chronic disease crisis, including by ending Federal practices that exacerbate the health crisis or unsuccessfully attempt to address it, and by adding powerful new solutions that will end childhood chronic disease.”

Attachment D (emphasis added). Additionally, EO 14212 requires the establishment of the President’s MAHA Commission. *Id.* According to EO 14212, the MAHA Commission must include the Administrator of the EPA. *Id.* Clearly, the President has mandated that Federal agencies, including the EPA, address the causes of chronic disease, including environmental factors.

The Grant is aligned with the President’s priorities for the Federal Government, especially the priorities stated above. The Grant expressly states that one of its “core objectives” is to “improve air quality” in housing and commercial structures. Attachment B at 4. The Grant also funds research to “define human health indicators and metrics and align healthier indoor environments.” *Id.* The tools funded by and developed through the Grant “will be used to assist both occupants and building developers/owners in identifying potential building upgrades and financial resources available to them” to combat health challenges created through poor indoor air quality, which may contribute to chronic diseases including, without limitation, asthma. *Id.* Ultimately, the Grant fits sufficiently into the vision set forth in EO 14212 by addressing poor indoor air quality, which is known to cause chronic diseases.

Additionally, the Grant does not conflict with EPA’s policy of “ensuring that the Agency’s grants do not conflict with the Agency’s policy of prioritizing merit, fairness, and excellence in performing [EPA’s] statutory functions.” Attachment B at 1. The Grant includes language regarding disadvantaged communities. *See e.g.*, Attachment B at 4. However, any particular focus on any Arlington population identified by the grant is colored by the County’s desire to “upscale use of the Project tools and resources for adoption and replication across other jurisdictions.” *Id.* In other words, the intent of the Grant is to create tools that can be expanded to localities and populations of **all demographics** across the country, notwithstanding any particular focus at this early stage. The Grant proposes a project that is essentially in a seed form to be developed into a larger effort to ensure greater health outcomes for **all Americans**. This goal does not conflict with, but rather supplements, the EPA’s noble desire to prioritize “merit, fairness, and excellence.” Attachment C at 1. Thus, the Grant is a shoo-in for restatement given the Grant’s clear congruity with Federal priorities regardless of any legal issues with the Amendment or Termination Memorandum.

b. The Amendment Contains Several Defects and Is Not Lawful

In addition to the Grant’s clear alignment with Federal priorities, there are multiple other legal and factual bases to reinstate the County’s grant. These legal and factual bases include:

- EPA’s termination actions are legally incoherent in this matter. For example, the Amendment and Termination Memorandum contradict each other. To illustrate, the Amendment purports to “amend” the Grant in the manner described in the introductory paragraph at the beginning of this Notice. However, the Termination Memorandum bluntly proclaims that the Termination Memorandum’s purpose

is to notify you that the U.S. Environmental Protection Agency (EPA) is hereby terminating Assistance Agreement No. 5B-95337501 awarded to County of Arlington. This EPA Assistance Agreement is terminated effective immediately

At 1. The EPA’s issuance of both documents creates a paradox where the Amendment purports to amend an agreement already terminated by the Termination Memorandum. Either the Termination Memorandum terminates the Grant, or the Amendment amends

the Grant, but not both. It is impossible to amend an agreement that has already been terminated. If the EPA wants to proceed with the Amendment, the Termination Memorandum must be rescinded or vice versa.

- EPA's termination actions violate applicable regulations. For example, 2 CFR 200.340 controls how EPA may terminate Federal Awards. 2 CFR 200.340(a) states

(a) The Federal award may be terminated in part or its entirety as follows:

(1) By the Federal agency or pass-through entity if the recipient or subrecipient fails to comply with the terms and conditions of the Federal award;

(2) By the Federal agency or pass-through entity with the consent of the recipient or subrecipient, in which case the two parties must agree upon the termination conditions. These conditions include the effective date and, in the case of partial termination, the portion to be terminated;

(3) By the recipient or subrecipient upon sending the Federal agency or pass-through entity a written notification of the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal agency or pass-through entity determines that the remaining portion of the Federal award will not accomplish the purposes for which the Federal award was made, the Federal agency or pass-through entity may terminate the Federal award in its entirety; or

(4) By the Federal agency or pass-through entity pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities.

Attachment E. The County has done nothing to deserve termination of the Grant, and none of the above factors are applicable to the County. To illustrate:

- EPA has not alleged or provided any evidence that the County failed "to comply with the terms and conditions of the Federal award." 2 CFR 200.340(a)(1). No such evidence exists. Therefore, 2 CFR 200.340(a)(1) is not a basis to terminate the Grant.
- The County does not and has never consented to the termination of the Grant. This Notice is designed to prevent such a possibility. Correspondingly, the County has never submitted a written notification to EPA requesting a termination. Therefore, 2 CFR 200.340(a)(2) and 2 CFR 200.340(a)(3) are not bases to terminate the Grant.
- The attempted termination of the Grant is not pursuant to the terms and conditions of the Federal award. The next bullet in this section contains a

detailed explanation regarding why the attempted termination of the Grant is not in alignment with the terms and conditions of the Grant. Additionally, the Grant furthers Federal goals and priorities as described in section I(a) of this Notice. Therefore, 2 CFR 200.340(a)(4) is not a basis to terminate the Grant.

Thus, none of the factors of 2 CFR 200.340(a) authorizing termination have been met in this matter, and the Amendment must be rescinded.

In addition, EPA's termination actions violate more than just 2 CFR 200.340(a). For example, 2 CFR 200.340(b) states "The Federal agency or pass-through entity must clearly and unambiguously specify all termination provisions in the terms and conditions of the Federal award." The Amendment never cites any concrete terms or conditions in the Grant, let alone any specific termination provision. Instead, the Amendment broadly states "Per 2 CFR 200.340 and the Termination General Terms and Conditions of this agreement, EPA is terminating this award" without ever "clearly and unambiguously" identifying any specific provision. 2 CFR 200.340(b). Simply including the phrase "the Termination General Terms and Conditions" is not the same as "clearly and unambiguously specify[ing] all termination provisions in the terms and conditions of the Federal Award." Attachment A at 1; 2 CFR 200.340(b). As demonstrated above, the County has done nothing to justify termination under any termination provision, so citing such a specific provision would be impossible for the EPA. Thus, in consideration of these clear violations of applicable regulations, the Amendment must be rescinded.

- EPA's termination of the Grant is not pursuant to the terms and conditions of the Grant. Again, 2 CFR 200.340(a)(4) states that an award may be terminated

By the Federal agency or pass-through entity pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities.

In this matter, the relevant terms and conditions to termination can be found in the EPA's operative General Terms and Conditions at the time the Grant became effective ("EPA T&Cs"). *See* Attachment F. The EPA T&Cs state that that the EPA may terminate awards "If the award no longer effectuates the program goals or agency priorities." EPA T&Cs § 3(b). However, immediately after this statement, the EPA T&Cs state

Situations in which EPA may terminate an award under this provision include when: [i] EPA obtains evidence that was not considered in making the award that reveals that specific award objective(s) are ineffective at achieving program goals and EPA determines that it is in the government's interest to terminate the award; [ii] EPA obtains evidence that was not considered in making the award that causes EPA to significantly question the feasibility of the intended objective(s) of the award and EPA determines that it is in the government's interest to terminate the award; [iii] EPA

determines that the objectives of the award are no longer consistent with funding priorities for achieving program goals.”

Id. First, it is unclear if all the factors above must be met or if only one of the above factors must be met to justify a termination under this clause. Second, even if merely one factor authorizes termination of an award, the Grant still should not have been terminated because the Grant meets none of the factors. To illustrate:

- The EPA has never stated that the EPA obtained “evidence that was not considered in making the award that reveal[ed] that specific award objective(s) are ineffective at achieving program goals.” There is no such evidence to be found. Thus, the Grant does not meet romanette [i] above.
- The EPA has never stated that the EPA ever “obtain[ed] evidence that was not considered in making the award that causes EPA to significantly question the feasibility of the intended objective(s) of the award and EPA determines that it is in the government’s interest to terminate the award.” Again, no such evidence exists. Thus, the Grant does not meet romanette [ii] above.
- The Grant meets various Federal priorities ostensibly binding on the EPA, as explained in section I(a) of this Notice. Thus, the Grant does not meet romanette [iii] above.

Thus, EPA’s termination of the Grant was improper because none of the factors for termination required by T&Cs § 3(b) are satisfied. This issue is representative of a broader problem: the County has done nothing to deserve termination of the Grant, and, even if the termination is solely based on policy, such policy disagreement is a misunderstanding as described in section I(a) above.

- EPA may not have intended to terminate the Grant. Instead, the EPA may have intended to terminate some other grant. To illustrate, the Termination Memorandum terminates “EPA Assistance Agreement 5B-95337501.” Attachment C at 1 (emphasis added). The County is not aware of an “EPA Assistance Agreement 5B-95337501.” The County is a recipient of a Cooperative Agreement with the EPA with the grant number “95337501” and program code “5C.” See Attachments B and C. Candidly, the Termination Memorandum is, within its four corners, not about the Grant. This is more than just a mere typo: the County is unsure whether the EPA truly intended to terminate the County’s grant or confused the Grant with some other grant. By extension, the County cannot be sure that the Amendment was truly meant to be sent to the County. Perhaps some mix up happened where someone at EPA inadvertently conflated grants 5B-95337501 and 5C-95337501. Such a scenario would explain this matter given the County has done nothing to merit a termination. Notwithstanding this critical issue, the County cannot afford to just ignore the Amendment or the Termination Memorandum. The County must submit this Notice of Disagreement to preserve its rights in case this bulleted objection is overruled. Given this uncertainty, the Amendment must be rescinded.

- There are numerous other legal bases for rescinding the Amendment. For example, EPA's attempt to withhold money through the Amendment is a violation of the Impoundment Control Act, a violation of various court orders, arbitrary and capricious, a violation of Congress' mandate in the Inflation Reduction Act, a violation of the separation of powers, ultra vires, a waste of valuable Federal resources, a violation of the Administrative Procedure Act, etc.² Many issues with the EPA's grant cancellation actions are described in the attached letter sent to EPA Administrator Lee Zeldin from the United States Senate Committee on Environment and Public Works dated March 25, 2025. *See* Attachment G. Given the legal minefield created by the Amendment, the EPA must rescind the Amendment.

The issues described above are only some of the problems with EPA's termination of the Grant. Any one of the items presented above is sufficient to reverse the termination of the Grant. Given the Grant's clear alignment with Federal priorities and the fatal issues in the EPA's termination process, EPA must reinstate the Grant and rescind the Amendment.

II. Requested Relief

The specific remedy or relief sought by the County under this Notice is for the EPA to rescind the Amendment and take all necessary actions to reinstate the Grant as originally awarded to the County.

III. Contact Information

The name and contact information, including email address, of the County's designated point of contact for this Notice is as follows:

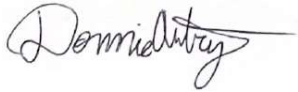
Donnie Autry, Esq.
Assistant County Attorney
Arlington County, Virginia
One Courthouse Plaza
2100 Clarendon Blvd., Suite 403
Arlington, VA 22201
703-843-1833
dautry@arlingtonva.us

IV. CONCLUSION

Thank you for your consideration of this Notice. Please feel free to contact me via the information provided in section III above to let me know how you would like to proceed. I look forward to hearing from you soon.


² These points are further elucidated in the County's Dispute to the Termination Memorandum. The Dispute has also been filed with the EPA.

Thank you,

A handwritten signature in black ink, appearing to read "Donnie Autry", with a long horizontal flourish extending to the right.

Donnie Autry, Esq.
Assistant County Attorney
Arlington County, Virginia

ATTACHMENT A

	U.S. ENVIRONMENTAL PROTECTION AGENCY Assistance Amendment	GRANT NUMBER (FAIN): 95337501 MODIFICATION NUMBER: 2 PROGRAM CODE: 5C		DATE OF AWARD 05/01/2025
		TYPE OF ACTION No Cost Amendment		MAILING DATE 05/01/2025
		PAYMENT METHOD: ASAP		ACH# 33533
		RECIPIENT TYPE: County		
RECIPIENT: COUNTY OF ARLINGTON 2100 Clarendon Blvd, Suite 501 Arlington, VA 22201-5445 EIN: 54-6001123		PAYEE: County of Arlington 2100 Clarendon Blvd, Suite 501 Arlington, VA 22201-5445		
PROJECT MANAGER Alicia Khan DEPT OF MGMT AND FINANCE 2100 Clarendon Blvd, Suite 705 Arlington, VA 22201-5445 Email: akhan@arlingtonva.us Phone: 703-228-3619		EPA PROJECT OFFICER Rina Murasaki Four Penn Center, 1600 John F. Kennedy Blvd., 3EJ10 Philadelphia, PA 19103 Email: Murasaki.Rina@epa.gov Phone: 215-814-2145		EPA GRANT SPECIALIST Celine Vertich Grants Management Section, 3MD22 Four Penn Center, 1600 John F. Kennedy Boulevard Philadelphia, PA 19103-2852 Email: Vertich.Celine@epa.gov Phone: 215-814-5286
PROJECT TITLE AND EXPLANATION OF CHANGES Energy-Health-Equity Project This amendment is to stop work; terminate the agreement; reduce performance period duration; curtail scope of work; and waive certain reporting requirements. Administrative terms and conditions are added. Per 2 CFR 200.340 and the Termination General Terms and Conditions of this agreement, EPA is terminating this award. Your organization shall immediately stop work and take all reasonable steps to minimize the incurrence of costs otherwise allocable to the assistance agreement. See terms and conditions.				
BUDGET PERIOD 06/01/2024 - 05/01/2025	PROJECT PERIOD 06/01/2024 - 05/01/2025	TOTAL BUDGET PERIOD COST \$ 980,350.00	TOTAL PROJECT PERIOD COST \$ 980,350.00	
<p style="text-align: center;">NOTICE OF AWARD</p> <p>Based on your Application dated 05/03/2024 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$ 0.00. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$ 980,350.00. 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 3, US EPA Region 3, 3MD22 Four Penn Center, 1600 John F. Kennedy Boulevard Philadelphia, PA 19103-2852		ORGANIZATION / ADDRESS U.S. EPA, Region 3, EJ, Comm. Hlth and Env. Rev. Div (3EJ00) R3 - Region 3 Four Penn Center, 1600 John F. Kennedy Boulevard Philadelphia, PA 19103-2852		
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY				
Digital signature applied by EPA Award Official Kenneth Rose - Grants Management Section, Chief				DATE 05/01/2025

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$ 980,350	\$ 0	\$ 980,350
EPA In-Kind Amount	\$ 0	\$ 0	\$ 0
Unexpended Prior Year Balance	\$ 0	\$ 0	\$ 0
Other Federal Funds	\$ 0	\$ 0	\$ 0
Recipient Contribution	\$ 0	\$ 0	\$ 0
State Contribution	\$ 0	\$ 0	\$ 0
Local Contribution	\$ 0	\$ 0	\$ 0
Other Contribution	\$ 0	\$ 0	\$ 0
Allowable Project Cost	\$ 980,350	\$ 0	\$ 980,350

Assistance Program	Statutory Authority	Regulatory Authority
66.312 - Environmental Justice Government-to-Government (EJG2G) Program	Clean Air Act: Sec. 138	2 CFR 200, 2 CFR 1500 and 40 CFR 33

Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$ 0
2. Fringe Benefits	\$ 0
3. Travel	\$ 0
4. Equipment	\$ 0
5. Supplies	\$ 4,250
6. Contractual	\$ 600,896
7. Construction	\$ 0
8. Other	\$ 375,204
9. Total Direct Charges	\$ 980,350
10. Indirect Costs: 0.00 % Base	\$ 0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %)	\$ 980,350
12. Total Approved Assistance Amount	\$ 980,350
13. Program Income	\$ 0
14. Total EPA Amount Awarded This Action	\$ 0
15. Total EPA Amount Awarded To Date	\$ 980,350

Administrative Conditions

UNILATERAL TERMINATION

1. The Agency is asserting its right under 2 CFR 200.340 and the Termination General Term and Condition of this agreement to unilaterally terminate this award. This amendment serves as required notice under 2 CFR 200.341.
2. Consistent with 2 CFR 200.343 Effect of suspension and termination, costs to the recipient or subrecipient resulting from financial obligations incurred by the recipient or subrecipient after the termination of a Federal award are not allowable. Costs after termination are allowable if:
 - a. The costs result from financial obligations which were properly incurred by the recipient or subrecipient before the effective date of suspension or termination, and not in anticipation of it; and
 - b. The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.
 - c. The costs are reasonable and necessary termination costs consistent with 2 CFR 200.472.
3. Federal Financial Reporting (FFR) General Terms and Conditions is still in full force and effect. EPA recipients must submit the SF-425 no later than 120 calendar days after the end date of the period of performance of the award.
4. Programmatic Terms and Conditions. Performance reporting is still in full force and effect. The recipient must submit the final report no later than 120 calendar days after the period of performance.

In accordance with 2 CFR 200.329, the recipient agrees to submit performance reports that include information on each of the following areas:

- a. A comparison of accomplishments to the outputs/outcomes established in the assistance agreement work plan for the reporting period;
- b. Explanations on why established outputs/outcomes were not met; and
- c. Additional information, analysis, and explanation of cost overruns or high-than-expected-unit costs.

5. Waiver of Reports

The following reports are waived:

- a. Utilization of Disadvantaged Business Enterprises General Terms and Conditions, EPA Form 5700-52A.
- b. Tangible Personal Property Report, SF-428, General Terms and Conditions.


6. Record Retention

Access to Records, 2 CFR 200.337, is still in full force and effect. The termination of this award does not affect the right of EPA to disallow costs and recover funds on the basis of a later audit or other reviews. Information regarding record retention, property disposition in accordance with EPA regulations, and other frequently asked questions can be accessed at <https://www.epa.gov/grants/frequent-questions-about-closeouts>.

Programmatic Conditions

All Programmatic Conditions remain the same.

ATTACHMENT B

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement	GRANT NUMBER (FAIN): 95337501 MODIFICATION NUMBER: 0 PROGRAM CODE: 5C	DATE OF AWARD 05/30/2024
		TYPE OF ACTION New	MAILING DATE 06/04/2024
		PAYMENT METHOD: ASAP	ACH# 33533
		RECIPIENT TYPE: County	
RECIPIENT: COUNTY OF ARLINGTON 2100 Clarendon Blvd, Suite 501 Arlington, VA 22201-5445 EIN: 54-6001123		Send Payment Request to: Contact EPA RTPFC at: rtpfc-grants@epa.gov	
PROJECT MANAGER Alicia Khan DEPT OF MGMT AND FINANCE 2100 Clarendon Blvd, Suite 705 Arlington, VA 22201-5445 Email: akhan@arlingtonva.us Phone: 703-228-3619		EPA PROJECT OFFICER Rebecca Souto-Glyn Four Penn Center, 1600 John F. Kennedy Blvd., 3EJ30 Philadelphia, PA 19103 Email: Glyn.Rebecca@epa.gov Phone: 215-814-2795	EPA GRANT SPECIALIST Celine Vertich Grants Management Section, 3MD22 Four Penn Center, 1600 John F. Kennedy Boulevard Philadelphia, PA 19103-2852 Email: Vertich.Celine@epa.gov Phone: 215-814-5286
PROJECT TITLE AND DESCRIPTION Energy-Health-Equity Project See Attachment 1 for project description.			
BUDGET PERIOD 06/01/2024 - 05/31/2027	PROJECT PERIOD 06/01/2024 - 05/31/2027	TOTAL BUDGET PERIOD COST \$ 980,350.00	TOTAL PROJECT PERIOD COST \$ 980,350.00
NOTICE OF AWARD <p>Based on your Application dated 05/03/2024 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$ 980,350.00. EPA agrees to cost-share <u>100.00%</u> of all approved budget period costs incurred, up to and not exceeding total federal funding of \$ 980,350.00. 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 3, US EPA Region 3, 3MD22 Four Penn Center, 1600 John F. Kennedy Boulevard Philadelphia, PA 19103-2852		ORGANIZATION / ADDRESS U.S. EPA, Region 3, EJ, Comm. Hlth and Env. Rev. Div (3EJ00) R3 - Region 3 Four Penn Center, 1600 John F. Kennedy Boulevard Philadelphia, PA 19103-2852	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official Lisa White - Mission Support Division, Deputy Director			DATE 05/30/2024

Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$ 0
2. Fringe Benefits	\$ 0
3. Travel	\$ 0
4. Equipment	\$ 0
5. Supplies	\$ 4,250
6. Contractual	\$ 600,896
7. Construction	\$ 0
8. Other	\$ 375,204
9. Total Direct Charges	\$ 980,350
10. Indirect Costs: 0.00 % Base	\$ 0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %)	\$ 980,350
12. Total Approved Assistance Amount	\$ 980,350
13. Program Income	\$ 0
14. Total EPA Amount Awarded This Action	\$ 980,350
15. Total EPA Amount Awarded To Date	\$ 980,350

Attachment 1 - Project Description

The County proposes the Energy-Health-Equity Project (EHE Project, or Project), which will create two technical resources: a decision-support tool and a comprehensive financing/incentives portfolio. These resources will be test driven, refined, and scaled for increased impact within the County and region, supported by an engagement plan, training, and capacity building between community-based nonprofit organizations (CBOs), contractors, and community partnerships. The EHE Decision Support Tool will allow users to model potential benefits of energy improvements to affordable housing and commercial structures common to underserved and disadvantaged communities (DACs) in the Northern Virginia and greater regional territories. The Project will culminate with a final deliverable report that will be leveraged to build a pipeline of projects and support scalability and replicability. The EHE Project's core objectives are to improve air quality and health and reduce greenhouse gas (GHG) emissions in Arlington DACs via building energy upgrades. The Project will also provide technical support and training to key audiences for using the tools and pursuing building upgrades, define human health indicators and metrics and align healthier indoor environments with energy-performance upgrades, and upscale use of the Project tools and resources for adoption and replication across other jurisdictions. EHE Project activities fall into five main areas: 1) Public and Private-Sector Engagement Plan and Best Practices, 2) Energy Modeling for Energy-Performance Upgrade Planning and Decision Support (the EHE Decision Support Tool), 3) Funding Opportunity Identification (the Financing/Incentive Portfolio), 4) Technical Support/Program Support Platform, and 5) Demonstration and Scaling. Activities to be performed include the development of two technical tools and two market resource tools. These tools will be used to assist both occupants and building developers/owners in identifying potential building upgrades and financial resources available to them. The EHE deliverables include two Technical Tools: 1) A robust analytic, EHE Decision-Support Tool, and 2) a Financing/Incentive Portfolio. Additionally, there will be two Market Resources: 1) A Technical/Program Support Platform, and 2) a Public and Private-Sector Engagement Plan.

The EHE Decision-Support Tool, will profile and categorize building types, assess optimal energy performance upgrades, and quantify climate, energy, and public health indicators and metrics. The Financing/Incentive Portfolio will gather innovative mechanisms to stimulate public-private partnerships, provide a mix of financial and non-financial incentives to developers and building owners in DACs, and address the split-incentive barrier. The Technical/Program Support Platform will help key audiences access and use the Decision Support Tool and support the development and financing of specific upgrade projects. The Public and Private-Sector Engagement Plan will utilize virtual public workshops, live special events, and other means to generate interest and optimize County collaborations with Community Based Organizations (CBOs).

The EHE Project's expected outcomes are to improve air quality and health and reduce greenhouse gas (GHG) emissions in Arlington DACs via building energy upgrades. The Project will also provide technical support and training to key audiences for using the tools and pursuing building upgrades.

The intended beneficiaries include underserved communities and vulnerable populations encompassing the Columbia Pike Corridor as a demonstration project, with later hopes of expanding the project to the rest of the county, region, and/or state.

The Northern Virginia Affordable Housing Alliance (NVAHA) (\$100,000) will develop and implement communications and outreach strategies specifically targeted to underserved populations and building owners and managers in disadvantaged communities and areas designated for high-social vulnerability. NVAHA will also employ/compensate resident community leaders at each property to assist with

outreach and education, provide translation services, childcare services, and other services.

The Columbia Pike Partnership Organization (\$110,000) will support development of the Decision-Support Tool with data on socio-economic factors, housing, land use, commercial building stock, and other conditions and characteristics. Columbia Pike will also facilitate outreach with business owners, citizen-civic groups, and residential/commercial building owners/managers, and developers.

George Mason University's Virginia Climate Center (\$78,000) will engage public stakeholder platforms with a focus on climate impacts to human health and mitigation strategies, evaluate key interventions of the project, and evaluate the county's Energy Action Climate Plan for alignment in advancing Environmental Justice and other goals. The university will also communicate energy-performance buildings, healthy environments, and their impact on human health indicators in DACs.

Virginia Clinicians for Climate Action (\$99,000) will provide translation and advocacy support regarding indoor environments and human health, support case studies of public health impacts among underserved communities and their connection with climate volatility, indoor environments, ambient air quality, extreme and prolonged heat events, and other dynamics between urbanized environments and underserved populations, and inform development of the Decision-Support Tool to reflect human health indicators and metrics

Administrative Conditions

National Administrative 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-1-2023-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: <https://www.epa.gov/grants/grant-terms-and-conditions#general>.

A. Correspondence Condition

The terms and conditions of this agreement require the submittal of reports, specific requests for approval, or notifications to EPA. Unless otherwise noted, all such correspondence should be sent to the following email addresses:

- Federal Financial Reports (SF-425): RTPFC-Grants@epa.gov with copy to grant specialist of record.
- MBE/WBE reports (EPA Form 5700-52A): R3_MBE-WBE_Reports@epa.gov.
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, requests for extensions of the budget and project period, amendment requests, requests for other prior approvals, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: Grant specialist and project officer of record.
- Payment requests (if applicable): RTPFC-Grants@epa.gov.
- Quality Assurance documents, work plan revisions, equipment lists, programmatic reports and deliverables: project officer of record.

Programmatic Conditions

Environmental Justice Government to Government Cooperative Agreement Terms and Conditions

A. PERFORMANCE REPORTING AND FINAL PERFORMANCE REPORT

Performance Reports – Content

In accordance with 2 CFR 200.329, the recipient agrees to submit performance reports that include brief information on each of the following areas: 1) A comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period; 2) The reasons why established outputs/outcomes were not met; and 3) other pertinent information, including, when appropriate, analysis and explanation of cost overruns or high unit costs. This description may include overall best practices and/or lessons learned over the project performance period, and attachments and links for materials that may be helpful to other Environmental Grants recipients or similar organizations (e.g., tip sheets, “how-to” sheets, communication materials, outreach materials, web tools, etc).

These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

Additionally, the recipient agrees to inform EPA as soon as problems, delays, or adverse conditions which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan are known.

Performance Reports - Frequency

The recipient agrees to submit semi-**annual** performance reports electronically to the EPA Project Officer within 30 days after the 6-month reporting period and a final performance report no later than 120 calendar days after the end date of the period of performance. The final report shall document project activities over the entire project period. The recipient agrees to submit performance reports to the EPA Project Officer according to the following schedule:

- ***Report 1: June 1, 2024 - December 1, 2024 (due January 1, 2025)***
- ***Report 2 - December 2, 2024 - June 1, 2025 (due July 1, 2025)***
- ***Report 3 - June 2, 2025 - December 1, 2025 (due January 1, 2026)***
- ***Report 4 - December 2, 2025 - June 1, 2026 (due July 1, 2026)***
- ***Report 5 - June 2, 2026 - December 1, 2026 (due January 1, 2027)***
- ***Report 6 - December 2, 2026 - May 31, 2027 (due June 30, 2027)***
- ***FINAL Report: Due 120 days after period of performance (due September 30, 2027).***

Subaward Performance Reporting

The recipient must report on its subaward monitoring activities under 2 CFR 200.332(d). Examples of items that must be reported if the pass-through entity has the information available are:

1. Summaries of results of reviews of financial and programmatic reports.
2. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.
3. Environmental results the subrecipient achieved.
4. Summaries of audit findings and related pass-through entity management decisions.
5. Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.332(e), 2 CFR 200.208 and the 2 CFR Part 200.339 Remedies for Noncompliance.

B. EJ Grantee Workshops (Virtual and/or In-Person)

All EJG2G recipients will be required to attend at least one EJ Grantee training workshop hosted by your EPA Region. These trainings will assist all current EPA EJ grant recipients with strategic planning and project management of their grants and/or cooperative agreements, as well as afford recipients opportunities to learn from their peers and other experts. Recipients will need to identify at least one authorized official to participate. Virtual workshops will utilize webinar technology that can be accessed via personal computer. A conference call line will be available for any recipient who doesn't have the technical capability (i.e. slow internet connection) to access the webinar. Your EPA Project Officer will keep you informed of the dates of the workshops. Each EPA Regional Office will tailor their workshop agenda to the environmental needs and priorities of workshop participants and local communities in the region. Workshops may include a mix of current and former EJ grant recipients, local community stakeholders, other EPA and federal program personnel, and other attendees. Workshop attendees will come together to provide perspective, insight, and lessons learned regarding environmental justice issues plaguing their communities and ways to address them. Recipients will need to identify at least one authorized official to participate. Recipients are permitted to use awarded funds to pay for travel to the workshops.

C. Review and Oversight

1. Products - The recipient agrees that any product (e.g., publication, outreach materials, training manuals) produced through this assistance agreement and made available for public view must be first reviewed by the EPA Project Officer for comment before release. The recipient shall make all final decisions on the product content.
2. Monthly Calls - The recipient shall consult with the EPA Project Officer on a monthly basis in order to obtain input on program activities and products produced. However, the recipient should make all final decisions on project implementation and product content. It is at the EPA Project Officer's discretion to determine any change to the frequency with which calls are held.
3. Prior Approval - Any proposed changes to the project must be submitted in writing to the EPA Project Officer for approval prior to implementation. The recipient incurs costs at its own risk if it fails to obtain written approval before implementing any changes.

D. Post-Project Period Follow-up and Engagement

For no less than one year after completion of the project, recipient agrees to periodically update its designated EPA Project Officer on current community-based and environmental justice work the recipient is performing and how/if that work relates to its now completed EJG2G project. These periodic updates may include (but are not limited to) recent local media reports, additional grant funding received, new initiatives, and developing partnerships. The EPA EJ Grants program is invested in the long-term success of each EJ Grant recipient and its long-term impact on addressing the disproportionate environmental and public health impacts plaguing their communities. These post-project period updates allow the EJ Grants program to provide past recipients with additional guidance about applicable funding opportunities, potential collaborations, and technical assistance that may assist recipients in their future work*. The periodic updates also allow the program to track best practices that lead to greater project sustainability and long-term community revitalization for impacted community residents. The frequency of these periodic updates will be at the discretion of the designated EPA Project Officer and will be discussed with the recipient before the end of the project period. Recipients are also encouraged to continue providing updates and engaging with their EPA Project Officers beyond the additional year after the end of the project.

*NOTE – Compliance with this term & condition will not give the recipient priority during future EPA EJ grant competitions and is not a guarantee for future EPA grant funding.

E. Cybersecurity Condition

Cybersecurity Grant Condition for Other Recipients, Including Intertribal Consortia

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

(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 200.332(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.

F. Competency Policy

Competency of Organizations Generating Environmental Measurement Data

In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements.

Recipient agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, Recipient agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. Recipient shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at <https://www.epa.gov/sites/production/files/2015-03/documents/competency-policy-aaia-new.pdf> or a copy may also be requested by contacting the EPA Project Officer for this award.

G. Procurement Terms and Conditions

The recipient agrees to conduct all procurement actions under this assistance agreement in accordance with the procurement standards set forth in Title 2 CFR, Parts 200.317 through 200.327, 2 CFR Part 1500 and 40 CFR Part 33. EPA provides additional guidance on complying with these requirements in the Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements which is available at <https://www.epa.gov/grants/best-practice-guide-procuring-services-supplies-and-equipment-under-epa-assistance>. Any costs incurred by the recipient under contracts and/or small purchases that EPA determines to be in noncompliance with EPA procurement standards shall be unallowable for Federal reimbursement.

H. Geospatial Data Standards

All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at <https://www.fgdc.gov/>.

I. Quality Assurance

Authority: Quality Assurance applies to all assistance agreements involving environmental information as defined in 2 C.F.R. § 1500.12 Quality Assurance.

The recipient shall ensure that subawards involving environmental information issued under this agreement include appropriate quality requirements for the work. The recipient shall ensure sub-award recipients develop and implement [a/the] Quality Assurance (QA) planning document[s] in accordance with this term and condition; and/or ensure sub-award recipients implement all applicable approved QA planning documents.

1. Quality Assurance Project Plan (QAPP)

a. Prior to beginning environmental information operations, the recipient must:

i. Develop a QAPP,

ii. Prepare QAPP in accordance with the current version of EPA's [Quality Assurance Project Plan \(QAPP\) Standard](#),

iii. Submit the document for EPA review, and

iv. Obtain EPA Quality Assurance Manager or designee (hereafter referred to as QAM) approval.

e. The recipient must submit a QAPP.

For Reference:

- EPA's [Quality Assurance Project Plan \(QAPP\) Standard](#); contain quality specifications for EPA and non-EPA organizations and definitions applicable to these terms and conditions.
- [EPA QA/G-5: Guidance for Quality Assurance Project Plans](#).
- (QAM and/or PO may insert QA references that inform or assist the recipient here).
- EPA's [Quality Program](#) website has a [list of QA managers](#), and [Non-EPA Organizations Quality Specifications](#).
- The Office of Grants and Debarment [Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance](#).

J. Use of Logos

If the EPA logo is appearing along with logos from other participating entities on websites, outreach materials, or reports, it must **not** be prominently displayed to imply that any of the recipient or subrecipient's activities are being conducted by the EPA. Instead, the EPA logo should be accompanied with a statement indicating that the County of Arlington received financial support from the EPA under an Assistance Agreement. More information is available at: <https://www.epa.gov/stylebook/using-epa-seal-and-logo#policy>

K. Paperwork Reduction Act

The scope of work for this cooperative agreement includes a survey or other information collection of identical information from 10 or more parties. As provided by 5 CFR 1320.3(d), EPA is a sponsor of the information collection for purposes of obtaining approval from the Office of Management and Budget for collecting information. The recipient agrees to assist EPA in complying with OMB procedures at 5 CFR Part 1320 for obtaining Information Collection Request authorization. The recipient may not collect information until EPA obtains OMB approval.

L. DURC/iDURC

The recipient agrees to not initiate any life sciences research involving agents and toxins identified in Section 6.2.1 of the [United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern](#) (iDURC Policy) until appropriate review and clearance by the recipient institution's Institutional Review Entity (IRE). The recipient also agrees to temporarily suspend life sciences research in the event that, during the course of the research project, the IRE determines that the life sciences research meets the definition of DURC in the iDURC Policy, and the recipient agrees to notify the EPA Institutional Contact for Dual Use Research (ICDUR) (DURC@epa.gov) of the institution's determination.

M. Substantial Involvement

EPA will be substantially involved in this agreement. Substantial involvement by the EPA Project Officer may include:

- 1.) monthly telephone calls and other monitoring,
- 2.) reviewing project phases and providing approval to continue to the next phase,
- 3.) reviewing and commenting on any documents, web content, or other materials developed under this agreement (the recipient will make final decisions on these matters),
- 4.) approving substantive terms included in contracts or subawards (EPA's Project Officer will not suggest, recommend or direct the recipient to select any particular contractor or subrecipient except to the extent permitted in Section 10 of EPA's Subaward Policy).
- 5.) reviewing and commenting on the programmatic progress reports
- 6) Consultation with EPA regarding the selection of key personnel (EPA's involvement is limited to reviewing the technical qualifications of key personnel and the recipient will make the final decisions on selection. EPA's Project Officer will not suggest, recommend or direct the recipient to select any individual).
- 7.) Joint operational involvement, participation, and/or collaboration between EPA and the recipient.

N. National Programmatic Term and Condition for Fellowship, Internship Programs and Similar Programs Supported by EPA Financial Assistance

1. EPA funds for this program may only be used for participant support cost payments, scholarships, tuition remission and other forms of student aid for citizens of the United States, its territories, or possessions, or for individuals lawfully admitted to the United States for permanent residence.
2. The recipient and program participants are responsible for taxes, if any, on payments made to or on behalf of individuals participating in this program that are allowable as participant support costs under 2 CFR 200.1 or [2 CFR 200.456](#) and scholarships and other forms of student aid such as tuition remission under [2 CFR 200.466](#). EPA encourages recipients and program participants to consult their tax advisers, the U.S. Internal Revenue Service, or state and local tax authorities regarding the taxability of stipends, tuition remission and other payments. However, EPA does not provide advice on tax issues relating to these payments.
3. Participant support cost payments, scholarships, and other forms of student aid such as tuition remission are lower tiered covered Nonprocurement transactions for the purposes of [2 CFR 180.300](#) and EPA's Suspension and Debarment Term and Condition. Recipients, therefore, may not make participant support cost payments to individuals who are excluded from participation in Federal Nonprocurement programs under [2 CFR Part 180](#). Recipients are responsible for checking the eligibility of program participants in the System for Award Management (SAM) or obtaining eligibility certifications from the program participants.

See [EPA Guidance on Participant Support Costs](#).

O. Conditional Award—Execution of Subaward to Implement Qualifying Community-based Nonprofit Organization (CBO) Partnership Agreement

In order to demonstrate eligibility for EPA's **Environmental Justice Government-to-Government (EJG2) Program**, Arlington County, Virginia, submitted a Partnership Agreement to EPA that did not include a binding subaward agreement between the recipient and Columbia Pike Organization, Northern Virginia Affordable Housing Alliance, Virginia Clinicians for Climate Action, George Mason University Virginia Climate Center, due to the recipient's local policies and laws that restrict the recipient from entering into subaward agreements prior to receipt of a Notice of Award. The recipient may not draw down funds for this award until the subaward with the subrecipient is executed through a written subaward agreement that is consistent with the requirements in 2 CFR 200.332(a). The recipient may refer to Appendix D of the EPA Subaward Policy for additional guidance. Once the subaward agreement with the subrecipient is executed and submitted to EPA's Project Officer, the EPA Grants Management Officer or the EPA Award Official will issue written notification that this condition has been satisfied and that the recipient is authorized to draw down EJG2G funds in accordance with the standards described in the EPA General Term and Condition *Automated Standard Application Payments (ASAP) and Proper Payment Draw Down*.

ATTACHMENT C



OFFICE OF MISSION SUPPORT

WASHINGTON, D.C. 20460

May 1, 2025

MEMORANDUM

SUBJECT: Termination of EPA Assistance Agreement 5B-95337501 under 2 CFR 200.340

FROM: Kenneth I. Rose III, Region 3 Grants Management Official

TO: Steve Burr, AIRE Energy Manager (sburr@arlingtonva.us)
County of Arlington

The purpose of this communication is to notify you that the U.S. Environmental Protection Agency (EPA) is hereby terminating Assistance Agreement No. 5B-95337501 awarded to County of Arlington. This EPA Assistance Agreement is terminated effective immediately on the grounds that the remaining portion of the Federal award will not accomplish the EPA funding priorities for achieving program goals. The objectives of the award are no longer consistent with EPA funding priorities.

The EPA Administrator has determined that, per the Agency's obligations to the constitutional and statutory law of the United States, this priority includes ensuring that the Agency's grants do not conflict with the Agency's policy of prioritizing merit, fairness, and excellence in performing our statutory functions. In addition to complying with the law, it is vital that the Agency assess whether all grant payments are free from fraud, abuse, waste, and duplication, as well as to assess whether current grants are in the best interests of the United States.

The process for closeout is generally outlined in 2 CFR 200.344. EPA is clarifying what reports are required and what reports are waived below. Other requirements are still in effect if applicable to your grant.

EPA is requiring the following closeout reports due within 120 days of closeout (2 CFR 200.344a:)

- Final Federal Financial Report, SF-425
- Final Technical Report
- Other programmatic reports identified in your terms and conditions

As part of this termination, EPA is waiving the following closeout reports:

- Property Report, SF-428
- Final Minority Business Enterprise/Woman Business Enterprise Utilization Under Federal Grants and Cooperative Agreements, EPA Form 5700-52A

The recipient may request payment from the Automated Standard Application Payments (ASAP) system for allowable costs incurred up to the date of this memo provided that such costs were contained in the approved workplan. Costs incurred by you after this termination are allowable only if (a) those costs were properly incurred by you before the effective date of this termination, and not in anticipation of it; and (b) those costs would be allowable if your federal award was not suspended or expired normally at the end of the period of

performance in which the termination takes effect. See 2 C.F.R. § 200.343. You are encouraged to carefully review and discharge your closeout responsibilities set forth in 2 C.F.R. § 200.344-45 and your award agreement. Those responsibilities include, but are not limited to, your obligation to “promptly refund any unobligated funds” that have been paid out but “are not authorized to be retained.” See 2 C.F.R. § 200.344(g).

Also, per 2 CFR 200.472, a recipient may use grant funds to properly closeout their grant including reasonable and necessary costs that might occur after the date of this memo. If the recipient drew down funds from ASAP for costs beyond the termination date or for costs that exceed the amount necessary to properly closeout their grant, the recipient must contact RTPFC at rtpfc-grants@epa.gov for instructions on how to return the excess funds.

The EPA Grants Management Office has issued an amendment to the agreement to document the termination.

If you wish to dispute this termination decision, the Disputes Decision Official (DDO), Amy Van Blarcom-Lackey, Regional Administrator, must receive the Dispute no later than 30 calendar days from the date this termination notice is electronically sent to you. Disputes must be sent electronically by email to the DDO at white.lisa@epa.gov, with a copy to the EPA Award Official at rose.kenneth@epa.gov within the 30-day period stated above. The Dispute submitted to the DDO must include: (1) A copy of the disputed Agency Decision; (2) A detailed statement of the specific legal and factual grounds for the Dispute, including copies of any supporting documents; (3) The specific remedy or relief you seek under the Dispute; and (4) The name and contact information, including email address, of your designated point of contact for the Dispute. See 2 CFR 1500.15

The requirements on post-closeout adjustments and continuing responsibilities, including audit and record retention requirements, at 2 CFR 200.345 remain in effect.

ATTACHMENT
Amendment Document

cc: Celine Vertich
Rina Murasaki

ATTACHMENT D

Establishing the President's Make America Healthy Again Commission

The White House

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. Purpose. American life expectancy significantly lags behind other developed countries, with pre-COVID-19 United States life expectancy averaging 78.8 years and comparable countries averaging 82.6 years. This equates to 1.25 billion fewer life years for the United States population. Six in 10 Americans have at least one chronic disease, and four in 10 have two or more chronic diseases. An estimated one in five United States adults lives with a mental illness.

These realities become even more painful when contrasted with nations around the globe. Across 204 countries and territories, the United States had the highest age-standardized incidence rate of cancer in 2021, nearly double the next-highest rate. Further, from 1990-2021, the United States experienced an 88 percent increase in cancer, the largest percentage increase of any country evaluated. In 2021, asthma was more than twice as common in the United States than most of Europe, Asia, or Africa. Autism spectrum disorders had the highest prevalence in high-income countries, including the United States, in 2021. Similarly, autoimmune diseases such as inflammatory bowel disease, psoriasis, and multiple sclerosis are more commonly diagnosed in high-income areas such as Europe and North America. Overall, the global comparison data demonstrates that the health of Americans is on an alarming trajectory that requires immediate action.

This concern applies urgently to America's children. In 2022, an estimated 30 million children (40.7 percent) had at least one health condition, such as allergies, asthma, or an autoimmune disease. Autism spectrum disorder now affects 1 in 36 children in the United States — a staggering increase from rates of 1 to 4 out of 10,000 children identified with the condition during the 1980s. Eighteen percent of late adolescents and young adults have fatty liver disease, close to 30 percent of adolescents are prediabetic, and more than 40 percent of adolescents are overweight or obese.

These health burdens have continued to increase alongside the increased prescription of medication. For example, in the case of Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder, over 3.4 million children are now on medication for the disorder — up from 3.2 million children in 2019-2020 — and the number of children being diagnosed with the condition continues to rise.

This poses a dire threat to the American people and our way of life. Seventy-seven percent of young adults do not qualify for the military based in large part on their health scores. Ninety percent of the Nation's \$4.5 trillion in annual healthcare expenditures is for people with chronic and mental health conditions. In short, Americans of all ages are becoming sicker, beset by illnesses that our medical system is not addressing effectively. These trends harm us, our economy, and our security.

To fully address the growing health crisis in America, we must re-direct our national focus, in the public and private sectors, toward understanding and drastically lowering chronic disease rates and ending childhood chronic disease. This includes fresh thinking on nutrition, physical activity, healthy lifestyles, over-reliance on medication and treatments, the effects of new technological

habits, environmental impacts, and food and drug quality and safety. We must restore the integrity of the scientific process by protecting expert recommendations from inappropriate influence and increasing transparency regarding existing data. We must ensure our healthcare system promotes health rather than just managing disease.

Sec. 2. Policy. It shall be the policy of the Federal Government to aggressively combat the critical health challenges facing our citizens, including the rising rates of mental health disorders, obesity, diabetes, and other chronic diseases. To do so, executive departments and agencies (agencies) that address health or healthcare must focus on reversing chronic disease. Under this policy:

(a) all federally funded health research should empower Americans through transparency and open-source data, and should avoid or eliminate conflicts of interest that skew outcomes and perpetuate distrust;

(b) the National Institutes of Health and other health-related research funded by the Federal Government should prioritize gold-standard research on the root causes of why Americans are getting sick;

(c) agencies shall work with farmers to ensure that United States food is the healthiest, most abundant, and most affordable in the world; and

(d) agencies shall ensure the availability of expanded treatment options and the flexibility for health insurance coverage to provide benefits that support beneficial lifestyle changes and disease prevention.

Sec. 3. Establishment and Composition of the President's Make America Healthy Again Commission. (a) There is hereby established the President's Make America Healthy Again Commission (Commission), chaired by the Secretary of Health and Human Services (Chair), with the Assistant to the President for Domestic Policy serving as Executive Director (Executive Director).

(b) In addition to the Chair and the Executive Director, the Commission shall include the following officials, or their designees:

(i) the Secretary of Agriculture;

(ii) the Secretary of Housing and Urban Development;

(iii) the Secretary of Education;

(iv) the Secretary of Veterans Affairs;

(v) the Administrator of the Environmental Protection Agency;

(vi) the Director of the Office of Management and Budget;

(vii) the Assistant to the President and Deputy Chief of Staff for Policy;

(viii) the Director of the National Economic Council;

(ix) the Chairman of the Council of Economic Advisers;

(x) the Director of the Office of Science and Technology Policy;

(xi) the Commissioner of Food and Drugs;

- (xii) the Director for the Centers for Disease Control and Prevention;
- (xiii) the Director of the National Institutes of Health; and
- (xiv) other members of my Administration invited to participate, at the discretion of the Chair and the Executive Director.

Sec. 4. Fighting Childhood Chronic Disease. The initial mission of the Commission shall be to advise and assist the President on how best to exercise his authority to address the childhood chronic disease crisis. Therefore, the Commission shall:

- (a) study the scope of the childhood chronic disease crisis and any potential contributing causes, including the American diet, absorption of toxic material, medical treatments, lifestyle, environmental factors, Government policies, food production techniques, electromagnetic radiation, and corporate influence or cronyism;
- (b) advise and assist the President on informing the American people regarding the childhood chronic disease crisis, using transparent and clear facts; and
- (c) provide to the President Government-wide recommendations on policy and strategy related to addressing the identified contributing causes of and ending the childhood chronic disease crisis.

Sec. 5. Initial Assessment and Strategy from the Make America Healthy Again Commission. (a) *Make our Children Healthy Again Assessment*. Within 100 days of the date of this order, the Commission shall submit to the President, through the Chair and the Executive Director, the Make Our Children Healthy Again Assessment, which shall:

- (i) identify and describe childhood chronic disease in America compared to other countries;
- (ii) assess the threat that potential over-utilization of medication, certain food ingredients, certain chemicals, and certain other exposures pose to children with respect to chronic inflammation or other established mechanisms of disease, using rigorous and transparent data, including international comparisons;
- (iii) assess the prevalence of and threat posed by the prescription of selective serotonin reuptake inhibitors, antipsychotics, mood stabilizers, stimulants, and weight-loss drugs;
- (iv) identify and report on best practices for preventing childhood health issues, including through proper nutrition and the promotion of healthy lifestyles;
- (v) evaluate the effectiveness of existing educational programs with regard to nutrition, physical activity, and mental health for children;
- (vi) identify and evaluate existing Federal programs and funding intended to prevent and treat childhood health issues for their scope and effectiveness;
- (vii) ensure transparency of all current data and unpublished analyses related to the childhood chronic disease crisis, consistent with applicable law;
- (viii) evaluate the effectiveness of current Federal Government childhood health data and metrics, including those from the Federal Interagency Forum on Child and Family Statistics and the National Survey of Children's Health;
- (ix) restore the integrity of science, including by eliminating undue industry influence, releasing findings and underlying data to the maximum extent permitted under applicable law, and

increasing methodological rigor; and

(x) establish a framework for transparency and ethics review in industry-funded projects.

(b) *Make our Children Healthy Again Strategy*. Within 180 days of the date of this order, the Commission shall submit to the President, through the Chair and the Executive Director, a Make Our Children Healthy Again Strategy (Strategy), based on the findings from the Make Our Children Healthy Again Assessment described in subsection (a) of this section. The Strategy shall address appropriately restructuring the Federal Government's response to the childhood chronic disease crisis, including by ending Federal practices that exacerbate the health crisis or unsuccessfully attempt to address it, and by adding powerful new solutions that will end childhood chronic disease.

(c) The Chair may hold public hearings, meetings, roundtables, and similar events, as appropriate, and may receive expert input from leaders in public health and Government accountability.

Sec. 6. Additional Reports. (a) Following the submission to the President of the Strategy, and any final strategy reports thereafter, the Chair and the Executive Director shall recommend to the President updates to the Commission's mission, including desired reports.

(b) The Commission shall not reconvene, following submission of the Strategy, until an updated mission is submitted to the President through the Executive Director.

Sec. 7. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,

February 13, 2025.

ATTACHMENT E

This content is from the eCFR and is authoritative but unofficial.

Title 2 — Federal Financial Assistance

Subtitle A — Office of Management and Budget Guidance for Federal Financial Assistance

Chapter II — Office of Management and Budget Guidance

Part 200 — Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Subpart D — Post Federal Award Requirements

Remedies for Noncompliance

Authority: 31 U.S.C. 503; 31 U.S.C. 6101-6106; 31 U.S.C. 6307; 31 U.S.C. 7501-7507.

Source: 89 FR 30136, Apr. 22, 2024, unless otherwise noted.

§ 200.340 Termination.

- (a) The Federal award may be terminated in part or its entirety as follows:
 - (1) By the Federal agency or pass-through entity if the recipient or subrecipient fails to comply with the terms and conditions of the Federal award;
 - (2) By the Federal agency or pass-through entity with the consent of the recipient or subrecipient, in which case the two parties must agree upon the termination conditions. These conditions include the effective date and, in the case of partial termination, the portion to be terminated;
 - (3) By the recipient or subrecipient upon sending the Federal agency or pass-through entity a written notification of the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal agency or pass-through entity determines that the remaining portion of the Federal award will not accomplish the purposes for which the Federal award was made, the Federal agency or pass-through entity may terminate the Federal award in its entirety; or
 - (4) By the Federal agency or pass-through entity pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities.
- (b) The Federal agency or pass-through entity must clearly and unambiguously specify all termination provisions in the terms and conditions of the Federal award.
- (c) When the Federal agency terminates the Federal award prior to the end of the period of performance due to the recipient's material failure to comply with the terms and conditions of the Federal award, the Federal agency must report the termination in *SAM.gov*. A Federal agency must use the Contractor Performance Assessment Reporting System (CPARS) to enter information in *SAM.gov*.
 - (1) The information required under paragraph (c) of this section is not to be reported in *SAM.gov* until the recipient has either:
 - (i) Exhausted its opportunities to object or challenge the decision (see § 200.342); or
 - (ii) Has not, within 30 calendar days after being notified of the termination, informed the Federal agency that it intends to appeal the decision to terminate.
 - (2) If a Federal agency, after entering information about a termination in *SAM.gov*, subsequently:

- (i) Learns that any of that information is erroneous, the Federal agency must correct the information in the system within three business days;
 - (ii) Obtains an update to that information that could be helpful to other Federal agencies, the Federal agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.
- (3) The Federal agency must not post any information that will be made publicly available in the non-public segment of *SAM.gov* that is covered by a disclosure exemption under the Freedom of Information Act (FOIA). When the recipient asserts within seven calendar days to the Federal agency which posted the information that a disclosure exemption under FOIA covers some of the information made publicly available, the Federal agency that posted the information must remove the posting within seven calendar days of receiving the assertion. Before reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's FOIA procedures.
- (d) When the Federal award is terminated in part or its entirety, the Federal agency or pass-through entity and recipient or subrecipient remain responsible for compliance with the requirements in §§ 200.344 and 200.345.

ATTACHMENT F

Environmental Protection Agency

General Terms and Conditions

Effective October 1, 2023

Revision History:

The Environmental Protection Agency's General Terms and Conditions **are published and become effective October 1st at the start of the federal fiscal year.** Any additions, revisions, or changes to the terms and conditions after October 1 will be summarized below.

T&C Number	Effective Date	Description of Changes
<u>#48</u>	October 23, 2023	Implements new Office of Management and Budget (OMB) guidance on the Buy America preference for infrastructure projects.
<u>#5</u>	January 12, 2024	Removed the customer service line for Research Triangle Park Finance Center (RTPFC).
<u>#8</u>	May 21, 2024	Added clarifying guidance on Subawards to Federal Agencies.
<u>#33</u>	May 21, 2024	Updated in accordance with 40 CFR 26 and EPA Order 1000.17A for human subjects research.

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Preface

1. Introduction

- (a) 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, and 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 200.339](#) and [2 CFR 200.340](#).
- (b) If the EPA General Terms and Conditions have been revised, EPA will update the terms and conditions when it provides additional funding (incremental or supplemental) prior to the end of the period of performance of this agreement. The recipient must comply with the revised terms and conditions after the effective date of the EPA action that leads to the revision. Revised terms and conditions do not apply to the recipient's expenditures of EPA funds or activities the recipient carries out prior to the effective date of the EPA action. EPA will inform the recipient of revised terms and conditions in the action adding additional funds.

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 Part 200](#) and [2 CFR Part 1500](#). 2 CFR 1500.2, Adoption of 2 CFR Part 200, states the 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 Part 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 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 2 CFR 200.1) 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 Parts 200 and 1500).

3. Termination

Consistent with [2 CFR 200.340](#), EPA may unilaterally terminate this award in whole or in part:

- (a) If a recipient fails to comply with the terms and conditions of the award including statutory or regulatory requirements; or

- (b) If the award no longer effectuates the program goals or agency priorities. Situations in which EPA may terminate an award under this provision include when:
- i. EPA obtains evidence that was not considered in making the award that reveals that specific award objective(s) are ineffective at achieving program goals and EPA determines that it is in the government's interest to terminate the award;
 - ii. EPA obtains evidence that was not considered in making the award that causes EPA to significantly question the feasibility of the intended objective(s) of the award and EPA determines that it is in the government's interest to terminate the award;
 - iii. EPA determines that the objectives of the award are no longer consistent with funding priorities for achieving program goals.

Financial Information

4. 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 1500.9](#).

5. Automated Standard Application Payments (ASAP) and Proper Payment Draw Down

Electronic Payments. Recipients must be enrolled or enroll in the Automated Standard Application for Payments (ASAP) system to receive payments under EPA financial assistance agreements unless:

- EPA grants a recipient-specific exception;
- The assistance program has received a waiver from this requirement;
- The recipient is exempt from this requirement under [31 CFR 208.4](#); or,
- The recipient is a fellowship recipient pursuant to [40 CFR Part 46](#).

EPA will not make payments to recipients until the ASAP enrollment requirement is met unless the recipients fall under one of the above categories. Recipients may request exceptions using the procedures below but only EPA programs may obtain waivers. To enroll in ASAP, complete the ASAP Initiate Enrollment Form located at: <https://www.epa.gov/financial/forms> and email it to rtpfc-grants@epa.gov or mail it to:

US Environmental Protection Agency
RTP-Finance Center (Mail Code AA216-01)
4930 Page Rd.
Durham, NC 27711

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 payments are credited to the account at the financial institution of the recipient organization set up by the recipient during the ASAP enrollment process. Additional information concerning ASAP and enrollment can be obtained by contacting the EPA

Research Triangle Park Finance Center (RTPFC), at rtpfc-grants@epa.gov, or by visiting: <https://www.fiscal.treasury.gov/asap/>.

EPA will grant exceptions to the ASAP enrollment requirement only in situations in which the recipient demonstrates to EPA that receiving payment via ASAP places an undue administrative or financial management burden on the recipient or EPA determines that granting the waiver is in the public interest. Recipients may request an exception to the requirement by following the procedures specified in [RAIN-2018-G06-R](#).

Proper Payment Drawdown (for recipients other than states)

- (a) As required by [2 CFR 200.305\(b\)](#), the recipient must draw funds from ASAP only for the minimum amounts needed for actual and immediate cash requirements to pay employees, contractors, subrecipients or to satisfy other obligations for allowable costs under this assistance agreement. The timing and amounts of the drawdowns must be as close as administratively feasible to actual disbursements of EPA funds. Disbursement within 5 business days of drawdown will comply with this requirement and the recipient agrees to meet this standard when performing this award.
- (b) Recipients may not retain more than 5% of the amount drawn down, or \$1,000 whichever is less, 5 business days after drawdown to materially comply with the standard. Any EPA funds subject to this paragraph that remain undisbursed after 5 business days must be fully disbursed within 15 business days of draw down or be returned to EPA.
- (c) If the recipient draws down EPA funds in excess of that allowed by paragraph b., the recipient must contact rtpfc-grants@epa.gov for instructions on whether to return the funds to EPA. Recipients must comply with the requirements at [2 CFR 200.305\(b\)\(8\) and \(9\)](#) regarding depositing advances of Federal funds in interest bearing accounts.
- (d) Returning Funds: [Pay.gov](#) is the preferred mechanism to return funds. It is free, secure, paperless, expedient, and does not require the recipient/vendor to create an account. Contact RTPFC-Grants at rtpfc-grants@epa.gov to obtain complete instructions. Additional information is available at the [Pay.gov website](#). Information on how to repay EPA via check is available at <https://www.epa.gov/financial/makepayment>. Instructions on how to return funds to EPA electronically via ASAP are available at <https://www.fiscal.treasury.gov/asap/>.
- (e) Failure on the part of the recipient to materially comply with this condition may, in addition to EPA recovery of the un-disbursed portions of the drawn down funds, lead to changing the payment method from advance payment to a reimbursable basis. EPA may also take other remedies for noncompliance under [2 CFR 200.208](#) and/or 2 CFR 200.339.
- (f) If the recipient believes that there are extraordinary circumstances that prevent it from complying with the 5-business day disbursement requirement throughout the performance period of this agreement, recipients may request an exception to the requirement by following the procedures specified in [RAIN-2018-G06-R](#). EPA will grant exceptions to the 5-business day disbursement requirement only if the recipient demonstrates that compliance places an undue

administrative or financial management burden or EPA determines that granting the exception is in the public interest.

Proper Payment Drawdown for State Recipients

In accordance with [2 CFR 200.305\(a\)](#), payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified [at 31 CFR Part 205, Subparts A and B](#) and [Treasury Financial Manual \(TFM\) 4A-2000, “Overall Disbursing Rules for All Federal Agencies”](#) unless a program specific regulation (e.g. 40 CFR 35.3160 or 40 CFR 35.3560) provides otherwise. Pursuant to 31 CFR Part 205, [Subpart A—Rules Applicable to Federal Assistance Programs Included in a Treasury-State Agreement](#), States follow their Treasury-State CMIA Agreement for major Federal programs listed in the agreement. For those programs not listed as major in the Treasury-State agreement, the State follows the default procedures in 31 CFR Part 205, [Subpart B—Rules Applicable to Federal Assistance Programs Not Included in a Treasury-State Agreement](#), which directs State recipients to draw-down and disburse Federal financial assistance funds in anticipation of immediate cash needs of the State for work under the award. States must comply with [2 CFR 200.302\(a\)](#) in reconciling costs incurred and charged to EPA financial assistance agreements at time of close out unless a program specific regulation provides otherwise.

Selected Items of Cost

6. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

This term and condition implements [2 CFR 200.216](#) and is effective for obligations and expenditures of EPA financial assistance funding on or after 8/13/2020.

As required by 2 CFR 200.216, EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use EPA funds to purchase:

- (a) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (b) Telecommunications or video surveillance services provided by such entities or using such equipment.

- (c) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Consistent with [2 CFR 200.471](#), costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

- (a) Obligating or expending EPA funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:
 - (1) Procure or obtain, extend or renew a contract to procure or obtain;
 - (2) Enter into a contract (or extend or renew a contract) to procure; or
 - (3) Obtain the equipment, services, or systems.

Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management](#) exclusion list.

7. 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).

Information on how to calculate the maximum daily rate and the daily pay limitation is available at the Office Of Personnel Management's [Fact Sheet: How to Compute Rates of Pay](#) and [Fact Sheet: Expert and Consultant Pay](#). Specifically, to determine the maximum daily rate, follow these steps:

- (1) Divide the Level IV salary by 2087 to determine the hourly rate. Rates must be rounded to the nearest cent, counting one-half cent and over as the next higher cent (e.g., round \$18.845 to \$18.85).
- (2) Multiply the hourly rate by 8 hours. The product is the maximum daily rate.

Contracts and subcontracts with firms for services that are awarded using the procurement requirements in Subpart D of 2 CFR Part 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 1500.10](#).

8. Establishing and Managing Subawards

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](#).

Subawards to Federal Agencies – Clarity on Applicable EPA Terms and Conditions: If the subrecipient is federal agency, the only provisions of the EPA General Terms and Conditions implementing 2 CFR Part 200 on subawards that apply are: (1) the requirement for the federal agency to obtain a Unique Entity Identifier (UEI) in accordance with 2 CFR Part 25 as described in Item 3 below and (2) the requirement for the recipient to report on first-tier subawards as described in EPA General Term and Condition 15.1, “Reporting of first tier subawards.”

As provided within 2 CFR 200.101(a)(2), all other provisions of 2 CFR Part 200, Subparts A through E, do not apply to subawards with federal agencies. Transactions between the recipient and the federal agency subrecipient will be governed by the federal agency subrecipient’s cost reimbursement agreement with the recipient.

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

- 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 200.331](#) 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 provided in [2 CFR 200.1](#) *Participant support costs*, [2 CFR 200.1](#) *Subaward*, and EPA’s [Guidance on Participant Support Costs](#).
 - (c) Subsidies, rebates and similar payments to participants in EPA funded programs to encourage environmental stewardship are also classified as *Participant support costs* as provided in 2 CFR 1500.1 and EPA’s [Guidance on Participant Support Costs](#).
- 2) Establish and follow a system that ensures all subaward agreements are in writing and contain all of the elements required by 2 CFR 200.332(a). EPA has developed a template for subaward agreements that is available in [Appendix D](#) of the [EPA Subaward Policy](#).
- 3) Prior to making subawards, ensure that each subrecipient has a “Unique Entity Identifier (UEI).” The UEI is required by [2 CFR Part 25](#) and [2 CFR 200.332\(a\)\(1\)](#). Subrecipients are not required to complete full System for Award Management (SAM) registration to obtain a UEI. Information regarding obtaining a UEI is available at the SAM Internet site: <https://www.sam.gov/SAM/> and

in EPA's General Term and Condition "**System for Award Management and Universal Identifier Requirements**" of the pass-through entity's agreement with the EPA.

- 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 200.332\(a\)\(2\)](#). 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 1500.10 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 <https://www.epa.gov/grants/epa-subaward-cross-cutter-requirements>. 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.

- 5) Ensure, for states and other public recipients, that subawards are not conditioned in a manner that would disadvantage applicants for subawards based on their religious character.
- 6) 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 200.332\(b\)](#) 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) Establish and follow a process for deciding whether to impose additional requirements on subrecipients based on risk factors as required by [2 CFR 200.332\(c\)](#). Examples of additional requirements authorized by 2 CFR 200.208 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
- 8) Establish and follow a system for monitoring subrecipient performance that includes the elements required by [2 CFR 200.332\(d\)](#) and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.
 - 9) Establish and maintain an accounting system which ensures compliance with the \$25,000 limitation at 2 CFR 200.1, Modified Total Direct Costs, if applicable, on including subaward costs in *Modified Total Direct Costs* for the purposes of distributing indirect costs. Recipients with Federally approved indirect cost rates that use a different basis for distributing indirect costs to subawards must comply with their Indirect Cost Rate Agreement.
 - 10) 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.
 - 11) 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 200.308](#).
 - 12) 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.
 - 13) 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.
 - 14) Establish and maintain a system under [2 CFR 200.332\(d\)\(3\)](#) and [2 CFR 200.521](#) 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.
 - 15) As provided in [2 CFR 200.333](#), 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 1 through 14 above or will refrain from making subawards until the systems are designed and implemented.

9. 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.

10. Federal Employee Costs

The recipient understands that none of the funds for this project (including funds contributed by the recipient as cost sharing) may be used to pay for the travel of Federal employees or for other costs associated with Federal participation in this project unless a Federal agency will be providing services to the recipient as authorized by a Federal statute.

11. Foreign Travel

EPA policy requires that all foreign travel must be approved by its Office of International and Tribal Affairs. The recipient agrees to obtain prior EPA approval before using funds available under this agreement for international travel unless the trip(s) are already described in the EPA approved budget for this agreement. Foreign travel includes trips to Mexico and Canada but does not include trips to Puerto Rico, the U.S. Territories or possessions. Recipients that request post-award approval to travel frequently to Mexico and Canada by motor vehicle (e.g., for sampling or meetings) may describe their proposed travel in general terms in their request for EPA approval. Requests for prior approval must be submitted to the Project Officer for this agreement.

12. The Fly America Act and Foreign Travel

The recipient understands that all foreign travel **funded under this assistance agreement** must comply with the Fly America Act. All travel must be on U.S. air carriers certified under 49 U.S.C. Section 40118, to the extent that service by such carriers is available even if foreign air carrier costs are less than the American air carrier.

13. Union Organizing

Grant funds may not be used to support or oppose union organizing, whether directly or as an offset for other funds.

Reporting and Additional Post-Award Requirements

14. System for Award Management and Universal Identifier Requirements

- 14.1 Requirement for System for Award Management ([SAM](#))** Unless exempted from this requirement under [2 CFR 25.110](#), the recipient must maintain current information in the SAM. This includes information on the recipient's immediate and highest-level owner and subsidiaries, as well as on all the recipient's predecessors that have been

awarded a Federal contract or Federal financial assistance within the last three years, if applicable, 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.

14.2 Requirement for Unique Entity Identifier. If the recipient is authorized to make subawards under this award, the recipient:

- a. Must notify potential subrecipients that no entity (see definition in paragraph 14.3 of this award term) may receive a subaward unless the entity has provided its Unique Entity Identifier.
- b. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier. Subrecipients are not required to obtain an active SAM registration but must obtain a Unique Entity Identifier.

14.3 Definitions. For the Purpose of this award term:

- a. **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 SAM Internet site: <https://www.sam.gov/SAM/>.
- b. **Unique Entity Identifier** means the identifier assigned by SAM to uniquely identify business entities
- c. **Entity** includes non-Federal entities as defined as 2 CFR 200.1 and also includes all of the following:
 - 14.3.c.1.** A foreign organization;
 - 14.3.c.2.** A foreign public entity;
 - 14.3.c.3.** A domestic for-profit organization; and
 - 14.3.c.4.** A domestic or foreign for-profit organization; and
 - 14.3.c.5.** A Federal agency.
- d. **Subaward** is defined at 2 CFR 200.1
- e. **Subrecipient** is defined at 2 CFR 200.1

15. Reporting Subawards and Executive Compensation

15.1 Reporting of first tier subawards.

- a. **Applicability.** Unless the recipient is exempt as provided in paragraph 15.4. of this award term, the recipient must report each action that obligates \$30,000 or more in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph 15.5 of this award term).
- b. **Where and When to Report.** (1) The recipient must report each obligating action described in paragraph 15.1.a of this award term at the [System for Award Management \(SAM.gov\)](#) (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.)

- c. **What to Report.** The recipient must report the information about each obligating action as described in the submission instructions available at:

<https://www.sam.gov/SAM/>.

15.2 Reporting Total Compensation of Recipient Executives.

- a. **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:

15.2.a.1. The total Federal funding authorized to date under this award is \$30,000 or more;

15.2.a.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

15.2.a.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/execomp.htm>.)

- b. **Where and When to Report.** The recipient must report executive total compensation described in paragraph 15.2.a of this award term: (i.) As part of the registration System for Award Management profile available at <https://www.sam.gov/SAM/> (ii.) By the end of the month following the month in which this award is made, and annually thereafter.

15.3 Reporting Total Compensation of Subrecipient Executives.

- a. **Applicability and What to Report.** Unless exempt as provided in paragraph 15.4. of this award term, for each first-tier non-Federal entity 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:

15.3.a.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

15.3.a.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](http://www.sec.gov/answers/execomp.htm).)

b. Where and When to Report. The recipient must report subrecipient executive total compensation described in paragraph 15.3.a. of this award term:

15.3.b.1. To the recipient.

15.3.b.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.

15.4 Exemptions

a. 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:

15.4.a.1. (i) subawards, and (ii) the total compensation of the five most highly compensated executives of any subrecipient.

15.5 Definitions. For purposes of this award term:

a. Federal Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C 552(f).

b. Non-Federal 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; and (iv.) A domestic or foreign for-profit organization.

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

d. Subaward:

15.5.d.1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

15.5.d.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 200.331).

15.5.d.3. A subaward may be provided through any legal agreement, including an agreement that the recipient or a subrecipient considers a contract.

- e. **Subrecipient** means a non-Federal entity or Federal agency that:
 - 15.5.e.1. Receives a subaward from the recipient under this award; and
 - 15.5.e.2. Is accountable to the recipient for the use of the Federal funds provided by the subaward.
- f. **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\(c\)\(2\)](#)):
 - 15.5.f.1. Salary and bonus.
 - 15.5.f.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.
 - 15.5.f.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.
 - 15.5.f.4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - 15.5.f.5. Above-market earnings on deferred compensation which is not tax-qualified.
 - 15.5.f.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.

16. Recipient Integrity and Performance Matters – Reporting of Matters Related to Recipient Integrity and Performance

16.1 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 responsibility/qualification information) 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.

16.2 Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five-year period; and
- c. Is one of the following:
 - 16.2.c.1.** A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - 16.2.c.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;
 - 16.2.c.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
 - 16.2.c.4.** Any other criminal, civil, or administrative proceeding if:
 - 16.2.c.4.1.** It could have led to an outcome described in paragraph 16.2.c.1, 16.2.c.2, or 16.2.c.3 of this award term and condition;
 - 16.2.c.4.2.** It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - 16.2.c.4.3.** The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

16.3 Reporting Procedures

Enter in 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.

16.4 Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 16.1 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.

16.5 Definitions

For purposes of this award term and condition:

- a. 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.

- b. 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.
- c. Total value of currently active grants, cooperative agreements, and procurement contracts includes –
 - 16.5.c.1.** Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - 16.5.c.2.** The value of all expected funding increments under a Federal award and options, even if not yet exercised.

17. Federal Financial Reporting (FFR)

Pursuant to [2 CFR 200.328](#) and [2 CFR 200.344](#), 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 calendar days after the end of each specified reporting period for quarterly and semi-annual reports and 90 calendar days for annual reports. Final reports are due no later than 120 calendar days after the end date of the period of performance of the award. Extension of reporting due dates may be approved by EPA when requested and justified by the recipient. The FFR form is available on the internet at: <https://www.epa.gov/grants/sf-425-federal-financial-report>. All FFRs must be submitted to the Research Triangle Park Finance Center (RTPFC) via email at rtpfc-grants@epa.gov or mail it to:

US Environmental Protection Agency
RTP-Finance Center (Mail Code AA216-01)
4930 Page Rd.
Durham, NC 27703

The RTPFC 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.

18. Indirect Cost Rate Agreements

This term and condition provides requirements for recipients using EPA funds for indirect costs and applies to all EPA assistance agreements unless there are [statutory or regulatory limits on IDCs](#). See also [EPA's Indirect Cost Policy for Recipients of EPA Assistance Agreements](#) (IDC Policy).

In order for the assistance agreement recipient to use EPA funding for indirect costs, the IDC category of the recipient's assistance agreement award budget must include an amount for IDCs and at least one of the following must apply:

- With the exception of "exempt" agencies and Institutions of Higher Education as noted below, all recipients must have one of the following current (not expired) IDC rates, including IDC rates that have been extended by the cognizant agency:
 - Provisional
 - Final
 - Fixed rate with carry-forward
 - Predetermined
 - 10% *de minimis* rate of modified total direct costs authorized by [2 CFR 200.414\(f\)](#)
 - EPA-approved use of an expired fixed rate with carry-forward on an exception basis, as detailed in section 6.4.a. of the IDC Policy
- "Exempt" state of local governmental departments or agencies are agencies that receive up to and including \$35,000,000 in Federal funding per the department or agency's fiscal year and must have an IDC rate proposal developed in accordance with 2 CFR Part 200, Appendix VII, with documentation maintained and available for audit.
- Institutions of Higher Education must use the IDC rate in place at the time of award for the life of the assistance agreement (unless the rate was provisional at time of award, in which case the rate will change once it becomes final). As provided by 2 CFR Part 200, Appendix III(C)(7), the term "life of the assistance agreement", means each competitive segment of the project. Additional information is available in the regulation.

IDCs incurred during any period of the assistance agreement that are not covered by the provisions above are not allowable costs and must not be drawn down by the recipient. Recipients may budget for IDCs if they have submitted a proposed IDC rate to their cognizant Federal agency or requested an exception from EPA under subsection 6.4 of the IDC Policy. However, recipients may not draw down IDCs until their rate is approved, if applicable, or EPA grants an exception. IDC drawdowns must comply with the indirect rate corresponding to the period during which the costs were incurred.

This term and condition does not govern indirect rates for subrecipients or recipient procurement contractors under EPA assistance agreements. Pass-through entities are required to comply with 2 CFR 200.332(a)(4)(i) and (ii) when establishing indirect cost rates for subawards.

19. Audit Requirements

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 for that year.

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://facides.census.gov/>.

For complete information on how to accomplish the single audit submissions, the recipient will need to visit the Federal Audit Clearinghouse Web site: <https://facweb.census.gov/>

20. 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: <https://www.epa.gov/grants/frequent-questions-about-closeouts>

21. Suspension and Debarment

Recipient shall fully comply with Subpart C of 2 C.F.R. Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons," as implemented and supplemented by [2 C.F.R. Part 1532](#). Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of [2 C.F.R. Part 180](#), entitled "Covered Transactions," and [2 C.F.R. § 1532.220](#), includes a term or condition requiring compliance with 2 C.F.R. Part 180, Subpart C. Recipient is responsible for further requiring the inclusion of a similar term and condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under [2 C.F.R. § 180.335](#) to the EPA office that is entering into the transaction with the recipient may result in the delay or negation of this assistance agreement, or pursuance of administrative remedies, including suspension and debarment. Recipients may access the System for Award Management (SAM) exclusion list at <https://sam.gov/SAM/> to determine whether an entity or individual is presently excluded or disqualified.

22. Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law

This award is subject to the provisions contained in an appropriations act(s) which prohibits the Federal Government from entering into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to any corporation having a delinquent Federal tax liability or a felony conviction under any Federal law, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government. A "corporation" is a legal entity that is separate and distinct from the entities that own, manage, or control it. It is organized and incorporated under the jurisdictional authority of a governmental body, such as a State or the District of Columbia. A corporation may be a for-profit or non-profit organization.

As required by the appropriations act(s) prohibitions, the Government will not enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee with any corporation that — (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority

responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or (2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

By accepting this award, the recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

Alternatively, by accepting this award, the recipient represents that it disclosed unpaid Federal tax liability information and/or Federal felony conviction information to the EPA. The recipient may accept this award if the EPA Suspension and Debarment Official has considered suspension or debarment of the corporation based on tax liabilities and/or Federal felony convictions and determined that suspension or debarment is not necessary to protect the Government's interests.

If the recipient fails to comply with this term and condition, EPA will annul this agreement and may recover any funds the recipient has expended in violation of the appropriations act(s) prohibition(s). The EPA may also pursue other administrative remedies as outlined in 2 CFR 200.339 and 2 CFR 200.340 and may also pursue suspension and debarment.

23. Disclosing Conflict of Interest

23.1 For Award 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 <https://www.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.

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 Grants 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 200.1 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 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.

23.2 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: <https://www.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.

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 Grants 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 200.1. 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 200.1 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 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.

24. Transfer of Funds

24.1 Transfer of Funds

Applicable to all assistance agreements other than Continuing Environmental Program Grants subject to 40 CFR 35.114 and 40 CFR 35.514 when EPA's share of the total project costs exceeds the Simplified Acquisition Threshold. Simplified Acquisition Threshold is defined at 2 CFR 200.1 and is currently set at \$250,000 but the amount is subject to adjustment.

- (1) As provided at [2 CFR 200.308\(f\)](#), the recipient must obtain prior approval from EPA's Grants Management Officer if the cumulative amount of funding transfers among direct budget categories or programs, functions and activities exceeds 10% of the total budget. Recipients must submit requests for prior approval to the Grant Specialist and Grants Management Officer with a copy to the Project Officer for this agreement.
- (2) Recipients must notify EPA's Grant Specialist and Project Officer of cumulative funding transfers among direct budget categories or programs, functions and activities that do not exceed 10% of the total budget for the agreement. Prior approval by EPA's Grant Management Officer is required if the transfer involves any of the items listed in [2 CFR 200.407](#) that EPA did not previously approve at time of award or in response to a previous post-award request by the recipient.

24.2 Post-Award Changes for Continuing Environmental Program Grants

Applicable to Continuing Environmental Program Grants subject to 40 CFR 35.114 and 40 CFR 35.514 when EPA's share of the total project costs exceeds the Simplified Acquisition Threshold. Simplified Acquisition Threshold is defined at 2 CFR 200.1 and is currently set at \$250,000 but the amount is subject to adjustment.

To determine if a post-award change in work plan commitments is significant and requires prior written approval for the purposes of [40 CFR §35.114\(a\)](#) or [40 CFR §35.514\(a\)](#), the recipient agrees to consult the EPA Project Officer (PO) before making the change. The term work plan commitments is defined at [40 CFR §35.102](#). If the PO determines the change is significant, the recipient cannot make the change without prior written approval by the EPA Award Official or Grants Management Officer.

The recipient must obtain written approval from the EPA Award Official prior to transferring funds from one budget category to another if the EPA Award Official determines that such transfer significantly changes work plan commitment(s). All transfers must be reported in required performance reports. In addition, unless approved with the budget at the time of award, Continuing Environmental Program (CEP) recipients must also obtain prior written approval from the EPA Award Official or Grants Management Officer to use EPA funds for directly charging compensation for administrative and clerical personnel under [2 CFR 200.413\(c\)](#) and the General Provisions for Selected Items of Cost allowability at [2 CFR 200.420](#) through [2 CFR 200.476](#) as supplemented by [EPA's Guidance on Selected Items of Cost](#). The recipient is not required to obtain prior written approval from the EPA Award Official for other items requiring prior EPA approval listed in [2 CFR §§ 200.407](#).

25. Electronic/Digital Signatures on Financial Assistance Agreement Form(s)/Document(s)

Throughout the life of this assistance agreement, the recipient agrees to ensure that any form(s)/document(s) required to be signed by the recipient and submitted to EPA through any means including but not limited to hard copy via U.S. mail or express mail, hand delivery or through electronic means such as e-mail are: (1) signed by the individual identified on the form/document, and (2) the signer has the authority to sign the form/document for the recipient. Submission of any signed form(s)/document(s) is subject to any provisions of law on making false statements (e.g., 18 U.S.C. 1001).

26. Extension of Project/Budget Period Expiration Date

EPA has not exercised the waiver option to allow automatic one-time extensions for non-research grants under [2 CFR 200.308\(e\)\(2\)](#). Therefore, if a no-cost time extension is necessary to extend the period of availability of funds, the recipient must submit a written request to the EPA prior to the budget/project period expiration dates. **The written request must include:** a justification describing the need for additional time, an estimated date of completion, and a revised schedule for project completion including updated milestone target dates for the approved workplan activities. In addition, if there are overdue reports required by the general, administrative, and/or programmatic terms and conditions of this assistance agreement, the recipient must ensure that they are submitted along with or prior to submitting the no-cost time extension request.

27. 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](#).

The following text provides updates to 40 CFR, Part 33 based upon the associated class exception or highlights a requirement.

1) EPA MBE/WBE CERTIFICATION, 40 CFR, Part 33, Subpart B

EPA no longer certifies entities as Minority-Owned Business Entities (MBEs) or Women-Owned Business Entities (WBEs) pursuant to a class exception issued in October 2019. The class exception was authorized pursuant to the authority in [2 CFR, Section 1500.4\(b\)](#).

2) SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to [40 CFR Section 33.301](#), the recipient agrees to make 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. The specific six good faith efforts can be found at: [40 CFR Section 33.301 \(a\)-\(f\)](#).

However, in EPA assistance agreements that are for the benefit of Native Americans, the recipient must solicit and recruit Native American organizations and Native American-owned

economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts ([40 CFR Section 33.304](#)). If recruiting efforts are unsuccessful, the recipient must follow the six good faith efforts.

3) CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of [40 CFR Section 33.302](#) (a)-(d) and (i).

4) 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.

5) FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

In June 2023, EPA reinstated the requirements under 40 CFR, Part 33, Subpart D. Unless the recipient is exempted from these requirements as outlined in [40 CFR 33.411](#), the recipient agrees to submit fair share objectives for EPA approval within 120 days of acceptance of this award, and, once approved, apply them to procurements under this award in accordance with Subpart D. See [RAIN-2023-G02](#) for information on EPA's reinstatement of the fair share objectives.

6) MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E

When required, the recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants and Cooperative Agreements" report (EPA Form 5700-52A) on an annual basis. The current EPA Form 5700-52A can be found at the EPA Grantee Forms Page at https://www.epa.gov/system/files/documents/2021-08/epa_form_5700_52a.pdf.

Reporting is required for assistance agreements where funds are 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) with a cumulative total that exceed the Simplified Acquisition Threshold (SAT) (currently, \$250,000 however the threshold will be automatically revised whenever the SAT is adjusted; See 2 CFR Section 200.1), including amendments and/or modifications. When reporting is required, all procurement actions are reportable, not just the portion which exceeds the SAT.

Annual reports are due by October 30th of each year. Final reports are due 120 days after the end of the project period.

This provision represents an approved exception from the MBE/WBE reporting requirements as described in [40 CFR Section 33.502](#).

7) MBE/WBE RECORDKEEPING, 40 CFR, Part 33, Subpart E

The recipient agrees to comply with all recordkeeping requirements as stipulated [in 40 CFR Part 33, Subpart E](#) including creating and maintain a bidders list, when required. Any document created as a record to demonstrate compliance with any requirements of 40 CFR Part 33 must be maintained pursuant to the requirements stated in this Subpart.

Programmatic General Terms and Conditions

28. 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.

29. 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 [i.e., authorized by] 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.

30. 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 <https://www.nist.gov/iedison>. 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 <https://www.nist.gov/iedison>. 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.”

31. 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: <https://www.nsf.gov/awards/managing/rtc.jsp>. In accordance with the [Research Terms and Conditions Overlay to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards \(Uniform Guidance\), 2 CFR §200](#), recipients of EPA ORD research must abide by the research T&Cs.

32. 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 <https://www.access-board.gov/about/policy/accessibility.html>).

33. Human Subjects

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: (i) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or (ii) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens [40 CFR 26.102\(e\)\(I\)](#).

No research involving human subjects shall be conducted under this agreement without prior written approval of the EPA Human Subject Research Review Official (HSRRO) 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 1000.17A (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 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 EPA HSRRO via 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 EPA HSRRO via the Project Officer, even if the event is not reportable to the IRB of record.

34. Animal Subjects

The recipient agrees to comply with the Animal Welfare Act of 1966 (P.L. 89-544), as amended, 7 USC 2131- 2156. Recipient also agrees to abide by the “U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training.” (Federal Register 50(97): 20864-20865. May 20,1985). The nine principles can be viewed at <https://olaw.nih.gov/policies-laws/phs-policy.htm>. For additional information about the Principles, the recipient should consult the [Guide for the Care and Use of Laboratory Animals](#), prepared by the Institute of Laboratory Animal Resources, National Research Council.

35. Light Refreshments and/or Meals

(a) APPLICABLE TO ALL AGREEMENTS EXCEPT STATE CONTINUING ENVIRONMENTAL PROGRAMS (AS DESCRIBED BELOW):

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

Costs for light refreshments and meals for recipient staff meetings and similar day-to-day activities are not allowable under EPA assistance agreements.

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.

EPA funding for meals, light refreshments, and space rental may not be used for any portion of an event where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

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](#))

(b) FOR STATE CONTINUING ENVIRONMENTAL PROGRAM GRANT RECIPIENTS EXCLUDING STATE UNIVERSITIES:

If the state maintains systems capable of complying with federal grant regulations at [2 CFR 200.432](#) and [2 CFR 200.438](#), EPA has waived the prior approval requirements for the use of EPA funds for light refreshments and/or meals served at meetings, conferences, and training, as described above. The state may follow its own procedures without requesting prior approval from EPA. However, notwithstanding state policies, EPA funds may not be used for (1) evening receptions, or (2) other evening events (with the exception of working meetings). Examples of working meetings include those evening events in which small groups discuss technical subjects on the basis of a structured agenda or there are presentations being conducted by experts. EPA funds for meals, light refreshments, and space rental may not be used for any portion of an event (including evening working meetings) where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

By accepting this award, the state is certifying that it has systems in place (including internal controls) to comply with the requirements described above.

36. Tangible Personal Property

36.1 Reporting pursuant to [2 CFR 200.312](#) and [2 CFR 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 [40 CFR 35.6660](#) for property reporting requirements. Recipients should utilize the Tangible Personal Property Report form series (SF-428) to report tangible personal property.

36.2 Disposition

36.2.1. Most Recipients. Consistent with [2 CFR 200.313](#), unless instructed otherwise on the official award document, this award term, or at closeout, 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.

36.2.2. 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.

36.2.3. Superfund Recipients. Equipment purchased under Superfund projects is subject to specific disposal options in accordance with [40 CFR Part 35.6345](#).

37. Dual Use Research of Concern (DURC)

The recipient agrees to conduct all life science research* in compliance with [EPA's Order on the Policy and Procedures for Managing Dual Use Research of Concern](#) (EPA DURC Order) and [United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern \(iDURC Policy\)](#). If the recipient is an institution within the United States that receives funding through this agreement, or from any other source, the recipient agrees to comply with the iDURC Policy if they conduct or sponsor research involving any of the agents or toxins identified in Section 6.2.1 of the iDURC Policy. If the institution is outside the United States and receives funding through this agreement to conduct or sponsor research involving any of those same agents or toxins, the recipient agrees to comply with the iDURC Policy. The recipient agrees to provide any additional information that may be requested by EPA regarding DURC and iDURC. The recipient agrees to immediately notify the EPA Project Officer should the project use or introduce use of any of the agents or toxins identified in the iDURC Policy. The recipient's Institution/Organization must also comply with USG iDURC policy and EPA DURC Order and will inform the appropriate government agency if funded by such agency of research with the agents or toxins identified in Section 6.2.1 of the iDURC Policy. If privately funded the recipient agrees to notify the National Institutes of Health at DURC@od.nih.gov.

* "Life Sciences Research," for purposes of the EPA DURC Order, and based on the definition of research in [40 CFR §26.102\(d\)](#), is a systematic investigation designed to develop or contribute to generalizable knowledge involving living organisms (e.g., microbes, human beings, animals, and plants) and their products. EPA does not consider the following activities to be research: routine product testing, quality control, mapping, collection of general-purpose statistics, routine monitoring and evaluation of an operational program, observational studies, and the training of scientific and technical personnel. [Note: This is consistent with Office of Management and Budget Circular A-11.]

38. Research Misconduct

In accordance with [2 CFR 200.329](#), the recipient agrees to notify the EPA Project Officer in writing about research misconduct involving research activities that are supported in whole or in part with EPA funds under this project. EPA defines research misconduct as fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results [65 FR 76262. I], or ordering, advising or suggesting that subordinates engage in research misconduct. The recipient agrees to:

- (1) Immediately notify the EPA Project Officer who will then inform the EPA Office of Inspector General (OIG) if, at any time, an allegation of research misconduct falls into one of the categories listed below:
 - A. Public health or safety is at risk
 - B. Agency resources or interests are threatened
 - C. Circumstances where research activities should be suspended
 - D. There is a reasonable indication of possible violations of civil or criminal law
 - E. Federal action is required to protect the interests of those involved in the investigation
 - F. The research entity believes that the inquiry or investigation may be made public prematurely so that appropriate steps can be taken to safeguard evidence and protect the rights of those involved
 - G. Circumstances where the research community or public should be informed. [65 FR 76263.III]
- (2) Report other allegations to the OIG when they have conducted an inquiry and determined that there is sufficient evidence to proceed with an investigation. [65 FR 76263. III]

39. Scientific Integrity Terms and Conditions

The recipient agrees to comply with [EPA's Scientific Integrity Policy](#) when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this award condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue. The recipient agrees to:

39.1 Scientific Products

39.1.1. Produce scientific products of the highest quality, rigor, and objectivity, by adhering to applicable EPA [information quality guidelines](#), [quality policy](#), and peer review policy.

39.1.2. Prohibit all recipient employees, contractors, and program participants, including scientists, managers, and other recipient leadership, from suppressing, altering, or otherwise impeding the timely release of scientific findings or conclusions.

39.1.3. Adhere to [EPA's Peer Review Handbook, 4th Edition](#), for the peer review of scientific and technical work products generated through EPA grants or cooperative agreements which, by definition, are not primarily for EPA's direct use or benefit.

39.2 Scientific Findings

39.2.1. Require that reviews regarding the content of a scientific product that are conducted by the project manager and other recipient managers and the broader management chain be based only on scientific quality considerations, e.g., the methods used are clear and appropriate, the presentation of results and conclusions is impartial.

39.2.2. Ensure scientific findings are generated and disseminated in a timely and transparent manner, including scientific research performed by employees, contractors, and program participants, who assist with developing or applying the results of scientific activities.

39.2.3. Include, when communicating scientific findings, an explication of underlying assumptions, accurate contextualization of uncertainties, and a description of the probabilities associated with both optimistic and pessimistic projections, if applicable.

39.2.4. Document the use of independent validation of scientific methods.

39.2.5. Document any independent review of the recipient's scientific facilities and testing activities, as occurs with accreditation by a nationally or internationally recognized sanctioning body.

39.2.6. Make scientific information available online in open formats in a timely manner, including access to data and non-proprietary models.

39.3 Scientific Misconduct

39.3.1. Prohibit intimidation or coercion of scientists to alter scientific data, findings, or professional opinions or non-scientific influence of scientific advisory boards. In addition, recipient employees, contractors, and program participants, including scientists, managers, and other leadership, shall not knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty.

39.3.2. Prohibit retaliation or other punitive actions toward recipient employees who uncover or report allegations of scientific and research misconduct, or who express a differing scientific opinion. Employees who have allegedly engaged in scientific or research misconduct shall be afforded the due process protections provided by law, regulation, and applicable collective bargaining agreements, prior to any action. Recipients shall ensure that all employees and contractors of the recipient shall be familiar with these protections and avoid the appearance of retaliatory actions.

39.3.3. Require all recipient employees, contractors, and program participants to act honestly and refrain from acts of research misconduct, including publication or reporting, as described in [EPA's Policy and Procedures for Addressing Research Misconduct](#), Section 9.C. Research misconduct does not include honest error or differences of opinion. While EPA retains the ultimate oversight authority for EPA-supported research, grant recipients conducting research bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with their own institution.

39.3.4. Take the actions required on the part of the recipient described in EPA's Policy and Procedures for Addressing Research Misconduct, Sections 6 through 9, when research misconduct is suspected or found.

39.4 Additional Resources

For more information about the Scientific Integrity Policy, an introductory video can be accessed at: <https://youtu.be/FQJCy8BXXq8>. A training video is available at: <https://youtu.be/Zc0T7fooot8>.

40. Post-Award Disclosure of Current and Pending Support on Research Grants

The recipient is required to notify EPA if there has been a change in support for the principal investigator and/or major co-investigators listed on EPA Key Contacts Form, EPA Form 5700-54, since submission of its application or the last reporting period in the performance report. If there has been a change, the recipient must report the change within 30 calendar days to the EPA Project Officer. The information should also be included in the next due performance report. EPA may consult with the Principal Investigator and the Authorized Representative, to determine the impact

of the new information on the EPA-funded research grant and, where necessary, take appropriate action.

If the recipient discovers that an investigator on an active EPA research grant failed to disclose current and pending support information or provided inaccurate information as part of the proposal submission process, it must provide the revised current and pending support information to the EPA Project Officer within 30 calendar days of the identification of the undisclosed or inaccurate current and pending support information.

Public Policy Requirements

41. 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) Certifications and Representations in Sam.gov 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 federal and 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 race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
 - 2) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
 - 3) The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.
- ii. If the recipient is an education program or activity (e.g., school, college, or university) or if the recipient is conducting an education program or activity under this agreement, it must also comply with:
 - 1) Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance. For further information about your compliance obligations regarding Title IX, see [40 CFR Part 5](#) and <https://www.justice.gov/crt/title-ix>
- iii. If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:
 - 1) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

(b) Regulatory Requirements

- i. The recipient agrees to comply with all applicable EPA civil rights regulations, including:

- 1) For Title IX obligations, 40 C.F.R. Part 5; and
- 2) For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, [40 CFR Part 7](#).
- 3) For statutory and national policy requirements, including those prohibiting discrimination and those described in Executive Order 13798 promoting free speech and religious freedom, [2 CFR 200.300](#).
- 4) As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator, and providing notices of non-discrimination.

(c) TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation

- i. As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at: <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>.
- ii. If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at: <https://www.govinfo.gov/content/pkg/FR-2006-03-21/pdf/06-2691.pdf>.
- iii. In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

42. Drug-Free Workplace

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title [2 CFR Part 1536 Subpart B](#). Additionally, in accordance with these regulations, the recipient organization must identify 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/.

43. Hotel-Motel Fire Safety

Pursuant to 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.

44. Lobbying Restrictions

a) This assistance agreement is subject to lobbying restrictions as described below. Applicable to all assistance agreements:

- 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 Part 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. By accepting this award, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 as required by Section 18 of the Lobbying Disclosure Act; 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.

b) Applicable to assistance agreements when the amount of the award is over \$100,000:

- i. By accepting this award, the recipient certifies, to the best of its knowledge and belief that:
 - 1) No Federal appropriated funds have been or will be paid, by or on behalf of the recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan,

the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or any employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the recipient shall complete and submit the linked [Standard Form -- LLL, "Disclosure Form to Report Lobbying,"](#) in accordance with its instructions.
 - 3) The recipient shall require that the language of this certification be included in the award documents for all subawards exceeding \$100,000 at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- ii. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

45. 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.

46. 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 200.323](#), 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.

47. 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 an effect; or
 - 3) Use forced labor in 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 (Non- procurement),” as implemented by our Agency at [2 CFR Part 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 Part 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).

48. Build America, Buy America – Required Use of American Iron, Steel, Manufactured Products, and Construction Materials (effective October 23, 2023, and forward)

Buy America Preference. Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for an infrastructure project unless:

- (1) All iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) All manufactured products used in the project are produced in the United States— this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
- (3) All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The construction material standards are listed below.

Incorporation into an infrastructure project. The Buy America Preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

Categorization of articles, materials, and supplies. An article, material, or supply should only be classified into one of the following categories: (i) Iron or steel products; (ii) Manufactured products; (iii) Construction materials; or (iv) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

Application of the Buy America Preference by category. An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

Determining the cost of components for manufactured products. In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

- (a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

Construction material standards. The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.” Except as specifically provided, only a single standard should be applied to a single construction material.

- (1) Non-ferrous metals.** All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
- (2) Plastic and polymer-based products.** All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
- (3) Glass.** All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
- (4) Fiber optic cable (including drop cable).** All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
- (5) Optical fiber.** All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
- (6) Lumber.** All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
- (7) Drywall.** All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
- (8) Engineered wood.** All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

Waivers. When supported by rationale provided in IJA §70914, the recipient may submit a waiver request in writing to EPA. Recipients should request guidance on the submission instructions of an EPA waiver request from the EPA Project Officer for this agreement. A list of approved EPA waivers (general applicability and project specific) is available on the [EPA Build America, Buy America website](#).

EPA may waive the application of the Buy America Preference when it has determined that one of the following exceptions applies:

- (1)** applying the Buy America Preference would be inconsistent with the public interest;
- (2)** the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3)** the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

For questions regarding the Build America, Buy America Act requirements for this assistance agreement or to determine if there is an approved waiver in place, please contact the EPA Project Officer for this agreement.

Definitions. For legal definitions and sourcing requirements, the recipient must consult the [EPA Build America, Buy America website](#), [2 CFR Part 184](#), and the [Office of Management and Budget's \(OMB\)](#)

49. Required Certifications and Consequences of Fraud

Per [2 CFR 200.415\(a\)](#) Required Certifications, to assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the financial reports or vouchers requesting payment under the agreement will include a certification that must be signed by an official who is authorized to legally bind the recipient which reads as follows:

“By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”

50. Reporting Waste, Fraud and Abuse

Consistent [2 CFR 200.113](#), the recipient and any subrecipients must report, in a timely manner, any violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this award to the EPA Project Officer and the [EPA Office of Inspector General \(OIG\) Hotline](#). The methods to contact the OIG hotline are (1) online submission via the [EPA OIG Hotline Complaint Form](#); (2) email to OIG_Hotline@epa.gov; (3) phone 1-888-546-8740; or (4) mail directed to Environmental Protection Agency, Office of Inspector General, 1200 Pennsylvania Avenue, N.W. (2410T), Washington, DC 20460.

To support awareness of the OIG hotline, recipients and/or subrecipients receiving an EPA award or subaward of \$1,000,000 or more must display EPA OIG Hotline posters in facilities where the work is performed under the grant. EPA OIG Hotline posters may be [downloaded or printed](#) or may be obtained by contacting the OIG at 1- 888-546-8740. Recipients and subrecipients need not comply with this requirement if they have established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct and have provided instructions that encourage employees to make such reports.

51. Whistleblower Protections

This award is subject to whistleblower protections, including the protections established at 41 U.S.C. 4712 providing that an employee of the recipient or a subrecipient may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a covered person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal grant or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal grant or subaward, a substantial and specific danger to public health or safety, or a violation

of law, rule, or regulation related to a Federal grant or subaward. These covered persons or bodies include:

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

Consistent with 41 U.S.C. 4712(d), the recipient and subrecipients shall inform their employees in writing, in the predominant language of the workforce or organization, of employee whistleblower rights and protections under 41 U.S.C. 4712. Additional information about whistleblower protections, including protections for such employees may be found at the [EPA Office of Inspector General's Whistleblower Protection page](#).

52. Access to Records

In accordance with [2 CFR 200.337](#), EPA and the EPA Office of Inspector General (OIG) have the right to access any documents, papers, or other records, including electronic records, of the recipient and subrecipient which are pertinent to this award in order to make audits, examinations, excerpts, and transcripts. This right of access also includes timely and reasonable access to the recipient and subrecipient's personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as the records are retained.

ATTACHMENT G

SHELLEY MOORE CAPITO, WEST VIRGINIA, CHAIRMAN
SHELDON WHITEHOUSE, RHODE ISLAND, RANKING MEMBER

KEVIN CRAMER, NORTH DAKOTA
CYNTHIA M. LUMMIS, WYOMING
JOHN R. CURTIS, UTAH
LINDSEY O. GRAHAM, SOUTH CAROLINA
DAN SULLIVAN, ALASKA
PETE RICKETTS, NEBRASKA
ROGER F. WICKER, MISSISSIPPI
JOHN BOOZMAN, ARKANSAS
JOHN HUSTED, OHIO

BERNARD SANDERS, VERMONT
JEFF MERKLEY, OREGON
EDWARD J. MARKEY, MASSACHUSETTS
MARK KELLY, ARIZONA
ALEX PADILLA, CALIFORNIA
ADAM B. SCHIFF, CALIFORNIA
LISA BLUNT ROCHSTER, DELAWARE
ANGELA D. ALSOBROOKS, MARYLAND

ADAM TOMLINSON, REPUBLICAN STAFF DIRECTOR
DAN DUDIS, DEMOCRATIC STAFF DIRECTOR

United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

March 25, 2025

The Honorable Lee M. Zeldin
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Zeldin:

We write concerning your extensive terminations of grants and technical assistance programs at the Environmental Protection Agency (EPA). These terminations—which violate a number of court orders—escalate your attempts to impound Congressionally-appropriated, legally-obligated funds protecting clean air and clean water and powering domestic investment in low-cost clean energy. According to documents obtained exclusively by Senate Committee on Environment and Public Works (EPW) Democratic Staff, including a list produced by your office of roughly 400 grants targeted for termination, you pursued these terminations in knowing violation of the Terms and Conditions clauses of EPA’s contracts, which stipulate conditions under which a grant can be terminated.¹ We call on you to follow the law, cease and desist implementation of EO 14151, rescind the grant terminations, and provide information on EPA’s decision-making process concerning the grant terminations and wider closure of the Office of Environmental Justice and External Civil Rights (OEJ-ECR).

In a March 10 press release, you announced that EPA, with the “assistance” of the so-called Department of Government Efficiency (DOGE), had terminated more than 400 previously-awarded grants across nine programs that would have invested \$1.7 billion to improve air and water quality and enhance resilience to extreme weather in communities across the United States.² Documents obtained by the Committee show you justifying these terminations by relying on Executive Order 14151, “Ending Radical and Wasteful Government DEI Programs and Preferencing,” which directs federal agency heads to “terminate, to the maximum extent allowed by law, all DEI, DEIA, and ‘environmental justice’ offices and positions.” Apparently also in response to EO 14151, you ordered the elimination of EPA’s Office of Environmental Justice and External Civil Rights and its regional offices, and placed

¹ U.S. Environmental Protection Agency, Office of the Administrator, List of Grants Targeted for Termination (Mar. 11, 2025); U.S. Environmental Protection Agency, Office of General Counsel, Email from Attorney to Staff (Mar. 3, 2025) (“In a meeting late last week with OMS/OGD we learned that the Agency management decision to direct termination of the EJ grants was made with the knowledge that some of the grants do not contain the T&C about termination for Agency priorities. Based on that conversation with OMS and OGD, it is clear that no decision to retract the terminations is forthcoming. It will play out via the disputes process, or litigation, for those recipients that choose to pursue those avenues.”).

² U.S. Environmental Protection Agency, *EPA Administrator Lee Zeldin Cancels 400+ Grants in 4th Round of Cuts with DOGE, Saving Americans More than \$1.7B* (Mar. 10, 2025), <https://www.epa.gov/newsreleases/epa-administrator-lee-zeldin-cancels-400-grants-4th-round-cuts-doge-saving-americans>.

168 of its employees on administrative leave, though a federal judge forced you to rehire dozens of them after finding that the firings had no legal basis.³ Your continued actions under the guise of compliance with EO 14151 raise several concerns.

First, continuing to implement EO 14151 violates federal appropriations law. According to an internal EPA list of the roughly 400 grants targeted for elimination obtained exclusively by the Committee, the vast majority of the targeted grant awards were made using funds appropriated by Congress with a *statutory mandate* that they be distributed to disadvantaged communities. Namely, the 2022 Inflation Reduction Act directed EPA to distribute \$3 billion to improve environmental protection in communities facing economic hardship.⁴ Congress specifically articulated in the statute the activities for which the funds can be awarded, including climate resiliency and adaptation, air pollution and toxin reduction, and mitigation of climate and health risk from heat and wildfires.⁵ Any attempt to withhold these funds violates the Impoundment Control Act and Congress's constitutional Article I spending authority—something you promised explicitly at your confirmation hearing not to do.⁶

Second, continuing to implement EO 14151 to freeze or terminate grants violates recent federal court injunctions. Federal district courts have enjoined the administration from “pausing, freezing, blocking, canceling, suspending, terminating, or otherwise impeding the disbursement

³ See Sen. Lisa Blunt Rochester, *Blunt Rochester, Colleagues Urge Trump Administration to Reopen EPA Environmental Justice Office That Helped Most Disadvantaged Communities Solve Environmental and Public Health Challenges* (Mar. 3, 2025), <https://www.bluntrochester.senate.gov/press-releases/blunt-rochester-colleagues-urge-trump-administration-to-reopen-epa-environmental-justice-office-that-helped-most-disadvantaged-communities-solve-environmental-and-public-health-challenges/>; Lisa Friedman, “EPA Plans to Close All Environmental Justice Offices,” *NY Times* (Mar. 11, 2024), <https://www.nytimes.com/2025/03/11/climate/epa-closure-environmental-justice-offices.html>.

⁴ Congress appropriated \$3 billion in Section 60201 of the Inflation Reduction Act of 2022, incorporated as Section 138 of the Clean Air Act, 42 U.S.C. 7438 (“The Administrator **shall** use amounts made available under subsection (a)(1) to award grants for periods of up to 3 years to eligible entities to carry out activities described in paragraph (2) that benefit disadvantaged communities, as defined by the Administrator.” (emphasis added)). EPA allocated these funds among several EJ grant programs, including the Collaborative Problem Solving (CPS), Community Change Grants, and Government-to-Government (G2G) programs. According to documents obtained exclusively by EPW Democratic Staff, CPS, Community Change Grants, and G2G grants made using these earmarked IRA funds have been targeted for mass termination.

⁵ *Id.* § 138(b)(2) (“An eligible entity may use a grant awarded under this subsection for— (A) community-led air and other pollution monitoring, prevention, and remediation [...] (B) mitigating climate and health risks [...] (C) climate resiliency and adaptation; (D) reducing indoor toxics and indoor air pollution; or (E) facilitating engagement of disadvantaged communities [...]).”).

⁶ You told Senator Alsobrooks (three times), Senator Moran, and Senator Markey that setting funding levels is up to Congress (“Ultimately, it will be up to Congress to decide on funding levels, and it will be my obligation to make sure that money will be spent to Congress’ intent [...] Ultimately it is going to be up to Congress to decide what the policy is, the laws, what the funding level is [...] Senator, I, if confirmed as Administrator of the EPA, won’t be cutting any funding. That is a decision as far as funding levels for Congress to set [...] Yes, Senator, ultimately the funding level will be set by Congress. It will be my responsibility to ensure that I do my part to fulfill Congressional intent [...] I need to make sure that I am following my obligations under the law as Congress sets out as to how funding should be appropriated [...]). See Senate Environment & Public Works Committee, Hearing on the Nomination of the Honorable Lee M. Zeldin (Jan. 16, 2025), https://www.epw.senate.gov/public/_cache/files/c/4/c4282a20-59a6-4523-bcd3-f692ffd133c9/BA023DD60A07E4B417B6DA9813A57307AECB8171E9B518601F316BC288B4C10F.spw-01162025-nomination-of-hon-lee-zeldin-.pdf.

of appropriated federal funds.”⁷ Additionally, one federal district court had enjoined the portion of EO 14151 that directs “Diversity, Equity, and Inclusion” and “Environmental Justice” program and funding terminations due to facial First Amendment and due process violations.⁸ That injunction specifically applied to EPA, meaning that EPA was barred from implementing the termination provision of EO 14151, pending judicial review.⁹

Third, EPA’s grant terminations were made knowing that they violate EPA’s own contracts. According to information obtained exclusively by EPW Democratic Staff, termination notices sent by EPA to grantees knowingly and deceptively cited contract language *that was not actually in many of the contracts* in an effort to shift the burden to grantees to challenge your illegal terminations in the courts.¹⁰ A March 3, 2025, email from EPA’s Office of General Counsel states: “[I]n a meeting late last week with OMS/OGD we learned that the Agency management decision to direct termination of the EJ grants was made with the knowledge that some of the grants do not contain the T&C about termination for Agency priorities. Based on that conversation with OMS and OGD, it is clear that no decision to retract the terminations is forthcoming. It will play out via the disputes process, or litigation, for those recipients that choose to pursue those avenues.”

In 2024, EPA modified its General Terms and Conditions (T&C) for grantees, eliminating a clause that permitted termination “[i]f the award no longer effectuates the program goals or agency priorities.”¹¹ EPA’s current T&C allows termination only (i) when a recipient fails to comply with conditions of the award; (ii) by mutual consent; (iii) upon the recipient’s request; or (iv) pursuant to program-specific requirements. Because EPA’s termination notices to grantees cite the now-inoperative “agency priorities” clause, and because EPA has not cited any valid condition for termination, these contract terminations are unauthorized under EPA’s

⁷ Memorandum & Order, *New York v. Trump*, C.A. No. 25-cv-39-JJM-PAS (D.R.I. Mar. 6, 2025); *see also* Memorandum Opinion, *National Council of Nonprofits v. Office of Management and Budget*, C.A. No. 25-230 (LLA) (D.D.C. Feb. 25, 2025).

⁸ Memorandum Opinion, *National Association of Diversity Officers in Higher Education v. Trump*, No. 25-cv-00333-ABA (D. Md. Mar. 10, 2025), <https://www.law360.com/articles/2308634/attachments/0> (clarifying that the preliminary injunction entered in the case on February 21 applies to all federal agencies); the Fourth Circuit reversed the injunction on March 14, 2025, holding that the EOs themselves were not unconstitutional even though the actions taken by federal agencies pursuant to the EOs could be. *See* Order, *National Association of Diversity Officers in Higher Education v. Trump*, No. 25-1189 (4th Cir. Mar. 14, 2025).

⁹ *Id.*

¹⁰ U.S. Environmental Protection Agency, Office of General Counsel, Email from Attorney to Staff (Mar. 3, 2025).

¹¹ Compare U.S. Environmental Protection Agency, *General Terms and Conditions Effective October 1, 2023* (Sept. 2023),

https://www.epa.gov/system/files/documents/2023-09/fy_2023_epa_general_terms_and_conditions_effective_october_1_2023_or_later.pdf, with U.S. Environmental Protection Agency, *General Terms and Conditions Effective October 1, 2024*

(2024 version),

https://www.epa.gov/system/files/documents/2024-10/fy_2025_epa_general_terms_and_conditions_effective_october_1_2024_or_later.pdf.

own policies.¹² And the fact that EPA’s own internal documents acknowledge that EPA cited that clause *knowing it was inoperative* show EPA acting in bad faith.

EPA’s unlawful, arbitrary, and capricious terminations of EJ grant programs eliminate commonsense, nonpartisan federal programs that clean the air and water and protect Americans from natural disasters. Beyond obvious issues with conflating “DEI” and “environmental justice,” these EPA grants helped ensure that *all* people—regardless of immutable traits—enjoy a healthy environment. EPA’s Thriving Communities Technical Assistance Centers (TCTACs), for instance, serve both urban and rural areas, including farming and ranching communities, and coal, oil, and natural gas-producing regions.¹³ EPA’s EJ grants were awarded to projects aimed at eliminating childhood lead poisoning, building public parks, spurring rural community economic development, and job training.¹⁴

Finally, EPA’s decision to gut OEJ-ECR ignores the bipartisan support for this work over the last three decades. The precursor office to OEJ-ECR was established in 1992 by President George H.W. Bush and for over 20 years has provided resources to combat legacy pollution in underserved communities—including many rural areas.¹⁵ Without the specialized expertise of this office and its approximate 200 employees, the EPA will be ill-equipped to achieve your stated outcome that “every American should have access to clean air, land, and water.”¹⁶

¹² 2 CFR § 200.340, <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR86b76dde0e1e9dc/section-200.340>. Furthermore, because EPA’s press releases do not provide an accounting of actually-terminated grants, it is impossible to confirm the total value of terminated federal funds. EPA alleges that “more than \$2 billion in taxpayer money” has been “saved.” Given recent reporting about DOGE’s inaccurate accounting of cost savings, however, this number could be inflated. See Dan Ruetenik, “DOGE team’s ‘wall of receipts’ shows errors in tallying billions in savings,” *CBS News* (Feb. 19, 2025), <https://www.cbsnews.com/news/doge-wall-of-receipts-shows-errors-tallying-billions-in-savings/>; Jessie Blaeser, “DOGE shared its receipts – and some of them don’t match,” *Politico* (Feb. 22, 2025), <https://www.politico.com/news/2025/02/22/doge-data-errors-inconsistencies-00002576>.

¹³ TCTACs help organizations apply for federal grant funds. Three TCTACs that serve states with strong agricultural or ranching economics—in Region 5 (MN, IL, IN, MI, OH, WI), Region 7 (IA, MO, NE, KS), and Region 8 (MT, CO, ND, SD, and WY)—have been terminated. See U.S. Environmental Protection Agency, *The Thriving Communities Technical Assistance Programs* (Mar. 7, 2025).

¹⁴ U.S. Environmental Protection Agency, *2023 Environmental Justice Collaborative Problem Solving (EJCPS) Program Project Summaries* (Oct. 2023), https://www.epa.gov/system/files/documents/2023-10/2023-the-environmental-justice-collaborative-problem-solving-ejcps-program-project-summaries_0.pdf; U.S. Environmental Protection Agency, *2023 Environmental Justice Government-to-Government (EJG2G) Program Project Summaries* (Apr. 2023), <https://www.epa.gov/system/files/documents/2024-04/2023-ej-government-to-government-ejg2g-project-summaries.pdf>.

¹⁵ Michael Gochfeld and Joanna Burger, *Disproportionate Exposures in Environmental Justice and Other Populations: The Importance of Outliers* (Am. J. Public Health 2011).

¹⁶ U.S. Environmental Protection Agency, *EPA Administrator Lee Zeldin Announces EPA’s “Powering the Great American Comeback” Initiative* (Feb. 4, 2025), <https://www.epa.gov/newsreleases/epa-administrator-lee-zeldin-announces-epas-powering-great-american-comeback#:~:text=Home-EPA%20Administrator%20Lee%20Zeldin%20Announces%20EPA's,the%20Great%20American%20Comeback%E2%80%9D%20Initiative&text=%E2%80%9CEvery%20American%20should%20have%20access,human%20health%20and%20the%20environment>.

In keeping with the promises you made to this Committee during your confirmation hearing,¹⁷ please respond to the following requests for information and documents by no later than March 31, 2025:

1. Provide all documents, email communications and memoranda from employees of the Office of the Administrator, Office of Grants and Debarment, Office of Mission Support, and Office of General Counsel concerning the decision to:
 - a. Terminate grants previously awarded to carry out the Agency's mission, including those on the list obtained by Committee Democrats, and including but not limited to Community Change Grants, Government-to-Government (G2G) Funding, the Thriving Community Technical Assistance Centers, the Thriving Communities Grantmakers Program, Environmental Justice Cooperative Problem Solving Grants; or
 - b. Pause or withhold legally obligated funding, including freezing ASAP accounts, for programs including but not limited to those on the list obtained by Committee Democrats, such as Community Change Grants, Government-to-Government (G2G) Funding, the Thriving Community Technical Assistance Centers, the Thriving Communities Grantmakers Program, and Environmental Justice Cooperative Problem Solving Grants.
2. Provide an accurate number of the total employees terminated due to the closure of the OEJ-ECR and provide a list of the firings by each EPA regional office and the office for the District of Columbia.
 - a. Provide the status of every program officer working on one of the grants on the list obtained by Committee Democrats, including but not limited to Community Change Grants, Government-to-Government (G2G) Funding, the Thriving Community Technical Assistance Centers, the Thriving Communities Grantmakers Program, Environmental Justice Cooperative Problem Solving Grants; and
 - b. If a project officer has been placed on leave or fired, please clarify whether EPA has identified a replacement and notified the grantee of their project officer replacement.
3. Please explain in detail how the agency will ensure fair access to grant programs and support economically and socially disadvantaged communities—including communities of color, rural and farm communities, and Tribal communities—in competing for funding and addressing critical issues in their community.
4. What is your strategy to combat pollution specifically in marginalized communities, and communities below the national poverty line across the country?

¹⁷ See Senate Committee on Environment and Public Works, Hearing on the Nomination of the Honorable Lee M. Zeldin (Jan. 16, 2025), https://www.epw.senate.gov/public/_cache/files/c/4/c4282a20-59a6-4523-bcd3-f692ffd133c9/BA023DD60A07E4B417B6DA9813A57307AECB8171E9B518601F316BC288B4C10F.spw-01162025-nomination-of-hon-lee-zeldin-.pdf.

5. What plans do you have for continuing to engage with community organizations and local governments on environmental justice issues in the absence of the OEJ-ECR?
6. How will you rebuild trust with local governments, communities, Tribes, and stakeholders who are now concerned about the lack of budget assurance for millions of dollars in projects funded through Congressionally-allocated Bipartisan Infrastructure Law and Inflation Reduction Act resources?
7. EPA's continued cancellation of EJ grants violate a federal court injunction that currently prohibits termination, certification or prosecution based on DEI policies,¹⁸ so please explain EPA's legal basis for continuing to implement EO 14151 despite that injunction. If EPA is not implementing EO 14151, explain the policy or law that supports terminating grants for environmental justice grantees.
8. Since EPA is prohibited from terminating grants or freezing grants based on DEI grounds, does EPA commit to rescinding those termination letters and restoring any federal funding that has been frozen for DEI reasons?
9. Please provide a complete accounting of all grant terminations that are included in the \$2 billion figure cited in EPA's March 10 press release. Please list all terminated awards and include, for each award:
 - a. The award's corresponding grant program;
 - b. The source of appropriations which funded the grant program, including the statutory language instructing EPA on how the appropriations may be allocated;
 - c. The value of award funds not drawn down; and
 - d. Name the current project officer assigned to each grant (the name cannot be of someone who has been terminated or placed on administrative leave).
10. Please explain what EPA plans to do with the alleged \$2 billion in federal funds "saved" by EPA and DOGE grant terminations in a way that conforms with the Congressionally approved programs under the Inflation Reduction Act for which the federal funding has been approved and obligated.
11. Please describe how EPA plans to disburse any remaining funds appropriated under Section 60201 of the Inflation Reduction Act before September 30, 2026, as required by law.¹⁹
12. Please provide a copy of every grant termination notice that EPA has sent to any grantee since January 20, 2025.

¹⁸ Memorandum Opinion, *supra* note 7.

¹⁹ U.S. Environmental Protection Agency, *Inflation Reduction Act Environmental and Climate Justice Program* (Dec. 17, 2024), <https://www.epa.gov/inflation-reduction-act/inflation-reduction-act-environmental-and-climate-justice-program>.

- a. For each notice that you provide, please provide a copy of that grantee's grant contract.
- b. For each notice that you provide, please specify how the cited reason for termination meets the 2024 EPA T&C termination criteria, or criteria specified in the grant contract.

Sincerely,



Sheldon Whitehouse
United States Senator
Ranking Member
Committee on Environment
and Public Works



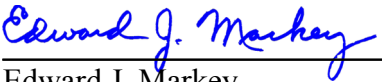
Lisa Blunt Rochester
United States Senator



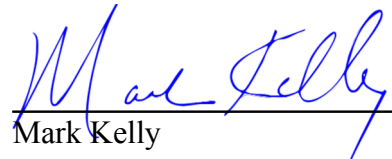
Bernard Sanders
United States Senator



Jeffrey A. Merkley
United States Senator



Edward J. Markey
United States Senator



Mark Kelly
United States Senator



Alex Padilla
United States Senator



Adam B. Schiff
United States Senator



Angela Alsobrooks
United States Senator