

DISPUTE SUBMITTED BY CITY OF HAMPTON, VIRGINIA

Re: Memorandum, Subject: Termination of EPA Assistance Agreement 5F-953A0079
under 2 CFR 200.340 dated May 1, 2025

1. Copy of Disputed Agency Decision

Copies of the Termination Memo and related Assistance Amendment (collectively, the “Agency Decision”) are included in this submission, as Attachment A and Attachment B, respectively.

2. Detailed Statement of Specific Legal and Factual Grounds for the Dispute

The Agency Decision seeks to terminate the Grant Agreement, dated December 5, 2024, between the City and the Agency for the Aberdeen Gardens Community Resilience Implementation Strategy (the “Grant Agreement”), which is included as Attachment C. For the reasons detailed below, and as stated in the City’s Notice of Disagreement dated May 21, 2025, which is included as Attachment D; the City respectfully disputes the termination as reflected in the Agency Decision. The submission of this Dispute in no way implies an admission that the Agency’s attempt to amend and terminate the Grant Agreement is legitimate or that any part of the Dispute process is valid.

A. Summary of Agency Decision

The Termination Memo states that the termination is based on the grounds that the Federal award, which is the Agency’s funding of the Aberdeen Gardens Community Resilience Implementation Strategy project pursuant to the Grant Agreement, will not accomplish Agency funding priorities for achieving program goals and the objectives of the Federal award are no longer consistent with Agency funding priorities. The Termination Memo then makes general references to Agency obligations to constitutional and statutory law of the United States to ensure that grants do not conflict with the Agency’s policy of prioritizing merit, fairness, and excellence in performing statutory functions; assessing whether grant payments are free from fraud, abuse, waste, and duplication; and assessing whether current grants are in the best interests of the United States. No further explanation and no specific allegations of non-compliance are provided.

The Assistance Amendment is explained as an amendment to stop work; terminate the agreement; reduce performance period duration; curtail scope of work; waive certain reporting requirements; and add administrative terms and conditions. The Assistance Amendment further states that the Agency is terminating the award based on 2 CFR 200.340 and the Termination General Term and Condition of the Grant Agreement, which serve as the basis for the Agency to unilaterally terminate the Grant Agreement. No further explanation and no specific allegations of non-compliance are provided.

B. Summary of Project and Grant Agreement Timeline

For a summary of the Aberdeen Gardens Community Resilience Implementation Strategy (the Project”) and timeline associated with the application, award, and resulting Grant Agreement, refer to Attachment D: City’s Notice of Disagreement.

C. Legal Grounds

The Agency’s attempts to amend and terminate the Grant Agreement as stated in the Agency Decision are contrary to the Grant Agreement, Agency regulations, Federal law, and the Constitution; and are beyond the Agency’s regulatory, statutory and constitutional authority.

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- i. The Termination General Term and Condition in the Grant Agreement does not authorize the Agency to unilaterally terminate the Grant Agreement due to a determination that the award no longer effectuates the program goals or Agency priorities.

The Agency's regulations regarding post Federal award requirements include specific parameters regarding the ability to terminate the Federal award. 2 CFR 200.340(a) provides four potential termination options – (1) recipient or subrecipient noncompliance; (2) mutual consent to termination; (3) recipient or subrecipient sending the Agency written notice; or (4) pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if the award no longer effectuates program goals or agency priorities. 2 CFR 200.340(b) further states that all termination provisions must be clearly and unambiguously specified in the Federal award.

The Termination General Term and Condition in the Grant Agreement does not authorize the Agency to unilaterally terminate the Grant Agreement due to a determination that the award no longer effectuates the program goals or Agency priorities. Although the Agency has since modified its General Terms and Conditions to include a termination option related to program goals and agency priorities, that option only applies to new awards and funding amendment made on or after April 3, 2025. The Agency's award to the City was dated December 5, 2024, and officially accepted by the City on December 27, 2024. The Agency pursued unilateral termination of the Grant Agreement on the grounds that the award no longer aligns with Agency priorities with the knowledge that the terms and conditions of the Grant Agreement did not include this unilateral termination provision. See Attachment D: Notice of Disagreement; Enclosure 4, Agency Emails (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)).

Even if such unilateral termination provision was included in the Grant Agreement, the Agency has not identified specific program goals or Agency priorities that the Federal award does not align with or effectuate, nor provided any new evidence that would have impacted the issuance of the Grant Agreement.

- ii. The Agency has not identified any further justification for such termination.

The Agency has not alleged that the City is not in compliance with the Grant Agreement; has not cited to another term and condition in the Grant Agreement that would authorize the termination; has not explained how the Federal award conflicts with the Agency's policy of prioritizing merit, fairness, and excellence in performing statutory functions; has not provided any explanation or evidence of wrongdoing, fraud, waste, abuse, or duplication; and has not explained how the Federal award is not in the best interests of the United States. The utter lack of any detail in the Agency documents frustrates the City's ability to provide a thorough dispute response.

- a. The Agency has not alleged that the City is not in compliance with the Grant Agreement.

The Termination General Term and Condition in the Grant Agreement would authorize termination if the City failed to comply with the terms and conditions of the award, including statutory or

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regulatory requirements. The Agency has not alleged that the City failed to comply with the terms and conditions of the award or any statutory or regulatory requirements.

- b. The Agency has not cited to another term and condition in the Grant Agreement for the termination.

The Termination General Term and Condition in the Grant Agreement would authorize termination with the City's consent when both the City and the Agency agree upon the termination conditions or if the City sends written notification of the reasons for termination to the Agency. The City has not consented to the termination, nor has the City initiated the termination.

The Termination General Term and Condition in the Grant Agreement would authorize termination pursuant to programmatic terms and conditions of the Federal award. However, the Agency has not cited to another term and condition in the Agreement, including any programmatic terms and conditions, for authorizing the termination.

- c. The Agency Decision is vague and unsubstantiated, and does not provide a reasoned explanation for the termination.

The Agency Decision does not identify specific program goals or Agency priorities that the Federal award does not align with or effectuate; however, the Agency Decision does make general references to Agency obligations to constitutional and statutory law of the United States to ensure that grants do not conflict with the Agency's policy of prioritizing merit, fairness, and excellence in performing statutory functions; assessing whether grant payments are free from fraud, abuse, waste, and duplication; and assessing whether current grants are in the best interests of the United States.

The Agency has not explained how the Federal award conflicts with the Agency's policy of prioritizing merit, fairness, and excellence in performing statutory functions. Submission and review of the City's application and the resulting Agency award was the result of a lengthy and complex process which included close collaboration with Wetlands Watch, the City's statutory partner required under the grant program. The application included a detailed workplan narrative, budget documents, and various attachments to ensure that the City and Wetlands Watch would effectively and efficiently carry out the project in accordance with the grant program's stated goals and requirements. See Attachment D: Notice of Disagreement; Application, Award, and Grant Agreement Timeline. It is the Agency Decision – made without proper legal justification, factual basis, or any response to the City's offer to collaborate with the Agency's internal review team on a path forward – that does not prioritize merit, fairness, or excellence in the Agency's performance of its statutory functions.

The Agency Decision does not identify, or provide evidence of, any wrongdoing, fraud, waste, abuse, or duplication; because there has not been any. The Grant Agreement incorporated the Agency's General Terms and Conditions, effective as of October 1, 2024, and Programmatic Terms and Conditions. These terms and conditions include detailed requirements associated with performance reporting, financial reporting, audit requirements, and additional safeguards against conflicts, waste, fraud, and abuse. See Attachment D: Notice of Disagreement; Application, Award, and Grant Agreement Timeline. Due to delays in the City's ability to obtain assurances from the Agency and successfully access the ASAP system for drawdowns, it is the Agency's

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actions that have impacted the ability for the Project to begin in a timely manner. The City has not acted in a manner that resulted in any wrongdoing, fraud, waste, abuse, or duplication.

The Agency has not explained how the Federal award is not in the best interests of the United States. The Project protects lives, homes, and critical infrastructure by keeping the community safe and prepared to withstand current and future hazards. In turn, this reduces reliance on government assistance in times of need. As such, it is in the best interests of the United States.

iii. The Agency Decision is contrary to multiple Federal laws.

The Inflation Reduction Act (IRA) created the Environmental and Climate Justice Program (ECJP). The ECJP is contained in Section 138 of the Clean Air Act (CAA), 42 U.S.C. § 7438. Under ECJP, the Agency was provided with \$2.8 billion to award grants to help disadvantaged communities address a wide range of environmental and climate justice issues, and \$200 million for technical assistance related to these grants. The Community Change Grants are the final and most comprehensive piece of the Agency's implementation of the ECJP IRA funding. See Notice of Funding Opportunity for Environmental and Climate Justice Community Change Grants Program, EPA-R-OEJECCR-OCS-23-04, 66.616, Section I(A), pg. 4.

The Impoundment Control Act of 1974 (ICA), 2 U.S.C. §§ 681-688, limits the President's authority to unilaterally divert or cancel funds that Congress has approved by identifying limited circumstances in which the President may defer or rescind congressionally appropriated funds and the process for such requests to be made to Congress. For example, a deferral may be proposed to provide for contingencies or to achieve savings made possible by changes in requirements or greater efficiency of operations; and a rescission may be proposed for policy reasons. The President must notify Congress of the proposed deferral or rescission. Deferrals may not be proposed for any period of time extending beyond the current fiscal year. And, for rescissions, Congress has forty-five days to review and respond to the proposal. If Congress does not approve legislation to enact the proposal, or any portion of the proposal, within that timeframe then the congressionally appropriated funds must be spent.

The Administrative Procedure Act (APA), 5 U.S.C. §§ 551-559, governs the procedures by which federal agencies act and how such agency actions may be challenged. For example, agency actions may be challenged on the grounds the action is unconstitutional, is outside of the agency's statutory authority, is arbitrary and capricious, or violates procedural requirements. 5 U.S.C. § 706.

The Agency Decision via the Termination Memo and Assistance Amendment are contrary to the IRA, the ICA, and the APA. With respect to the IRA, the Agency Decision violates the plain language of the statute, which clearly and unambiguously directs the Agency to distribute and obligate the funds for the purposes provided for in the statute. With respect to the ICA, neither the President nor the Agency has adhered to the procedures required by the IRA. No "special message" notifying Congress of the rescission has been sent and Congress has not acted to approve such rescission. With respect to the APA, the Agency Decision is arbitrary and capricious, and exceeds the Agency's constitutional and statutory authority. As stated previously, the Agency Decision is vague and unsubstantiated and does not provide a reasoned explanation for the termination. No constitutional or statutory provision enables the Agency to ignore or undermine the statutes identified above.

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iv. The Agency Decision is contrary to the Separation of Powers in the Constitution.

The U.S. Constitution establishes three separate but equal branches of government and divides the Federal government's powers between those three branches. Congress retains the exclusive control of the nation's purse and the President has a duty to spend those funds in accordance with their established terms. U.S. Const. Art. I.

The Constitution grants Congress the exclusive power to legislate and control the nation's purse. Additionally, when Congress appropriates funds for a certain purpose, the President has a duty to spend those funds in accordance with the terms established by Congress. In this situation, and as further detailed above, Congress enacted the ECJP under the IRA; and in December 2024, following a competitive grant process, the Agency obligated a portion of those funds to the City via a Grant Agreement. The IRA was properly passed by Congress and signed by the President. The Agency has not identified any constitutional authority as a basis of the Agency Decision. The Agency's attempt to amend and terminate the Agreement as stated in the Termination Memo and Assistance Agreement directly contravenes Congress's directives in the IRA, in violation of the separation of powers, and is beyond the Agency's constitutional authority.

D. Factual Grounds

It is difficult to identify specific factual errors related to the Agency Decision because, as noted above, the Agency Decision lacks specific detail and does not explain or provide evidence to support the stated reasons for termination. The Agency did not make, and the Agency Decision was not based on, any factual findings or allegations. While the City did attempt to engage with the Agency during the internal review of the Grant Agreement to collaborate on a path forward, the Agency did not respond to the City's request. See Attachment D: Notice of Disagreement; Application, Award, and Grant Agreement Timeline.

3. Specific Remedy or Relief Sought Under the Dispute

Based on the foregoing, the City respectfully requests that the Agency rescind the Termination Memo and Assistance Amendment; and reinstate the Grant Agreement, pursuant to its original terms and conditions, including but not limited to the Project's duration and scope.

4. Name and Contact Information for Designated Points of Contact

Primary

Angela King
Deputy City Attorney
City of Hampton
22 Lincoln Street, 4th Floor
Hampton, Virginia 23669
757-727-6754
angela.king@hampton.gov

Secondary

Scott Smith
Coastal Resilience Engineer
City Hall
22 Lincoln Street, 4th Floor
Hampton, Virginia 23669
757-771-1107
scott.smith@hampton.gov

Attachment A: Termination Memo



OFFICE OF MISSION SUPPORT

WASHINGTON, D.C. 20460

May 1, 2025

MEMORANDUM

SUBJECT: Termination of EPA Assistance Agreement 5F-953A0079 under 2 CFR 200.340

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

TO: Mary B. Bunting, City Manager (mbunting@hampton.gov)
City of Hampton

The purpose of this communication is to notify you that the U.S. Environmental Protection Agency (EPA) is hereby terminating Assistance Agreement No. 5F-953A0079 awarded to City of Hampton. 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 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: Ariel Bailey
Delaney Crosley
Scott Smith (scott.smith@hampton.gov)

Attachment B:

Assistance Amendment

	U.S. ENVIRONMENTAL PROTECTION AGENCY Assistance Amendment		GRANT NUMBER (FAIN): 953A0079 MODIFICATION NUMBER: 1 PROGRAM CODE: 5F	DATE OF AWARD 05/01/2025	
			TYPE OF ACTION No Cost Amendment		MAILING DATE 05/01/2025
			PAYMENT METHOD: ASAP		ACH# 33546
			RECIPIENT TYPE: Municipal		Send Payment Request to: Contact EPA RTPFC at: rtpfc-grants@epa.gov
RECIPIENT: CITY OF HAMPTON 22 Lincoln Street Hampton, VA 23669-3522 EIN: 54-6001336			PAYEE: CITY OF HAMPTON 22 Lincoln Street Hampton, VA 23669-3522		
PROJECT MANAGER Scott Smith 22 Lincoln Street Hampton, VA 23669-3522 Email: scott.smith@hampton.gov Phone: 757-771-1107		EPA PROJECT OFFICER Delaney Crosley Four Penn Center, 1600 John F. Kennedy Blvd., 3EJ20 Philadelphia, PA 19103-2852 Email: Crosley.Delaney@epa.gov Phone: 215-814-3002		EPA GRANT SPECIALIST Ariel Bailey Grants Management Section, 3MD22 Four Penn Center, 1600 John F. Kennedy Boulevard Philadelphia, PA 19103-2852 Email: Bailey.Ariel@epa.gov Phone: 215-814-5288	
PROJECT TITLE AND EXPLANATION OF CHANGES Aberdeen Gardens Community Resilience Implementation Strategy 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 03/01/2025 - 05/01/2025	PROJECT PERIOD 03/01/2025 - 05/01/2025	TOTAL BUDGET PERIOD COST \$ 20,006,400.00	TOTAL PROJECT PERIOD COST \$ 20,006,400.00		
NOTICE OF AWARD Based on your Application dated 11/26/2024 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 \$ 20,006,400.00. 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.					
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, Environmental Justice, Community Health, & Environmental Review Division, 3EJ20 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	\$ 20,006,400	\$ 0	\$ 20,006,400
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	\$ 20,006,400	\$ 0	\$ 20,006,400

Assistance Program	Statutory Authority	Regulatory Authority
66.616 - Environmental and Climate Justice Block Grant 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	\$ 120,000
5. Supplies	\$ 23,000
6. Contractual	\$ 4,213,096
7. Construction	\$ 13,564,203
8. Other	\$ 2,078,601
9. Total Direct Charges	\$ 19,998,900
10. Indirect Costs: 0.00 % Base See General Admin Condition 18	\$ 7,500
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %)	\$ 20,006,400
12. Total Approved Assistance Amount	\$ 20,006,400
13. Program Income	\$ 0
14. Total EPA Amount Awarded This Action	\$ 0
15. Total EPA Amount Awarded To Date	\$ 20,006,400

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 C: Grant Agreement

	U.S. ENVIRONMENTAL PROTECTION AGENCY Grant Agreement	GRANT NUMBER (FAIN): 953A0079 MODIFICATION NUMBER: 0 PROGRAM CODE: 5F		DATE OF AWARD 12/05/2024
		TYPE OF ACTION New		MAILING DATE 12/10/2024
		PAYMENT METHOD: ASAP		ACH# 33546
		RECIPIENT TYPE: Municipal		
RECIPIENT: CITY OF HAMPTON 22 Lincoln Street Hampton, VA 23669-3522 EIN: 54-6001336		PAYEE: CITY OF HAMPTON 22 Lincoln Street Hampton, VA 23669-3522		
PROJECT MANAGER Scott Smith 22 Franklin Street Hampton, VA 23669-3522 Email: scott.smith@hampton.gov Phone: 757-771-1107		EPA PROJECT OFFICER Delaney Crosley Four Penn Center, 1600 John F. Kennedy Blvd., 3EJ20 Philadelphia, PA 19103-2852 Email: Crosley.Delaney@epa.gov Phone: 215-814-3002		EPA GRANT SPECIALIST Julie Dietrich Grants Management Section, 3MD22 Four Penn Center, 1600 John F. Kennedy Boulevard Philadelphia, PA 19103-2852 Email: Dietrich.Julie@epa.gov Phone: 215-814-5373
PROJECT TITLE AND DESCRIPTION Aberdeen Gardens Community Resilience Implementation Strategy See Attachment 1 for project description.				
BUDGET PERIOD 03/01/2025 - 02/29/2028	PROJECT PERIOD 03/01/2025 - 02/29/2028	TOTAL BUDGET PERIOD COST \$ 20,006,400.00	TOTAL PROJECT PERIOD COST \$ 20,006,400.00	
NOTICE OF AWARD Based on your Application dated 11/26/2024 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$ 20,006,400.00. 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 \$ 20,006,400.00. 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.				
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, Environmental Justice, Community Health, & Environmental Review Division 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 Catharine McManus - Mission Support Division, Director				DATE 12/05/2024

Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$ 0
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11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %)	\$ 20,006,400
12. Total Approved Assistance Amount	\$ 20,006,400
13. Program Income	\$ 0
14. Total EPA Amount Awarded This Action	\$ 20,006,400
15. Total EPA Amount Awarded To Date	\$ 20,006,400

Attachment 1 - Project Description

This agreement provides funding under the Inflation Reduction Act (IRA) to City of Hampton, Virginia. Specifically, the project will work to create a sustainable, resilient future by addressing immediate environmental challenges and fostering economic growth through targeted green infrastructure, community engagement, and workforce development initiatives.

The activities include installation of residential stormwater solutions; implementation of outdoor education features at Aberdeen Elementary School; creation of native plant buffers; workforce development certifications; establishment of a community resilience center; infrastructure and connectivity improvements; Aberdeen Creek restoration; and installation of community garden amenities.

The anticipated deliverables include installation of residential stormwater solutions through the creation of 50 rain gardens and deployment of 300 rain barrels; the installation of 27,500 square feet of native plant buffers at the local Aberdeen Elementary School; 85 certifications for an environmental workforce development program; establishment of a resilience center with trailers for emergency relief and medical aid; provision of 600 weatherization kits; improvement of 62,200 L.F. of sidewalks, crosswalks, and pedestrian pathways; restoration of 2,000 L.F. of eroded creek banks of the Aberdeen Creek through vegetative buffers; installation of 3 hydrodynamic separators in Aberdeen Creek; 8,000-10,000 square feet of garden plots will be installed for local food production and community engagement.

The expected outcomes include management and redirection of water away from buildings to minimize property damage and associated health risks; reduction in flooding; alleviation of pressure on local water supplies; increased community awareness about sustainable water management; enhancement of water quality in local water bodies; improvement in overall safety and habitability of homes; increased environmental resilience and biodiversity; increased environmental knowledge among residents and students; increased community connections through educational and recreational activities; job training opportunities created; economic and financial benefits for low income community residents; increased resilience and safety for community members during extreme weather events; safer pedestrian pathways and better connectivity between community assets; improved wildlife habitats; water pollution reduction; greater access to healthy food options to address food insecurity. The intended beneficiaries are disadvantaged communities.

The sub awardee, Wetlands Watch, will support training and educational initiatives through professional certification offerings for implementation and maintenance of sustainable landscapes and green infrastructure; support internships and employment programs to provide locals and youth with employment opportunities; deployment of residential rain barrels to manage and redirect water to minimize flood risks; establish outdoor education features at Aberdeen Elementary School to provide educational opportunities to youth and promote sustained community participation in sustainability practices; provision of weatherization kits to increase community resiliency to climate impacts; attendance at civic meetings and hosting of Joint Committee meetings to provide project updates and convene project leaders.

Administrative Conditions

General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2024-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

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 with a copy to grant specialist of record.
- 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

Community Change Grants Terms and Conditions

The recipient agrees to comply with the current EPA Community Change Grants Programmatic Terms and Conditions, available at: <https://www.epa.gov/inflation-reduction-act/epa-community-change-grants-program-terms-and-conditions>.

These terms and conditions are in addition to the [General Terms and Conditions](#), additional programmatic terms and conditions, and the administrative terms and conditions included in the EPA award document.

Attachment D:
Notice of Disagreement



May 21, 2025

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED; AND VIA EMAIL

Kenneth I. Rose III
Manager, Grants Management Section
US EPA Mid-Atlantic Region (3MD22)
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2852
Phone: 215-814-3147
Cell: 215-983-8660
rose.kenneth@epa.gov

Copies via email to: Delaney Crosley, EPA Project Officer, crosley.delaney@epa.gov
Ariel Bailey, EPA Grant Specialist, bailey.ariel@epa.gov

Re: Notice of Disagreement re: U.S. Environmental Protection Agency (the "Agency") Assistance Amendment for the Aberdeen Gardens Community Resilience Implementation Strategy, Grant Number (FAIN): 953A0079; Modification Number: 1; Program Code 5F; Date of Award 05/01/2025; MAILING DATE 05/01/2025 (the "Assistance Amendment")

Dear Mr. Rose:

The City of Hampton, Virginia (the "City") received the above-referenced Assistance Amendment and a Memorandum re: Termination of EPA Assistance Agreement 5F-953A0079 under 2 CFR 200.340 (the "Termination Memo") on May 1, 2025 via an email sent by Kenneth Rose, Manager, Grants Management Section, US EPA Mid-Atlantic Region (3MD22), to Mary Bunting, City Manager, and Scott Smith, Coastal Resilience Engineer, with various Agency contacts copied. This letter serves as the City's Notice of Disagreement for the Assistance Amendment. The Assistance Amendment seeks to amend the Grant Agreement, dated December 5, 2024, between the City and the Agency for the Aberdeen Gardens Community Resilience Implementation Strategy (the "Grant Agreement"). The Assistance Amendment is explained as an amendment to stop work; terminate the agreement; reduce performance period duration; curtail scope of work; waive certain reporting requirements; and add administrative terms and conditions. The Assistance Amendment further states that the Agency is terminating the award based on 2 CFR 200.340 and the Termination General Term and Condition of the Grant Agreement, which serve as the basis for the Agency to unilaterally terminate the Grant Agreement. The Termination Memo states that the termination is based on the grounds that the Federal award will not accomplish Agency funding priorities for achieving program goals and the objectives of the Federal award are no longer consistent with Agency funding priorities. The Termination Memo then makes general references to Agency obligations to constitutional and statutory law of the United States to ensure that grants do not conflict with the Agency's policy of prioritizing merit, fairness, and excellence in performing statutory functions; assessing whether grant payments are free from fraud, abuse,

waste, and duplication; and assessing whether current grants are in the best interests of the United States. No further explanation and no specific allegations of non-compliance are provided.

For the reasons detailed below, the City respectfully disagrees with the Assistance Amendment, which effectively terminates the Grant Agreement, and the City requests that the Agency rescind the Assistance Amendment and reinstate the Grant Agreement, pursuant to its original terms and conditions. The submission of this Notice of Disagreement in no way implies an admission that the Agency's attempt to amend and terminate the Grant Agreement is legitimate or that any part of the Notice of Disagreement process is valid.

PROJECT SUMMARY

The purpose of the Aberdeen Gardens Community Resilience Implementation Strategy (the "Project") is to protect lives, homes, and critical infrastructure in one of the City's most flood-vulnerable neighborhoods. With the \$20 million Agency award, the Project focuses on enhancing public safety and community well-being by addressing long-standing stormwater and infrastructure deficiencies that have exposed residents to repeated flood losses, health hazards, and emergency access challenges. The Project includes restoration of 2,000 feet of degraded creek corridor, installation of 50 rain gardens and 300 rain barrels to control runoff, replacement of lead water service lines in up to 150 homes, and improved drainage infrastructure across multiple streets. These upgrades are vital to protecting homes and transportation of goods from flood destruction and maintaining clean drinking water for families. Additional measures, such as the conversion of 249 streetlights to LED, sidewalk upgrades, and pedestrian safety enhancements, aim to improve neighborhood walkability and emergency access during high-water events. To strengthen disaster readiness, a 200kW backup generator and emergency supplies would be installed at Aberdeen Elementary School, transforming it into a reliable neighborhood resilience hub that can support residents during power outages, heat emergencies, or storm events. This also enhances continuity for school operations, which are critical for supporting working parents and military families employed by Joint Base Langley-Eustis or other nearby military bases. Automated weather and air quality monitoring systems will further enhance early warning capabilities and public health safeguards.

Investments in this historic community—originally established in 1934 as housing for shipyard workers—represent not only an urgent public safety intervention, but also a strategic investment in the long-term stability of Hampton's workforce housing stock. The Project enhances livability for working families and retirees, reduces absenteeism by minimizing flood-related disruptions, and improves mobility and access for residents, employers, and service providers. Strengthening this community's resilience and stability is important because workforce housing in the neighborhood serves the Newport News Shipyard and Joint Base Langley-Eustis – both key employers in Hampton that safeguard national security. The Project prioritizes on-the-ground solutions that directly reduce risk and improve quality of life—making the neighborhood safer, more connected, and better prepared to withstand current and future hazards, while demonstrating a fiscally responsible and replicable model of community-centered resilience.

APPLICATION, AWARD, AND GRANT AGREEMENT TIMELINE

On July 31, 2024, the City submitted its Aberdeen Gardens Community Resilience Implementation Strategy application in response to the Agency's Notice of Funding Opportunity for Environmental and Climate Justice Community Change Grants Program, EPA-R-OEJECR-OCS-23-04, 66.616. The application was the result of a lengthy and complex process which included close collaboration with Wetlands Watch, the City's statutory partner required under the

grant program. The application included a detailed workplan narrative, budget documents, and various attachments to ensure that the City and Wetlands Watch would effectively and efficiently carry out the project in accordance with the grant program's stated goals and requirements. For example, Attachment B: Statutory Partnership Agreement, detailed the relationship between the City and Wetlands Watch and the agreement of both entities to abide by the grant program's rules, regulations, and requirements; Attachment G: Readiness Approach, detailed the commitment of the City and Wetlands Watch to complete the proposed work within three years; and Attachment H: Compliance Plan, detailed multi-layer internal control processes to ensure that the grant funds would be properly managed, as well as expended in a timely and effective manner.

On November 11, 2024, an Agency Project Officer notified the City of its selection for potential funding in the Community Change Program and the workplan negotiation phase began. Over the course of the next few weeks, City and Agency staff coordinated with one another to identify revisions to application materials that the City resubmitted to the Agency. During the course of the workplan negotiation phase, the City also coordinated with Agency counsel regarding Form 4700-4, Preaward Compliance Review Report. On November 15, 2024, the City and the Agency entered into a six-month extension agreement to enable the City to update certain policies as requested by the Agency at that time and to resubmit Form 4700-4.

On December 11, 2024 the Agency issued to the City a Notice of Award, with an award date of December 5, 2024. The Notice of Award served as the Grant Agreement and incorporated the Agency's General Terms and Conditions, effective as of October 1, 2024, and Programmatic Terms and Conditions. These terms and conditions include detailed requirements associated with performance reporting, financial reporting, audit requirements, and additional safeguards against conflicts, waste, fraud, and abuse. The Grant Agreement identified the period of performance as beginning on March 1, 2025 and ending on February 29, 2028. On December 27, 2024, the City emailed the Agency written notice to confirm its acceptance of the Grant Agreement.

In the days and weeks that followed, the City continued to collaborate with its statutory partner, Wetlands Watch, to prepare for a March 1, 2025 start date. This included finalizing language for the subaward agreement to be executed between the two entities and preparing template reporting documents. On February 3, 2025, after a temporary pause and discussion about the effect of Executive Order 14154, *Unleashing American Energy*, the Agency's Project Officer provided a copy of an email from the Office of Grants and Debarments, indicating that all grant actions could resume.

In preparation to start the Project on time, the City contacted the Agency Project Officer on February 24, 2025, because the funds had not appeared in ASAP and were not available for drawdown. After months of back-and-forth, the City received this termination. In all correspondence, the City promptly responded to requests for additional information and expressed a desire to collaborate on a path forward and noted the importance of the Project's critical flood mitigation efforts. The Agency did not respond to the City's request to meet with the team conducting the internal review of the Grant Agreement.

On May 1, 2025, the City received the Assistance Amendment and Termination Memo from the Agency via email. The two documents received from the Agency detail differing methods to disagree with or dispute the Agency's action. As a result, City ceased all activity associated with the Grant Agreement, including submission of a revised Form 4700-4 pursuant to the six-month extension agreement, and is pursuing the stated methods to disagree with and dispute the Agency's action. The City cannot proceed on this vital project without reimbursement per the terms of the Grant Agreement.

BASIS OF CITY'S NOTICE OF DISAGREEMENT

In addition to termination, the Assistance Amendment identified other changes to the Grant Agreement, including stopping work; reducing the duration of the period of performance; curtailing the scope of work; waiving certain reporting requirements; and, adding administrative terms and conditions. The underlying purpose and intent of such changes is to effectively terminate the Grant Agreement. The City disagrees with the terms and conditions of the Assistance Amendment because such action is beyond the Agency's authority and is contrary to various contractual, regulatory, statutory, and constitutional requirements, as further explained below. For similar reasons, the City disputes the termination decision as stated in the Termination Memo and will provide its formal dispute response pursuant to the method identified in the Termination Memo.

A. City's Grant Agreement and Agency Regulations

The Agency's attempts to amend and terminate the Grant Agreement as stated in the Assistance Amendment and Termination Memo are contrary to the Grant Agreement, Agency regulations, and are beyond the Agency's regulatory authority.

The Agency's regulations regarding post Federal award requirements include specific parameters regarding the ability to terminate the Federal award. 2 CFR 200.340(a) provides for four termination options – (1) recipient or subrecipient noncompliance; (2) mutual consent to termination; (3) recipient or subrecipient sending the Agency written notice; or (4) pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if the award no longer effectuates program goals or agency priorities. 2 CFR 200.340(b) further states that all termination provisions must be clearly and unambiguously specified in the Federal award.

The Termination General Term and Condition in the Grant Agreement does not authorize the Agency to unilaterally terminate the Grant Agreement in this manner based on 2 CFR 200.340. Although the Agency has since modified its General Terms and Conditions to include a termination option related to program goals and agency priorities, that option only applies to new awards and funding amendment made on or after April 3, 2025. The Agency's award to the City was dated December 5, 2024, and officially accepted by the City on December 27, 2024. The Agency acted in bad faith by pursuing termination of the Grant Agreement knowing that the terms and conditions of the Grant Agreement did not include this unilateral termination provision. See 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).

The Agency has not identified any further justification for such termination. The Agency has not alleged that the City is not in compliance with the Grant Agreement; has not cited to another term and condition in the Grant Agreement for the termination; has not explained why the Federal award conflicts with the Agency's policy of prioritizing merit, fairness, and excellence in performing statutory functions; has not provided any explanation or evidence of wrongdoing, fraud, waste, abuse, or duplication; and has not explained how the Federal award is not in the best interests of the United States.

In fact, the award is in the best interests of the United States. The Project protects lives, homes, and critical infrastructure by keeping the community safe and prepared. In turn, this reduces reliance on government assistance in times of need.

B. Constitution and Federal Law

The Agency's attempts to amend and terminate the Grant Agreement as stated in the Assistance Amendment and the Termination Memo are contrary to the Separation of Powers established in the United States Constitution; various Federal laws including the Inflation Reduction Act, the Impoundment Control Act, and the Administrative Procedure Act; and is beyond the Agency's constitutional and statutory authority. Specifically:


- The U.S. Constitution establishes three separate but equal branches of government and divides the Federal government's powers between those three branches. Congress retains the exclusive control of the nation's purse and the President has a duty to spend those funds in accordance with their established terms. U.S. Const. Art. I.
- The Inflation Reduction Act (IRA) created the Environmental and Climate Justice Program (ECJP). The ECJP is contained in Section 138 of the Clean Air Act (CAA), 42 U.S.C. § 7438. Under ECJP, the Agency was provided with \$2.8 billion to award grants to help disadvantaged communities address a wide range of environmental and climate justice issues, and \$200 million for technical assistance related to these grants. The Community Change Grants are the final and most comprehensive piece of the Agency's implementation of the ECJP IRA funding. See Notice of Funding Opportunity for Environmental and Climate Justice Community Change Grants Program, EPA-R-OEJECR-OCS-23-04, 66.616, Section I(A), pg. 4.
- The Impoundment Control Act of 1974 (ICA), 2 U.S.C. §§ 681-688, limits the President's authority to unilaterally divert or cancel funds that Congress has approved by identifying limited circumstances in which the President may defer or rescind congressionally appropriated funds.
- The Administrative Procedure Act (APA), 5 U.S.C. §§ 551-559, governs the procedures by which federal agencies act and how such agency actions may be challenged. For example, agency actions may be challenged on the grounds the action is unconstitutional, is outside of the agency's statutory authority, is arbitrary and capricious, or violates procedural requirements. 5 U.S.C. § 706.

The Agency's actions via the Assistance Amendment and Termination Memo are contrary to the IRA, the ICA, and the APA. With respect to the IRA, the Agency's actions violate the plain language of the statute, which clearly and unambiguously directs the Agency to distribute and obligate the funds for the purposes provided for in the statute. With respect to the ICA, neither the President nor the Agency has adhered to the procedures required by the ICA. No "special message" notifying Congress of the rescission has been sent and Congress has not acted to approve such rescission. With respect to the APA, the Agency's action is arbitrary and capricious, and exceeds the Agency's constitutional and statutory authority. The Assistance Amendment is vague and unsubstantiated, and does not provide a reasoned explanation for the Agency's actions. No constitutional or statutory provision enables the Agency to ignore or undermine the statutes identified above.

REQUESTED RELIEF

Based on the foregoing, the City respectfully requests that the Agency rescind the Assistance Amendment and Termination Memo; and reinstate the Grant Agreement, pursuant to its original terms and conditions, including but not limited to the Project's duration and scope.

Sincerely,



Mary B. Bunting
City Manager

Date: 5-21-25

Enclosures

City's Notice of Disagreement Enclosures

- 1. Initial Notice of Award, Grant Agreement
(See Dispute, Attachment C)**
- 2. Assistance Amendment (See Dispute,
Attachment B)**
- 3. Termination Memo (See Dispute,
Attachment A)**
- 4. Agency Emails - March 2025 Grants
Targeted for Termination (See following
pages)**

From:
Sent:
To:

Monday, March 3, 2025 2:14 PM

Cc:
Subject:

RE: Grant terminations

Hi Everyone,

Following up from my email last week regarding EJ grants that were terminated. 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.

The termination memoranda contain standard language identifying the following bases for the grant being terminated as inconsistent with Agency priorities:

- The grant provides funding for programs that promote or take part in DEI initiatives that conflict with the Agency's policy of prioritizing merit, fairness, and excellence in performing our statutory functions;
- The grant provides funding for programs that promote or take part in environmental justice initiatives that conflict with the Agency's policy of prioritizing merit, fairness, and excellence in performing our statutory functions;
- The grant provides funding for other initiatives that conflict with the Agency's policy of prioritizing merit, fairness, and excellence in performing our statutory functions;
- The grant provides funding for programs that are not free from fraud, abuse, waste, or duplication;
- The grant provides funding for programs that otherwise fail to serve the best interests of the United States.

I would anticipate that recipients that raise objections to the terminations or file disputes will raise certain common arguments that the award should not have been terminated. Outlined below are considerations for responding to potential recipient arguments.

- The award does not contain a T&C providing that the Agency may unilaterally terminate the award a change in program policy or Agency priorities.
 - Consideration for response – EPA may decide the dispute in favor of the recipient because the T&C regarding termination for changes in Agency priorities is not included in the award.
 - Alternative consideration for response – Determine the Agency termination of the award is an exercise of the requirement to ensure the award is consistent with public policy requirements under 2 CFR 200.300. Having determined the award is not consistent with current Agency funding priorities EPA terminated the award.
- The Agency termination is not consistent with the nationwide Preliminary injunction issued on 2/21 in National Association of Diversity Officers in Higher Education v Trump. The PI precludes, among other things, termination of equity-related grants.

It has come to our attention (see attached email from OEJECR) that Regions 3, 4, 5, 6, 7, and 8, have issued notices of termination to recipients of Regional Thriving Communities Technical Assistance Center grants advising that the grants have been terminated on "changes in priorities" grounds pursuant to the version of 2 CFR 200.340(a)(2) and EPA General Terms and Conditions effective August 13, 2020 through September 30, 2024. If the information OEJECR provided us is accurate, the termination notices contain a significant error because the grants do not contain a Term and Condition indicating EPA can unilaterally terminate the grant based on changes in Agency priorities. OEJECR has provided records establishing that all the affected TCTAC grants were amended at various times in December 2024 to incorporate the General Terms and Conditions effective October 1, 2024, and the version of 2 CFR 200.340 that EPA adopted on July 3, 2024. The December 2024 amendments to the Regional TCTAC grants revised the termination provisions as follows:

Notwithstanding the General Term and Condition "Termination", ***EPA maintains the right to terminate the Assistance Agreement only as specified in 2 CFR 200.339 and the version of 2 CFR 200.340 applicable to EPA grants as of July 1, 2024 pursuant to 89 FR 55262 (July 3, 2024) , when the noncompliance with the terms and conditions is substantial such that effective performance of the Assistance Agreement is materially impaired or there is adequate evidence of waste, fraud, or abuse,*** prompting adverse action by EPA per 2 CFR 200.339, through either a partial or full termination. In accordance with 2 CFR 200.341, EPA will provide the Recipient notice of termination.

If EPA partially or fully terminates the Assistance Agreement, EPA must (1) de-obligate uncommitted funds and reobligate them to another Eligible Recipient to effectuate the objectives of the Environmental Justice Thriving Communities Technical Assistance Centers (TCTAC) Program within 90 days of the de-obligation and (2) amend the Recipient's Assistance Agreement to reflect the reduced amount, based on the de-obligation.

(emphasis added)

In the referenced July 3, 2024, Federal Register Notice EPA advised the public that for awards issued or amended to add funds after July 3, 2024, EPA would include terms and conditions expressly indicating when the Agency is preserving the right to unilaterally terminate awards on the grounds that the awards no longer effectuate program goals or agency priorities. The Federal Register Notice is also attached.

Additionally, on February 21, 2025, the U.S. District Court for the District of Maryland issued a Preliminary Injunction in *National Association of Diversity Officers in Higher Education et. al. v. Trump* that may limit EPA's discretion to terminate grants based on concerns regarding funding programs that promote equity and environmental justice. The termination actions taken against the Regional TCTAC's may also be encompassed in the Preliminary Injunction. We will coordinate appropriately within EPA and externally as necessary and advise further when information regarding the implementation of the preliminary injunction becomes available.

For those of you in Regions 3, 4, 5, 6, 7 and 8 please alert your Grants Management Officer and Dispute Decision Official of the potential error. Given that the termination notices contain dispute rights it is probably that the recipients will file a dispute based on the error. ORC attorneys in other regions are copied here for awareness of the issue in case similar grants are identified for termination in your region. Going forward please remember to check for this issue, i.e., whether the award has a term and condition that allows for termination for changes in Agency priorities, if you are asked to provide advice on any legal concerns or considerations for an award being considered for termination.

Please consult with me if you'd like to discuss a particular termination.

Assistant General Counsel, [REDACTED]