BOARD OF COMMISSIONERS

200 College Street, Room 326
Asheville, NC

September 1, 2026 – 5:00 PM

WORKING AGENDA

Public Comment is taken at the beginning of the meeting.

CALL TO ORDER

CONSENT

1. Approval of the August 18, 2026, Combined Meeting Minutes
2. Approval of the July 2026 Tax Collection Report
3. Resolution Approving Pyrotechnic Experts for Firework Displays
4. Road Closure Petition to Delete a Section of SR-1495 from the NCDOT State System
5. Budget Amendment for Library Donations
6. Approval of the Interlocal Agreement Between the City of Asheville and Buncombe County Governing the General Assistance Program

PUBLIC COMMENT

GOOD NEWS

1. LEAD Fellow Madison Harms Introduction

MANAGER'S REPORT

PRESENTATIONS

PUBLIC HEARINGS

OLD BUSINESS

NEW BUSINESS

1. Approval of Pharmacy Benefit Changes and New Pharmacy Benefit Manager
2. Authorization to Submit Proposed Projects for CDBG-DR Community Infrastructure
3. Notification of Award for WNC Future Factories and Authorization for the County Manager to Execute Agreements
4. Budget Amendment for the Hazard Mitigation Grant Program Subrecipient Management Funds

5. FY2026 Budget Carryforwards

BOARD APPOINTMENTS

1. Board Appointments for September 1, 2026

BOARD UPDATES

ANNOUNCEMENTS

CLOSED SESSION

[MEET_FOOT]

MINUTES OF THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS'

BRIEFING MEETING OF AUGUST 18, 2026.

BE IT REMEMBERED: That the Board of Commissioners met to hold a Briefing Meeting on August 18, 2026, in the First Floor Conference room at 200 College Street in downtown Asheville, North Carolina at 3:00 p.m.

Present: Chair Amanda Edwards; Vice-Chair Martin Moore; Commissioner Terri Wells, Commissioner Al Whitesides; Commissioner Jennifer Horton; Commissioner Drew Ball.

Absent: Commissioner Parker Sloan

The following items were reviewed.

1. **UNC Health Letter of Support**

Chair Edwards provided background information. She explained that the proposed letter expressed support for UNC Health's Certificate of Need application to build a new 92-bed hospital in western Asheville, citing documented regional need and the benefits of improved access for rural counties. The letter highlights lessons from Hurricane Helene, noting that limited road access underscored the importance of distributed emergency care. The letter concludes that the project will enhance public health, safety, and economic development and urges state approval. Commissioners consented to adding the letter to the New Business agenda for review and approval.

2. **NCACC Legislative Goals**

Josh Hallingse provided background information and provided the timeline and structure for the NCACC 2026 Legislative Goals process, including deadlines for goal submissions. Commissioner Wells further outlined the proposed goals which included:

<u>State-level NCACC Legislative Goals</u>

- Support additional resources for mental and behavioral health, including emergency responders, law enforcement, and state employees.
- Ensure any restructuring of the behavioral health system accounts for county fiscal/operational impacts and protects community-based crisis capacity.
- Encourage state funding for essential medical, mental health, substance use disorder, and social services for individuals in local detention facilities.
- Advocate for statewide support to address detention facility bed shortages and in-custody treatment challenges.
- Seek state funding for K–12 and community college employees and related capital needs.
- Adjust state programs to improve property tax relief for low-income seniors, veterans, and disabled residents.
- Preserve local taxing authority and local control over locally delivered services.
- Fund and support affordable housing initiatives, including closing the property-tax loophole related to nonprofit ownership.

- Pursue increased recurring state funding for farmland preservation initiatives.

Federal-level NCACC Legislative Goals

- Support increased funding for disaster preparation, assistance, and mitigation, and seek policy changes to streamline and improve access to FEMA assistance.
- Oppose unfunded mandates or cuts to essential health programs such as Medicaid and SNAP.
- Improve food assistance programs at both state and federal levels.

The Board discussed and consented to sending a letter on behalf of the Board to the NCACC outlining the stated goals.

3. Update on Benefits and Pharmacy Offerings

Shauna Shepherd provided background information. USI consultants further detailed the proposed 2027 health plan changes, focusing on pharmacy benefits and weight-management medication strategies. The County recommends removing GLP-1 weight-loss drugs from the BCBS formulary and adopting an RxSaveCard program, which would provide lower direct-to-consumer pricing and yield an estimated annual savings of over $565,700. Employees would pay a $100 copay under this program, while the County funds the remaining cost through the RxSaveCard mechanism. USI also reviewed options due to BCBSNC's transition away from Prime Therapeutics, with USI recommending Employers Health-CVS because it delivers approximately $1.43 million in savings compared to the BCBS/Optum renewal. Though either PBM option would involve formulary changes and some disruption, Employers Health-CVS offers stronger rebate guarantees and wide pharmacy network access. Additional updates for 2027 include required IRS-related HDHP deductible increases, higher HSA contributions, and vendor changes for FSA and Dependent Care FSA programs. The proposed timeline targets implementation beginning in early September, with final approval expected at the September 1 Board of Commissioners meeting.

MINUTES OF THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS'

REGULAR MEETING OF AUGUST 18, 2026.

BE IT REMEMBERED: That the Board of Commissioners met to hold a Regular Meeting on August 18, 2026, in the Chamber at 200 College Street in downtown Asheville, North Carolina at 5:00 p.m.

Present: Chair Amanda Edwards; Vice-Chair Martin Moore; Commissioner Terri Wells, Commissioner Al Whitesides; Commissioner Jennifer Horton; Commissioner Drew Ball.

Absent: Commissioner Park Sloan.

The Chair opened the meeting and provided opening remarks.

CONSENT

1. Approval of the August 4, 2026 Combined Meeting Minutes

2. Justice Resource Advisory Council Name Change to Criminal Justice Coordinating Councils and Membership Change Resolution

3. Resolution Approving Pyrotechnic Experts for Firework Displays

Commissioner Wells made the motion to add UNC Health Letter of Support to New Business. The Motion was seconded by Commissioner Moore and carried unanimously.

Commissioner Moore made the motion to approve the consent agenda and the amended agenda. The motion was seconded by Commissioner Horton and carried unanimously.

PUBLIC COMMENT

R.J. Taylor - Swannanoa resident - member of the Small Area Plan steering committee - voiced support for the plan and commended the planning staff for their extensive work. He highlighted the plan's focus on safety, connectivity, and transportation improvements that will help make Swannanoa a safer community.

Jennifer Eby – described her concerns about conditions at the Detention Center, stating that incarcerated individuals often lack outdoor time, exercise opportunities, and functional access to reading materials. She urged the board to investigate these conditions.

Dan Slagle –retired postal employee from Swannanoa - thanked the board for its support in efforts to restore the local post office and shared that residents have been told a fully funded 10-year lease has been signed. He requested that the board help obtain formal written confirmation from the Postal Service to reassure the community.

John Dennis – president of the Blue Ridge Bicycle Club - spoke on behalf of 10,000 regional cyclists to highlight the safety issues they face from a minority of aggressive drivers. He expressed support for Lenny's Law and Buncombe County's effort to advance it in the General Assembly to improve road safety for all users.

Maddie Barondeau – shared her personal story of losing her boyfriend, Lenny Anteneelli, in the 2025 NC251 crash and urged the board to take actions that improve safety for vulnerable

road users. She expressed gratitude for recent safety improvements and emphasized the importance of bicycle safety zones to prevent future tragedies.

Adam Smith - Chair of the Woodfin Parks and Community Enrichment Committee- described how the deaths of Lenny Anteneelli and Jake Hill inspired the creation of “Lennie’s Law,” a proposed bicycle safety zone initiative aimed at reducing speeding and protecting cyclists. He highlighted the widespread local support already secured and urged Buncombe County to join other communities in endorsing the proposal to help advance it at the state level.

GOOD NEWS

1. Elevate Buncombe Guide Award Winners

Shuana Shepherd and Richard Bell introduced the new employee recognition program. Bell explained that the program is designed to celebrate the incredible contributions our employees make every day. Built with feedback from departments across the County, the program aims to strengthen the County’s commitment to living the core values while creating more ways to highlight exceptional work throughout the year. Elevate Buncombe is designed with a two-tiered structure, featuring both quarterly awards and a distinguished annual award. Fifty-nine nominations were received, and 13 employee winners were recognized including Rocio Borghini (Human Resources), Tom Braine (Information Technology), Robert Brown (General Services), Lauren Couch (Health & Human Services), Matt Evans (Finance), Tracie Franklin (Health & Human Services), Sergeant Bryan Freeborn (Buncombe County Sheriff’s Office), Kelly Houston (Risk & Compliance), Neggy Rodriguez-Fox (Election Services), Felissa Vazquez (Health & Human Services), Jen Waite (Libraries), Conner White (Recreation Services), and Jack Wright (General Services).

PRESENTATIONS

1. Strategic Partnership Grants Committee Annual Update

Members of the Strategic Partnership Grants Committee shared an overview of the work of the board and their mission to grant funding to nonprofit organizations working toward outcomes in alignment with Buncombe County’s Strategic Plan and Helene recovery priorities. The board oversees a budget of $1 million in projects and each project can apply for up to $85,000 in funding. Sixteen projects received funding in environmental, community health, education, and economic development focus areas.

PUBLIC HEARINGS

1. Southeastern Container Economic Development Agreement

Josh Hallingse provided background information. He explained that on February 19, 2026, Southeastern Container announced its plans to expand at its existing facility in Enka, North Carolina. Southeastern Container is an injection molding and blow molding manufacturer that produces preforms, bottle closures, and pallets.

Southeastern Container plans to invest $31.3 million in capital expenditures and create 12 new full-time jobs, averaging $32.90 per hour. Prior to the February expansion announcement, Southeastern Container requested, and the County agreed, subject to formal approval by the Board of Commissioners at a Public Hearing, to provide economic development incentives to induce the Company to make capital investments and create jobs in Buncombe

County. The Buncombe County incentives will total $85,000. $5,000 of these incentives will be leveraged as the required local government match for the State of North Carolina's Building Reuse Program. The Building Reuse grant program requires a 5% local match and this project received a $100,000 Building Reuse grant award. In addition to the grant match incentives, per the Buncombe County Economic Development Policy, Southeastern Container is eligible for a one-time incentive of $80,000 based on capital investment and job creation targets. Additionally, a portion of the grant may only be earned if Southeastern Container demonstrates its ability to hire employees from workforce development programs. In total, between State Building Reuse grant incentives ($100,000) and Buncombe County incentives ($85,000), Southeastern Container is eligible to receive up to $185,000 in total incentives.

Hallingse said that staff have analyzed the economic impact of the expansion project, drafted an Economic Development Agreement (EDA) between Southeastern Container and Buncombe County, and are requesting the Board's formal approval for the incentive Grant and are also requesting approval for a budget ordinance that would establish the building reuse grant fund.

The Chair opened the public hearing at 5:48 p.m. There were no comments. The public hearing was closed at 5:48 p.m.

Commissioner Wells made the motion to approve the 1) Building Reuse Grant Agreement with N.C. Commerce and Southeastern Container 2. Economic Development Incentives for Southeastern Container; and; 3. Economic Development Agreement between Southeastern Container and Buncombe County; and 4. Establishing a $105,000 budget for the NC Commerce Building Reuse Grant. The motion was seconded by Commissioner Whitesides and it passed 5-1 with Commissioner Ball voting nay.

2. CDBG-DR Community Infrastructure - Public Hearing #1

Tyler Henry provided background information. He explained that this first funding round makes approximately $55 million available statewide, with individual projects capped at $15 million. Three potential projects aim to address unmet needs after Helene including parks recovery projects, infrastructure on the County-owned Ferry Road Affordable Housing site, and resiliency projects at critical county facilities focused on power redundancy. He noted that the Helene Recovery Plan outlined the need to recover parks, build more affordable housing, and invest in resiliency measures and preparedness.

Henry further explained that the public comment period will remain open through Aug. 28 to gather feedback before final applications are due Sep. 16. Public comment can be shared with the Helene Recovery Office by email, by phone at 828-250-6100, or in writing to the attention of the Buncombe County Helene Recovery Office at 200 College St., Asheville, NC 28801. Staff will incorporate public feedback for the Board’s review and approval at the September 1, 2026 meeting. Lastly, he noted that other infrastructure projects will be considered as more recovery funding streams become available.

The Chair opened the public hearing at 5:58 p.m. There were 8 speakers. The public hearing closed at 6:19 p.m.

Public Hearing comments:

David Nutter- Chair of the Connect Buncombe Advocacy and Partnerships Committee, voiced support for incorporating the recovery of Owen Park into the broader Swannanoa River and Fonta Flora Greenway plan, noting its alignment with existing French Broad River greenway efforts. He emphasized the regional importance, resilience needs, and long-term connectivity benefits of completing each segment of the Swannanoa River Greenway.

Jeff Fager- resident of Beacon Village in Swannanoa, described ongoing flooding issues caused by clogged culverts and inadequate stormwater infrastructure, exacerbated by recent development at the old Beacon plant site. He asked the board to intervene, noting that county and state departments have not coordinated effectively and that residents need support to address the persistent flooding.

Dan Slagle – described significant flooding in Swannanoa caused by clogged culverts that were only partially cleared after Hurricane Helene, resulting in repeated water backups into homes and streets. He asked the county to help coordinate with DOT to fully inspect, repair, or replace the drainage infrastructure using CDBG funds to protect the unincorporated community.

Rebecca Williams –Swannanoa resident, echoed neighbors' concerns about repeated flooding in Swannanoa and emphasized that rebuilding homes without addressing drainage problems is not sustainable. She also voiced strong support for the CDBG-DR grant, highlighting the importance of park restoration, particularly Owen Park, as part of the community's emotional, physical, and environmental recovery.

Shelly Mckechnie - executive director of the Friends of the Fonta Flora State Trail, thanked the county for its disaster recovery grant application and emphasized the importance of fully restoring Owen Park. She urged the county to ensure a greenway connection in the planning process, noting its significance for the Fonta Flora State Trail and the broader regional trail network

Liesl Erb – Warren Wilson College staff member, echoed neighbors' concerns about Swannanoa's flooding and expressed strong support for the county's disaster recovery grant focused on resilience. She highlighted the importance of restoring Owen Park as both a community gathering space and a model for regional resilience, emphasizing its role in local well-being and broader research on disaster recovery.

Jevald Pope – Swannanoa resident, urged the board to support the Owen Park project, emphasizing that the community has lacked a central gathering place since the mill closed and that Owen Park once served as its social heart. He noted how the park brought neighbors together and asked commissioners to remember the strong public support when the project comes up for a vote.

James Thomas –Swannanoa resident, voiced strong support for the Owen Park project and emphasized the importance of parks and greenways for healthy, vibrant communities. He also described ongoing flooding in downtown Swannanoa and urged the county to address the drainage issues impacting homes and businesses.

3. ZPH2026-00024 KOA Map Amendment (US Hwy 70)

Shannon Capezzali provided backgroud information. She explained that the ZPH2026-00024 KOA Map Amendment: Kampgrounds of America Inc. applied to rezone two (2) parcels of land with the addresses 517 Lazy Bear Blvd. and 99999 US Hwy 70 further identified as PINs 9699-70-6736 and 9699-71-5166 from CS Commercial to R-3 – Residential. She further explained that the property is currently used as a recreation vehicle park with cottages and camping available with a vacant commercial space. This zoning change would allow for more residential uses like mobile homes and RV parks. During the public hearing, one community member offered comment on the rezoning proposal.

Commissioner Wells asked about a rezoning request involving a flood hazard area, and Capezzali explained that the proposed change is a downzoning that does not increase residential density and therefore poses no additional risk. She also noted that the impact analysis indicates reduced potential impacts compared to the current higher-intensity zoning.

The Chair opened the Public Hearing opened at 6:26 p.m. there was one public commenter. The Public Hearing closed 6:28 p.m.

Public Comment:

Liesl Erb – Ecologist and Buncombe County resident, urged commissioners to avoid permitting development in flood-prone areas, stressing that repeated flooding reflects a new climate reality requiring long-term, science-based planning. She encouraged the county to think broadly and act as a national model for resilient land-use decisions.

Commissioner Whitesides made the motion to approve the text amendment as it is consistent with the Buncombe County 2043 Comprehensive Plan. Commissioner Wells seconded the motion and passed 5-1 with Commissioner Horton voting nay.

Commissioner Horton noted her nay vote was because, as a lifelong resident of Swannanoa, she cannot support building in known flood areas.

NEW BUSINESS

1. Resolution in Support of Lennie's Law

Commissioner Ball read the resolution. He said that the Board of Commissioners expresses support for the Leonard Antonelli and Jacob Hill Bicycle Safety Zone Act of 2025 (“Lennie’s Law”), created in response to a tragic 2025 crash that killed two cyclists and injured another. The resolution highlights the region’s high rate of bicycle-related crashes and emphasizes the urgent need for enhanced roadway safety. It supports establishing Bicycle Safety Zones, implementing traffic-calming measures, and collaborating with NCDOT, the French Broad MPO, and local municipalities to improve safety along NC Scenic Byway 251 and other key corridors. Additionally, the resolution honors the victims and underscores the community’s commitment to preventing future tragedies.

Commissioner Ball made the motion to pass the Resolution in Support of Lennie’s Law. Commissioner Moore seconded the motion and it was carried unanimously.

2. Indoor Recreation Center Design Services Contract Approval

Ronnie Lundsford provided background information. He explained that as part of the FY27 Capital Improvement Plan, the Board of Commissioners approved a project to design an Indoor Recreation Center located on County-owned property at the Buncombe County Sports Park. Consultants are needed to facilitate this design project and their services will include the following:

- Space Programming
- Schematic Design
- Design Development
- Construction Documents
- Cost Estimating
- Bid and Construction Administration

He further explained that pursuant to General Statute, General Services released a Request for Qualifications (RFQ) to select a consulting firm. Ten responses to the RFQ were received, and a scoring committee made up of Parks and Recreation and General Services staff evaluated and scored those responses. Of the ten, Method Studio received the highest score and was selected as the design firm. After negotiations, their contract amount is $1,599,220, which is within budget for this project and no new funds are needed.

Commissioner Horton made the motion to approve the contract. The motion was seconded by Commissioner Whitesides and carried unanimously.

3. UNC Health Letter of Support

Chair Edwards noted that this was added from the Briefing and noted that the letter of support signaled their strong support for the Certificate of Need application filed by UNC Health West Medical Center to develop a new 92-bed acute care hospital on the western side of Asheville. The proposed site located west of the French Broad River near the interstate interchange is positioned to serve as a point of entry for patients traveling into Buncombe County from Clay, Graham, Madison, and Yancey Counties. The letter emphasizes the need for a well-distributed network of accessible emergency and inpatient care throughout Buncombe County in the aftermath of Helene

Commissioner Ball made the motion to approve the letter of support. The motion was seconded by Commissioner Wells and carried unanimously.

BOARD APPOINTMENTS

1. Board Appointments for August 18, 2026

- Strategic Partnership Grants Committee – The Board requested to keep accepting allocations to be reviewed at the September 1 meeting and schedule interviews for September 15.

- **AB Tech Trust Committee –** The Board requested to keep accepting allocations to be reviewed at the September 1 meeting and schedule interviews for September 15.

Adjourned at 6:50 p.m.

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: September 1, 2026

CONSENT

Department: Tax Collections **Presenter(s):** Jennifer Pike, Tax Collector

Contact: Jennifer Pike, Tax Collector

Subject: Approval of the July 2026 Tax Collection Report

Brief Summary:

NCGS 105-350 requires the Tax Collector to submit a report showing the amount of taxes collected. This report includes fiscal year 2027 activity through July 2026.

Recommended Motion & Requested Action:

Approve as presented.

Attachments:

1. July 2026 Monthly Collection Report

Jennifer Pike
Tax Collector

Consent Agenda 9/1/2026

Department: Tax Collections **Presenter: Jennifer Pike**

Contact: Jennifer Pike

Subject: Approval of July 2026 Tax Collection Report

Brief Summary:

NCGS 105-350 requires the Tax Collector to submit a report showing the amount of taxes collected.

In the month of July, the collection focus remains on the preceeding tax year. Initital billing for fiscal year 2027 occurred July 25th, a second billing occurred in August, and a billing for Public Utilities is currently scheduled to occur in the Fall.
As of July 31, 2026, the total levy billed for fiscal year 2027 is 1.64% collected, as compared to 1.26% for fiscal year 2026, as of the end of July.

Below is Buncombe County year to date reporting for fiscal year 2027, as of July 31, 2026.

Current Year Collections

Fiscal Year 2027	Personal Property	Public Service	Real Estate	Motor Vehicles	Total
Total Levy	$ 21,714,021.53	$ -	$ 179,503,655.22	$ 2,010,417.11	$ 203,228,093.86
Amount Collected	$ 65,498.44	$ -	$ 1,257,109.00	$ 2,001,846.30	$ 3,324,453.74
Unpaid Balance	$ 21,648,523.09	$ -	$ 178,246,546.22	$ 8,570.81	$ 199,903,640.12
Interest Collected	$ -	$ -	$ 7,004.82	$ 16,326.33	$ 23,331.15
FY27 Collection %	**0.30%**	**0.00%**	**0.70%**	**99.57%**	**1.64%**
FY26 Collection %	0.34%	0.00%	0.61%	99.56%	1.26%

Total fiscal year 2027 year to date collections, property tax and interest **$ 3,347,784.89**

Prior Year Collections

Prior Years 2017-2026	Personal Property	Real Estate	Total
Amount Collected	$ 26,842.16	$ 135,883.55	$ 162,725.71
Interest Collected	$ 3,563.62	$ 9,101.25	$ 12,664.87

Total prior year collections, fiscal year to date **$ 175,390.58**

***Total property tax released July 2026 due to taxable value adjustments** **$ 24,764.55**

***Total refunds processed July 2026** **$ 24,993.32**

***Detailed information for releases and refunds is available in Tax Collections.**

Recommended Action: Approve collection report on consent agenda.

County Manager's Comments & Recommendation: Approve as recommended

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: September 1, 2026

CONSENT

Department: Emergency Services **Presenter(s):** Kevin Tipton, Fire Marshal

Contact: Kevin Tipton, Fire Marshal

Subject: Resolution Approving Pyrotechnic Experts for Firework Displays

Brief Summary:

Request from Frank Terzino Jr. and Pyrostar Entertainment to conduct a fireworks show on September 6, 2026 at The Omni- Grove Park, 290 Macon Avenue, Asheville, N.C. 28804.

Recommended Motion & Requested Action:

Approve Resolution

Attachments:

1. Pyrotechnics Display 9-1-26 mtg

RESOLUTION #:

RESOLUTION APPROVING PYROTECHNICS EXPERTS FOR CONDUCTING FIREWORKS DISPLAYS

WHEREAS, pursuant to NCGS §§ 14-410 and 14-413 the Board of Commissioners is authorized to review and approve the qualifications of persons applying for approval as pyrotechnics experts for the purpose of conducting fireworks displays; and

WHEREAS, applications have been made by Frank Terzino Jr. and Pyrostar Entertainment for a pyrotechnic display;

WHEREAS, the Fire Marshal has reviewed and determined that the application meets the standards set forth in the general statutes and the required proof of insurance has been provided; and

WHEREAS, this Board is of the opinion that the application received to conduct firework pyrotechnic displays should be approved.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners for the County of Buncombe as follows:

1. That the following be granted permission to conduct a fireworks display at the location and on the date shown, to-wit:

NAME	LOCATION	DATE
Frank Terzino Jr. & Pyrostar	The Omni Grove Park 290 Macon Avenue Asheville, NC 28804	September 6, 2026

That should inclement weather prevent the presentation of said display on said date(s), then the pyrotechnics display may be rescheduled to a postponement date with the consent of the fire Marshal or designee.

2. That pursuant to NCGS §§ 14-410 and 14-413 this Board finds that the above-named individual/company is a qualified pyrotechnic expert for the purpose of conducting fireworks displays.

3.

ADOPTED this 1st day of September, 2026.

ATTEST

_____
Sarah Gross, Clerk to the Board

BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE

By: _____
Amanda Edwards, Chair

APPROVED AS TO FORM

_____
County Attorney

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: September 1, 2026

CONSENT

Department: Planning -and Development - General

Presenter(s): Curt Euler, County Attorney

Contact: Nathan Pennington, Planning Director

Subject: Road Closure Petition to Delete a Section of SR-1495 from the NCDOT State System

Brief Summary:

Request from the NC Department of Transportation to vacate 0.1 miles of Georges Branch Road (SR-1495) from the public road system. Planning Staff has reviewed the request and found no adverse impact to the public given that all affected property owners have consented to the right-of-way/road section vacation as noted in the attached exhibit.

Recommended Motion & Requested Action:

Approve the resolution to vacate a 0.1 mile section of Georges Branch Road (SR-1495)

Attachments:

1. SR1495 Road Abandonment Package
2. Resolution for Road Closing - Georges Branch Rd

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

ROY COOPER
GOVERNOR

JR "JOEY" HOPKINS
SECRETARY

July 13th, 2026

Avril Pinder
Buncombe County Manager
200 College Street, Suite 300
Asheville, NC 28801

Dear Avril,

Our office has received a request from the property owners adjacent to SR-1495 (Georges Branch Road) to delete SR-1495 from the state system. The dead-end road (an extension of SR-1131 Georges Branch Road) is unpaved and 0.1 miles in length. The property owners have signed a petition to abandon this road from our roadway inventory.

Attached is a vicinity map showing the location of the road in question. Please obtain a resolution for the abandonment of SR-1495 (Georges Branch Road) in Buncombe County if the county commissioners concur. Please email the resolution to my staff member Anson Merithew at apmerithew@ncdot.gov.

If I can provide additional information, please contact me at 828-250-3200.

Sincerely,

DocuSigned by:
6D92D71E27C94A3...
Christopher D. Medlin, P.E.
District Engineer

CDM/apm
attachments

NC DEPARTMENT OF TRANSPORTATION
DIVISION 13 DISTRICT II OFFICE
PO BOX 3279
ASHEVILLE, NC 28802

Telephone: (828) 250-3200
Fax: (828) 299-3747
Customer Service: 1-877-368-4968

11 OLD CHARLOTTE HWY.
ASHEVILLE, NC 28803

Website: www.ncdot.gov

Date Petition Received by NCDOT: 7/13/2026

North Carolina Department of Transportation
Division of Highways
Abandonment Petition

North Carolina

County of BUNCOMBE

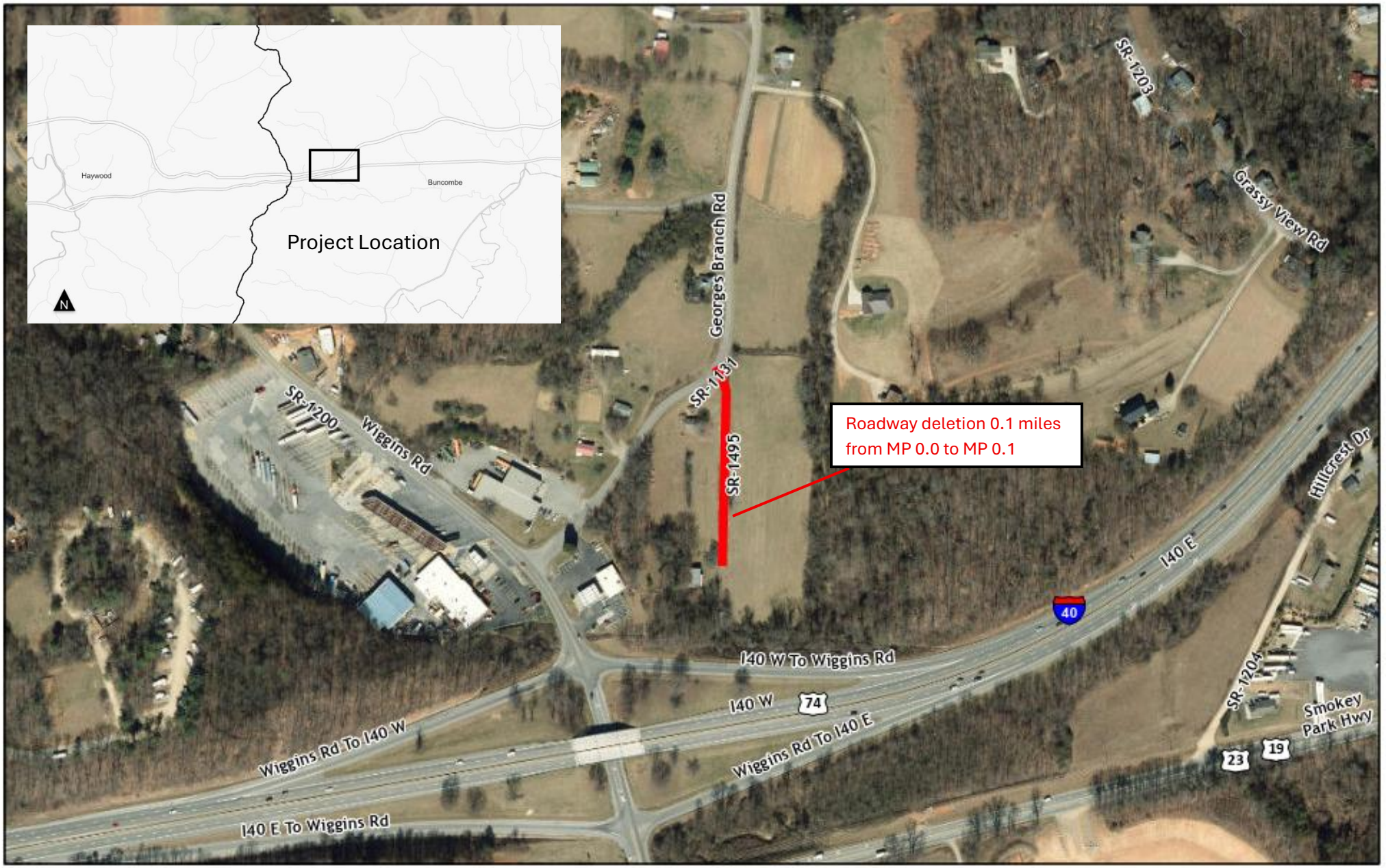
Petition request for the abandonment of Secondary Road GEORGES BRANCH RD from the State.

Maintained System

We the under signed, being all of the property owners on Secondary Road GEORGES BRANCH RD in BUNCOMBE County do hereby request the Division of Highways of the Department of Transportation to abandon the road from the State Maintained System.

PROPERTY OWNERS

Printed Name and Signature	Address
LANDSHARK GROUP LLC SERGEY KISEL	40 GEORGES BRANCH RD CANDLER 28715
Jason Kisel KISEL ENTERPRISES LLC	36 Georges Branch rd Candler, NC 28715



7/8/2026

Buncombe County
SR-1495 (Georges Branch Road)
Abandonment Limits

Abandonment Limits

1:5,040

0 0.04 0.07 0.14 mi

0 0.05 0.1 0.2 km

North Carolina Department of Information Technology -Transportation, GIS Unit, NC Collaboratory at UNCCH, Vantor

APM

RESOLUTION #_____

RESOLUTION REQUESTING THE BOARD OF TRANSPORTATION TO ABANDON SR 1495 GEORGES BRANCH ROAD

WHEREAS, the Board of Transportation has received an Abandonment Petition from the owner on SR 1495, Georges Branch Road, requesting that the State of North Carolina abandon the entire road consisting of 0.1 miles that serves only their property;

WHEREAS, pursuant to N.C. Gen. Stat. §136-63, a board of county commissioners of any county may, on its own motion or on petition of a group of citizens, request the Board of Transportation to change or abandon any road in the secondary system when the best interest of the people of the county will be served thereby;

WHEREAS, if this Board concurs with the Abandonment Petition, the Board of Transportation will make inquiry into the proposed change or abandonment, and if in its opinion the public interest demands it, shall make such change or abandonment; and

WHEREAS, this Board is of the opinion that it is in the best interests of the citizens and residents of the County to concur with this Abandonment Petition.

NOW, THEREFORE, BE IT RESOLVED by the Commissioners for the County of Buncombe as follows:

1. That pursuant to N.C. Gen. Stat. §136-63 the Board of Transportation is hereby requested to abandon SR 1495, Georges Branch Road, consisting of 0.1 miles, in its entirety.

2. That this Resolution shall be effective upon its adoption.

ADOPTED this the 1st day of September 2026.

ATTEST

_____
Sarah Gross, Clerk

BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE

By: _____
Amanda Edwards, Chair

APPROVED AS TO FORM

_____
County Attorney

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: September 1, 2026

CONSENT

Department: Budget

Presenter(s): John Hudson, Budget Director

Contact: Jason Hyatt, Library Director

Subject: Budget Amendment for Library Donations

Brief Summary:

This amendment realizes donations from library partners (Friends of Pack Library, Trust Fund for Buncombe County Public Libraries) of $18,000 for the Library's One Book One Buncombe program and $14,577 from an estate, specified for West Asheville Library.

Recommended Motion & Requested Action:

Approve budget amendment.

Attachments:

1. Fund 100 Library Donations - Ordinance

ORDINANCE # _____

BUNCOMBE COUNTY, NORTH CAROLINA
General Fund

BOARD MEETING DATE: September 1, 2026

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2026-2027 General Fund as outlined below in Exhibit "A" to the budget,

NOW THEREFORE,

BE IT ORDAINED by the Board of Commissioners for the County of Buncombe as follows:

1. That the FY2026-2027 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 1st day of September, 2026

Requesting Department:	Library
Budget Amendment Item:	Realize Donations for Library Programming & Renovations

Description:

This amendment realizes donations from library partners (Friends of Pack Library, Trust Fund for Buncombe County Public Libraries) of $18,000 for the Library's One Book One Buncombe program and $14,577 from an estate, specified for West Asheville Library.

Funding Source:

Donations only. No new county dollars.

Exhibit A:	**Increase (Decrease)**	
Account Description	**Revenues**	**Expenditures**
Cultural & Recreational	$ 32,577	
Other Revenue		$ 32,577
TOTAL	$ 32,577	$ 32,577

ATTEST:

Clerk to the Board

BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE:

By: _____

Chair of the Board

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: September 1, 2026

CONSENT

Department: Health and Human Services **Presenter(s):** David Sweat, Health and Human Services Department Director

Contact: David Sweat, Health and Human Services Department Director

Subject: Approval of the Interlocal Agreement Between the City of Asheville and Buncombe County Governing the General Assistance Program

Brief Summary:

This ILA constitutes an agreement for the General Assistance Program between the City of Asheville and Buncombe County and outlines the programmatic and funding changes from the previous Homeowner Grant Program. Per this agreement, Buncombe County will fund the General Assistance Program that replaces the previous Homeowner Grant Program at $290,000 in FY 2027, and the City of Asheville agrees to fund the program at $75,000 in FY 2027, bringing the total budget to $365,000.

Recommended Motion & Requested Action:

Approve Interlocal Agreement with the City of Asheville.

Attachments:

1. ILA General Assistance Program FY27
2. Resolution-General Assistance

STATE OF NORTH CAROLINA COUNTY OF BUNCOMBE

INTERLOCAL AGREEMENT BETWEEN THE CITY OF ASHEVILLE
AND BUNCOMBE COUNTY GOVERNING THE GENERAL ASSISTANCE PROGRAM

This Agreement is entered into effective July 1, 2026, by and between the County of Buncombe ("County"), a body politic and corporate organized and existing under the laws of the State of North Carolina, and the City of Asheville ("City"), a municipal corporation of the State of North Carolina.

WITNESSETH:

WHEREAS, in response to a lack of affordable housing within the territorial jurisdictions of the City and the County, the parties agreed to fund an economic public assistance program ("General Assistance Program") designed to assist Buncombe County residents with income at or below 200% Federal Poverty Level ("FPL");

WHEREAS, the parties successfully administered the Homeowner Grant Program for fiscal years 2023-2026, and desire to continue to support our community, the parties have agreed to administer the General Assistance Program for fiscal year 2027; and

WHEREAS, pursuant to N.C. Gen. Stat. § 160A-461, the City and County may enter into agreements necessary to execute a joint governmental undertaking.

NOW THEREFORE, in consideration of the mutual promises made in this Agreement and the mutual reliance placed by each party on the responsibilities of the other, and such other consideration as the parties agree is good and sufficient, it is agreed as follows:

1. Description. Subject to approval by the City Manager or designee and the County Manager or designee (collectively, "Managers"), the parties agree to jointly administer the General Assistance Program ("Program"). The Program shall generally be structured as follows:

Funding

a. The County has included $290,000 in its fiscal year 2027 ("FY 2027") budget for the Program.
b. The City has included $75,000 in its FY 2027 budget for the Program.
c. Grants awarded under the Program shall be funded as follows:
    i. Maximum of $350 for households with income at 131-200% FPL regardless of household size.
    ii. Maximum of $500 for households with income at or below 130% FPL regardless of household size.
d. City funding shall only be available to eligible grant applicants whose qualifying residence is located within the territorial jurisdiction of the City.
e. The City shall fund the full amount of the award for City residents up to the maximum budgeted amount of City funding. At which point the County will fund the full amount of the award for City residents.
f. The obligations of the City and the County under this Agreement are contingent upon the allocation of sufficient funds by their respective governing bodies,

Grantee Qualifications

g. In order to qualify for the Program,
    i. A household demonstrates a financial need if the household income is at or below 200% FPL.
    ii. Resource limit for all households is $5,000.
    iii. Benefits are based on the household's size and income at the time of application. The income limit is 200% of the federal poverty level. To determine benefit levels, the income limit is broken down into two categories so that families with the lowest incomes receive the higher benefit.

Use of Program Funds by Grantees

h. Eligible households may, in their discretion, choose to have grant funds applied directly to the allowable bill that best supports their needs such as housing or utility bill costs.

Authority

i. The Managers are given broad authority, by and with the consent of their respective legal counsel, to mutually alter the structure of the Program and its requirements in any way that is consistent with the spirit and intent of this Agreement and the respective budgetary procedures of the parties.

2. Payment. Each party shall be responsible for allocating the agreed-upon funds for the Program. The County shall be responsible for paying vendors directly as funding is awarded by the Program. The County shall invoice the City for its share of funding awarded by the Program. The City Agrees to pay such Invoices in a timely manner up to the amount allocated.

3. Term/Renewal/Termination. The term of this Agreement shall begin on the day and year first above written and shall terminate on June 30, 2027. This Agreement may be terminated by either party for convenience at any time for any or no reason upon thirty (30) days written notice.

4. Remedy to Return Agreement to Compliance. In the event that a remedy is necessary for either party to ensure that the terms of this Agreement are realized, the parties agree to meet and agree to an Action Plan that describes action to be taken by each party to bring the Agreement into compliance.

5. Indemnification.

    a. The City agrees, to the extent permitted by North Carolina law, to indemnify and hold harmless the County and its officers, agents and employees from any third-party claims arising from negligent acts or omissions of the County employees and/or County in connection with the performance pursuant to this Agreement.

b. The County agrees, to the extent permitted by North Carolina law, to indemnify, defend, and hold harmless the City and its officers, agents and employees from any third-party claims arising from negligent acts or omissions of the City employees and/or City in connection with the performance pursuant to this Agreement.

6. Insurance.

a. The City is self-insured for general liability and maintains excess general liability coverage up to $15,000,000 per occurrence: Including coverage for bodily injury and property damage. Additionally, the City is self-insured for workers' compensation and maintains excess workers' compensation coverage per statutory requirement and carries $1,000,000 of employer's liability insurance. Further, this provision shall specifically include auto liability as County employees may be directed by the City to operate City vehicles as Permissive Users

b. The County is self-insured for general liability up to $500,000 and maintains excess general liability coverage up to $7,000,000 per occurrence: Including coverage for bodily injury and property damage. Additionally, the County is self-insured for workers' compensation and maintains excess workers' compensation coverage per statutory requirement and carries $1,000,000 of employer's liability insurance. Further, this provision shall specifically include auto liability as City employees may be directed by the County to operate County vehicles as Permissive Users.

c. Maintaining the types and amounts of insurance, including self-insurance, specified in Paragraphs 6(a) and 6(b) is a material obligation of each party.

d. The City and County shall, at all times, comply with all lawful terms and conditions of each of its insurance policies and lawful requirements of their respective insurers.

e. The City and the County shall each demonstrate compliance with the requirements of this section by submitting Certificates of Insurance to each other upon request.

f. Noting in this Agreement is intended to affect or abrogate either party's governmental immunity.

7. Amendments. This Agreement constitutes the entire Agreement between the Parties. This Agreement may be amended, supplemented or modified only by duly executed written instruments as an amendment to this agreement.

8. Compliance with Laws. Each party shall comply with all state, federal, or local laws, or ordinances, codes, rules or regulations governing performance of this Agreement. The parties further agree that this contract shall follow the requirements under 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II.

9. Assignability. This Agreement is not assignable by either party without the prior written consent of the other party.

10. Budgetary Limitations. Nothing stated in this Agreement shall be construed as requiring either party to make any budgetary appropriations

11. Non-discrimination. In accordance with State and Federal laws, neither party may discriminate against any person on the basis of sex, national origin, race, ethnic background, color, religion, age or disability in its program activities related to this Agreement

12. E-Verify Employer Compliance. Employers and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the NC General Statutes must comply with E- Verify requirements to contract with governmental units. E-Verify is a Federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law. E-verify can be accessed via this link: http://www.uscis.gov/e- verify/employers.

13. Disputes.

    a. Mediation. Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the Buncombe County Resident Superior Court Judge shall name a mediator to hear the matter. The parties shall equally share the mediator's fee. The mediation shall be held in Asheville at a location designated by the mediator selected to hear the matter.

    b. Legal Proceedings. Claims, disputes and/or other matters in question between the parties that are not resolved by mediation shall be heard in the North Carolina General Courts of Justice in Asheville, Buncombe County, North Carolina, which said Court shall have jurisdiction to hear any dispute between the parties arising out of this Agreement. The Parties hereby agree that this paragraph establishes exclusive and sole jurisdiction for any legal proceeding in Buncombe County, North Carolina.

14. Severability. Should any provision or provisions contained in this Agreement be declared by a court of competent jurisdiction to be void, unenforceable or illegal, such provision or provisions shall be severable, and the remaining provisions hereof shall remain in full force and effect.

15. Notices. In the event either party hereunder desires or is required to provide any notice to the other party, the party desiring or requiring to provide such notice shall provide it in writing, by email to the other party at the address listed below:

City:

County:

NOW THEREFORE, the parties hereby make, agree, and execute this Agreement by the signatures of their respective duly authorized officials or agents.

City of Asheville

By: _____

Dakisha Wesley, City Manager

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

_____ Date: _____

Tony McDowell, Finance Director

Buncombe County

By: _____

Avril Pinder, County Manager

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

_____ Date: _____

_____

Melissa Moore, Finance Director

RESOLUTION NO. _____

RESOLUTION AUTHORIZING INTERLOCAL AGREEMENT BETWEEN BUNCOMBE COUNTY AND THE CITY OF ASHEVILLE TO CREATE A GENERAL ASSISTANCE PROGRAM

WHEREAS, cities and counties are authorized to enter into joint undertakings through interlocal agreements as authorized by N.C. Gen. Stat. §153A-445 and N.C. Gen. Stat. § 160A-461; and

WHEREAS, Buncombe County and the City of Asheville have successfully administered the Homeowner Grant program for several years; and

WHEREAS, Buncombe County and the City of Asheville seek to continue to support the residents by administering a General Assistance Program; and

WHEREAS, Buncombe County and the City of Asheville deem it desirable and in the best interest of the residents to enter into an Interlocal Agreement identify a dedicated budget for a General Assistant Program.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE AS FOLLOWS:

1. That the Buncombe County Board of Commissioners authorize the Interlocal Agreement between Buncombe County and the City of Asheville identifying a dedicated budget for the General Assistance Program.

2. That the County Manager, or her designee, is hereby authorized to execute such documents as may be required or affect the purpose and intent of this Resolution.

3. That this resolution is effective upon adoption by the Board of Commissioners for the County of Buncombe

This the _____day of _____September 2026.

ATTEST

BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE

_____

Sarah Gross, Clerk

_____

Amanda Edwards, Chair

APPROVED AS TO FORM

_____

County Attorney

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: September 1, 2026

GOOD NEWS

Department: County Manager

Presenter(s): Avril Pinder, County Manager

Contact: Avril Pinder, County Manager

Subject: LEAD Fellow Madison Harms Introduction

Brief Summary:

Lead For North Carolina (LFNC) is a state affiliate of Lead for America, a nonpartisan fellowship program across the United States. Lead for America was launched in 2018, and LFNC is its first state affiliate program. The School of Government has partnered with key organizations, including the NC County Managers Association (NCCCMA), NC League of Municipalities (NCLM), and NC Association of County Commissioners (NCACC) to implement LFNC.
Buncombe County was selected as one of Lead for North Carolina's host jurisdictions for the 2026-2027 program year. The pool was competitive. Over 50 government entities across the state put forward competitive applications, but the selection team believed Buncombe County would provide an exceptional experience for an AmeriCorps Fellow. County staff were afforded the opportunity to interview several candidates. As a result of this process, Madison Harms was selected and agreed to complete her year of service in Buncombe County.

Madison Harms is a recent graduate from Appalachian State University; Madison earned her degree in Political Science with a Minor in Community and Regional Planning. Originally from Arizona, she decided to stay in NC, as she has come to prefer the mountains over the desert. Madison chose Buncombe County for beautiful landscapes and rivers, and the strong sense of community in its residents.

Madison started her year of service with us on August 10th. Madison is assigned to the County Manager's Office. She will have at least three active workplans during this year focusing on the following projects:

1. Planning (POC Gillian Phillips)

- Small Area Plan Swannanoa: help analyze and theme comments from the last engagement phase for the Small Area Plan (this would be a mid to end of August project)

2. Helene Recovery Office (POC Kevin Madsen)

    - Support HRO ProjectOwen Park
    - Research Best Practice for HMGP Acquisition & Activation

3. Identification Bureau Department: (POC Oscar Wooten)

    - If CDE revamps next steps:

        - Delivery Process Assistance
        - Establish a training program for internal and external personnel
        - Creation of new documentation and video presentation/training

4. Strategy and Innovation: (POC Rafael Baptista)

    - Strategic Plan Contract KPIs project

        - Define relevant metrics with established vendors and create meaningful reporting
        - Project Duration: This would project would have some regular ongoing work throughout the entire fellowship and would touch almost all County departments.

5. Library: (POC Jason Hyatt)

    - Research/best practice for Library and Human Service's needs, Process/Protocols, etc.

We believe that the afore-mentioned projects, though not exhaustive of the potential opportunities, will provide an excellent overall experience of local government and the challenges and opportunities that can be gained by various projects and experiences.

Recommended Motion & Requested Action:

No action requested.

Attachments:

None

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: September 1, 2026

NEW BUSINESS

Department: Human Resources

Presenter(s): Shauna Shepherd, Human Resources Director
Roberta Ferdinand
USI

Contact: Shauna Shepherd, Human Resources Director

Subject: Approval of Pharmacy Benefit Changes and New Pharmacy Benefit Manager

Brief Summary:

(1) The recommended GLP-1 savings strategy for 2027 is for the County to remove GLP-1 medications prescribed for weight management from the BCBS formulary, eliminating coverage through the medical plan. Instead, the County would implement an RxSaveCard program to provide financial assistance for eligible employees prescribed these medications.

(2) Blue Cross Blue Shield of North Carolina has announced that Prime Therapeutics will no longer serve as its Pharmacy Benefit Manager (PBM) beginning in 2027. As part of our renewal strategy, USI conducted a PBM market evaluation and identified two primary options: to either remain with BCBSNC and transition to their default PBM, Optum, or to carve out pharmacy benefits from BCBSNC and contract directly with Employers Health-CVS (EHCVS) as the PBM. While both BCBS Optum and Employers Health - CVS involve formulary changes and some level of employee disruption, the projected $1.43 million in additional savings makes Employers Health - CVS the stronger financial option.

Recommended Motion & Requested Action:

Motion to support the Health Insurance Plan as presented by staff.

Attachments:

1. Presentation

BUNCOMBE COUNTY GOVERNMENT

2027 HEALTH PLAN RECOMMENDATIONS

September 1, 2026

Larry Reece

Roberta Ferdinand

www.usi.com

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THE USI ONE ADVANTAGE®

RxSaveCard – 2027 GLP-1 Management Strategy for Weight Loss Medications

Program Overview

- Employees would obtain a Glucagon-like peptide - 1(GLP-1) prescription directly from their physician rather than through the VIDA program.

- Employees would use an RxSaveCard website or app to obtain access to online participating pharmacies as directed by the respective drug manufacturer, accessing direct-to-consumer pricing that is significantly lower than traditional insurance pricing.

- Employees would pay a $100 copay amount at the point of sale, with the balance of cost funded by Buncombe County.

- Employees must have a personal credit card that can be loaded into the RxSaveCard site to fund their copay, and they must have an active email address to use the program.

- Employees will upload BMI verification documentation through the RxSaveCard app to confirm eligibility.

RxSaveCard Savings Analysis

	Current 2026 Costs	Proposed 2027 costs
Employee co-pay	$200	$100
Net Employer cost (after rebates)	$700-$900	$200-$350
Net employer cost based on 2025 utilization	$1,035,600	$443,856

- Direct-to-consumer pricing creates savings for both employees and the County compared to traditional insurance reimbursement rates.
- Employees benefit from lower personal costs and a simplified purchasing process.
- Based on 2025 utilization data, projected annual savings for the County exceed $500,000.

RxSaveCard – 2027 GLP-1 Management Strategy for Weight Loss Medications

Recommendation

The recommended GLP-1 savings strategy for 2027 is for the County to remove GLP-1 medications prescribed for weight management from the BCBS formulary, eliminating coverage through the medical plan. Instead, the County would implement an RxSaveCard program to provide financial assistance for eligible employees prescribed these medications.

GLP-1s prescribed for diabetes will be covered under employee insurance as normal and will not be part of the RxSaveCard change.

Disclaimer

Manufacturer-sponsored medication discount programs such as RxSaveCard have eligibility restrictions that may limit access for certain members, including those who are Medicare-eligible.

The County and RxSaveCard do not have control over manufacturer program eligibility rules or terms and conditions, therefore, criteria can change at any time.

Pharmacy Benefit Manager (PBM) Change

Program Overview

- Blue Cross Blue Shield of North Carolina has announced that Prime Therapeutics will no longer serve as its Pharmacy Benefit Manager (PBM) beginning in 2027.

- As part of our renewal strategy, USI conducted a PBM market evaluation and identified two primary options:

  1. Remain with BCBSNC and transition to their default PBM, Optum.

  or

  2. Carve out pharmacy benefits from BCBSNC and contract directly with Employers Health-CVS (EHCVS) as the PBM.

- Both options represent a change from the County's current pharmacy arrangement and would require implementation of a new formulary. As a result, some level of member disruption is expected regardless of the option selected.

- Some members may need to transition to therapeutically equivalent alternatives if their current medication is not included on the new formulary. In addition, certain employees could experience higher or lower copays depending on the medication.

Pharmacy Benefit Manager (PBM) Recommendation

Recommendation

While both BCBS Optum and Employers Health - CVS involve formulary changes and some level of employee disruption, the projected $1.43 million in additional savings makes Employers Health - CVS the stronger financial option.

The carve-out approach provides a substantial opportunity to reduce pharmacy costs while maintaining access to clinically appropriate medications and offering transition support to affected employees.

Other Benefit Changes for January 2027

Confirmed Changes for January 2027

- Employee Medical Premium increases
- High-Deductible High Plan (HDHP) deductible and out of pocket maximum increases as required by the Internal Revenue Service (IRS)
- Increase to County contribution to Health Savings Account to one half of new HDHP deductible
- VOYA Accident and Critical Illness insurance – employee premium increase
- Flexible Spending Account (FSA)/ Dependent Care FSA – new vendor

Employee Medical Premiums January 2027

Note: Standard Plan grandfathered as of January 1, 2010; no new enrollments

STANDARD PLAN	EMPLOYEE **BI-WKLY** RATES	EMPLOYEE **BI-WKLY** NO HRA
Employee Only	$32.36	$78.42
Employee + 1 Child	$56.63	$137.19
Employee + Children	$100.79	$244.19
Employee + Spouse	$98.31	$238.19
Family	$107.57	$260.60

BUY-UP PLAN	EMPLOYEE **BI-WKLY** RATES	EMPLOYEE **BI-WKLY** NO HRA
Employee Only	$43.91	$109.78
Employee + 1 Child	$109.76	$274.39
Employee + Children	$132.57	$331.42
Employee + Spouse	$124.59	$311.48
Family	$141.48	$353.70

CORE PLAN	EMPLOYEE **BI-WKLY** RATES	EMPLOYEE **BI-WKLY** NO HRA
Employee Only	$25.09	$62.73
Employee + 1 Child	$54.88	$137.19
Employee + Children	$90.70	$226.75
Employee + Spouse	$73.29	$183.25
Family	$96.80	$242.00

Note: HDHP Plan no change to rates

HDHP PLAN	EMPLOYEE **BI-WKLY** RATES	EMPLOYEE **BI-WKLY** NO HRA
Employee Only	$11.00	$42.64
Employee + 1 Child	$42.64	$85.28
Employee + Children	$69.29	$138.58
Employee + Spouse	$53.30	$106.60
Family	$69.29	$138.58

Board Action Items

Board Supports the Health Insurance Plan as presented by staff

- Transition of GLP-1 weight management drugs from the pharmacy formulary, transition affected employees to the RxSaveCard program.

- Carving out pharmacy benefits from Blue Cross Blue Shield-North Carolina (BCBS-NC) and contract with Employers Health-CVS as the new Pharmacy Benefit Manager.

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: September 1, 2026

NEW BUSINESS

Department: County Manager

Presenter(s): Kevin Madsen, Helene Recovery Officer

Contact: Dana French
Elizabeth Odderstol, Economic Development Program Analyst
Tyler Henry

Subject: Authorization to Submit Proposed Projects for CDBG-DR Community Infrastructure

Brief Summary:

In response to the State of North Carolina's "Community Infrastructure" Community Development Block Grant - Disaster Recovery (CDBG-DR) grant opportunity, staff have prepared three proposed applications for funding. The "Buncombe County Parks Recovery & Resilience" project proposes to rebuild Buncombe County Parks damaged by Hurricane Helene, restore park service to pre-Helene levels, and mitigate against future disasters. The "Ferry Road Infrastructure to Enable Affordable Housing" project proposes to build and improve essential infrastructure that will enable the development of affordable housing on the Ferry Road Affordable Housing Community site. And the "Community Resilience at County-Owned Facilities" project seeks to provide comprehensive permanent power redundancy systems for the county's critical facilities. This grant application requires one public hearing and the County has opted to include a public comment period. The public hearing was conducted on August 18th and the public comment period was open between July 31st and August 28th. At this meeting, staff will request authorization to submit the three grant applications by the September 16th, 2026 deadline.

Recommended Motion & Requested Action:

Requested Board Action:

- Approve resolution and authorize staff to submit proposed applications for the Community Infrastructure CDBG-DR Helene Recovery grant program.

Attachments:

1. Presentation
2. Resolution

CDBG-DR Community Infrastructure
Request for Board Authorization

Background and Request

Background

- North Carolina's Community Infrastructure CDBG-DR funding Notice Of Funding Opportunity opened on 7/6
- For project development, staff briefed the Board on 7/21, opened public comment period (7/31-8/28), and held the first Public Hearing on 8/18
- Staff have two proposed applications for funding we are preparing to submit by the deadline on 9/16

Requested Board Action

- Approve resolution and authorize staff to submit proposed applications for the Community Infrastructure CDBG-DR Helene Recovery grant program

Proposed Projects

Buncombe County Parks
Recovery & Resilience

- **Goal:** Rebuild Buncombe County Parks damaged by Hurricane Helene, restore park services to pre-Helene levels, and mitigate against future disasters
- **Unmet Needs**
  - Insufficient funding to complete repairs to Park System
  - Park Services have not yet been fully restored
- **Deliverables**
  - Restore and reconstruct critical park infrastructure damaged by Hurricane Helene
  - Rebuild park facilities and recreational amenities
  - Implement flood mitigation and ecological restoration measures
  - Enhance long-term resilience and accessibility
- **Estimated Grant Cost: $11.2M**

Ferry Road Infrastructure to Enable Affordable Housing

- **Goal:** Build and improve essential infrastructure that will enable the development of affordable housing on the Ferry Road Affordable Housing Community site
- **Unmet Needs**
  - Hurricane Helene damaged and destroyed 6,505 units of rental housing in Buncombe County, to date there has been insufficient funding to repair and replace rental units, deepening our existing affordability crisis
  - The Ferry Road site lacks the infrastructure to construct replacement rental units
- **Deliverables**
  - Construct 0.65 miles of access road
  - Repair existing Ferry and Dry Ferry Roads
  - Build infrastructure to enable affordable housing development
- **Estimated Grant Cost: $13M**

Public Comment Summary

Buncombe County opened a public comment period from July 31, 2026 to August 28, 2026

- The Notice of Funding Opportunity (NOFO) requires 10 days
- Buncombe County Helene Recovery Office opted for 4 weeks of public comment to ensure opportunity for engagement and to account for widespread impact of T.S. Helene

Public Comments Received

- 3 comments by email
- 8 residents spoke at the public hearing on August 18th

Public Hearing Summary

Buncombe County held a public hearing on August 18, 2026

- 8 residents spoke during the public comment

Comments Sharing

- 4 community members expressed support for Owen Park specifically
  - Included comments on greenways and integration with other projects
  - Statement about parks being the heart of a community
- 2 residents spoke about stormwater and drainage concerns and emphasized the flooding associated with the recent weather events
- 2 people talked about both parks and drainage challenges in Swannanoa

Next Steps and Request

Next Steps:

- If authorized, staff will submit full applications by September 16th deadline
  - A second public hearing will be required if grant funds are awarded
- Anticipating a second round of funding for the remaining $137M of Community Infrastructure funding
  - Future opportunity to submit projects that were not ready or eligible in this round

Requested Board Action:

- Approve resolution and authorize staff to submit proposed applications for the Community Infrastructure CDBG-DR Helene Recovery grant program

APPENDIX

Overview: CDBG-DR Basics

- CDBG-DR: appropriated by Congress and allocated by HUD to rebuild disaster-impacted areas by funding **housing, infrastructure,** and **economic revitalization** activities
- Uses of CDBG-DR funds must meet three basic criteria:
  1. ***Tie-back to the Disaster*** by addressing a direct or indirect impact
  2. ***Meet a CDBG National Objective***: Benefit LMI persons, prevent or eliminate slums/blight, or address an urgent need
     - 70% of DR funds must benefit LMI persons
  3. ***Eligible Use*** under section 105 of the Housing and Community Development act or be allowed by waiver
- Funds must benefit the **Most Impacted and Distressed (MID)** areas
  - 80% of funds must be spent in HUD-identified MIDs
  - Further defined in the Action Plans
- "Funding of last resort": projects require duplication of benefit analysis
  - Funds can benefit FEMA-PA or HMGP projects OR "stand alone" unmet needs

Overview: CDBG-DR Process

- Funding Recipients must publish detailed documents and engage communities in order to justify expenditure of funds:
  1. Action Plan
  2. Programs & Policies
  3. Notice of Funding Opportunity
- Recipients can manage funds by:
  1. **Managing programs** (ex: DCR's RenewNC Single Family program)
  2. Awarding funds to **subrecipients** to manage activities (ex: the city of Asheville's Small Business Support Program)
  3. Awarding through **competitive NOFOs** (ex: COA's Multi-Family NOFO, the upcoming State CI and CDR opportunities)

North Carolina Competitive Grant Program Timeline

	Action Plan	Policies and Procedures	*Pre-Screening*	Notice of Funding Opportunity #1	Notice of Funding Opportunity #2
Multi-Family Housing Large Construction (LIHTC)	Completed	Completed	*N/A*	N/A*	N/A
Multi-Family Housing Large Construction (non-LIHTC)	Completed	Completed	*Open*	Opened June 25th	N/A
Community Infrastructure	Completed	Completed	*Open*	Opened July 6th	Anticipated Fall 2026
Commercial District Revitalization	Completed	Completed	*Open*	Opened on April 6th	Anticipated Fall 2026

*The State is working with NCHFA to manage the funding for “Large” projects (LIHTC).

Buncombe County Community Infrastructure Project Summary

Project Concept	Tie-Back to the Storm	National Objective	Eligible Activity
Buncombe County Parks Recovery & Resilience	Physical damage to Parks	Urgent Need	Yes, restores access to services and meets priority for repair of public parks
Ferry Road Infrastructure to Enable Affordable Housing	Damaged and destroyed renter-occupied units	Benefit to low- to moderate-income clientele	Yes, physical improvement and road infrastructure to enable affordable housing
Sustainability Project	Improvements to essential facilities and mitigation for future events	Urgent Need	Yes, physical improvements to critical infrastructure and mitigation for future events

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING SUBMISSION OF APPLICATIONS FOR THE NORTH CAROLINA COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY COMMUNITY INFRASTRUCTURE PROGRAM

Whereas, on or about September 27-28, 2024, Tropical Storm Helene ("storm") devastated portions of Buncombe County and the incorporated municipalities;

Whereas, the North Carolina Department of Commerce, Division of Community Revitalization, has made funding available through the Community Development Block Grant – Disaster Recovery (CDBG-DR) Community Infrastructure (CI) Program to support the recovery and revitalization of storm-impacted communities;

Whereas, the CI Program will fund projects in HUD-identified and State-identified Most Impacted and Distressed areas including Buncombe County;

Whereas, Buncombe County has identified eligible projects that address unmet disaster recovery needs, strengthen community resilience, support long-term economic recovery, and further the goals identified in the County's Tropical Storm Helene Recovery Plan;

Whereas, the County has undertaken a public engagement process consistent with the requirements of the CDBG-DR Community Infrastructure (CI) Program, including a public comment period beginning on July 31, 2026, and ending on August 28, 2026, during which written, electronic, and verbal comments were accepted from residents and stakeholders;

Whereas, the Buncombe County Board of Commissioners conducted a public hearing on August 18, 2026, to receive public input on the proposed applications prior to submission to the North Carolina Department of Commerce;

Whereas, comments received during the public participation process were reviewed and considered in the development and refinement of the proposed applications;

Whereas, under N.C. Gen. Stat. § 160A-17.1, counties are authorized to make contracts for and to accept grants-in-aid and loans from the federal and State governments and their agencies for constructing, expanding, maintaining, and operating any project or facility, or performing any function, which such city or county may be authorized by general law or local act to provide or perform;

Whereas, pursuant to N.C. Gen. Stat. § 158-7.1, counties are authorized to make appropriations for economic development purposes which are determined by the governing body of the city or county to increase the population, taxable property, agricultural industries, employment, industrial output, or business prospects of the city or county;

Whereas, pursuant to N.C. Gen. Stat. § 160D-1311, counties may engage in, accept federal and state grants, and appropriate fund for community development programs and activities, including programs concerned with the economic development needs of persons of low and moderate income; and

Whereas, the Board of Commissioners finds that submission of the proposed applications is in the best interest of Buncombe County and its residents, supports the County's ongoing disaster recovery and economic revitalization efforts, and will improve the business prospects of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS:

1. The Board hereby authorizes the submission of the applications presented to the Board of Commissioners at the regular meeting on September 1, 2026, to the North Carolina Department of Commerce, Division of Community Revitalization, under the Community Development Block Grant – Disaster Recovery Community Infrastructure (CI) Program for projects determined by the County to be eligible and competitive.

2. The County Manager, or her designee, is authorized to execute and submit all applications, certifications, assurances, forms, and other documents necessary to complete the application process on behalf of Buncombe County.

3. County staff are authorized to make such technical, administrative, budgetary, mapping, or narrative revisions to the applications as may be necessary or requested by the North Carolina Department of Commerce prior to or during the application review process, provided such revisions do not materially alter the intent or scope of the projects authorized by this Resolution.

4. If funding is awarded, acceptance of any grant award and execution of any grant agreement, contract, or other legally binding funding documents shall be subject to subsequent approval by the Buncombe County Board of Commissioners in accordance with applicable law and County policy.

5. This Resolution shall become effective upon its adoption.

This 1st day of September, 2026.

ATTEST

BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE

_____
Sarah Gross, Clerk

_____
By Amanda Edwards, Chair

APPROVED AS TO FORM

_____
Curt Euler, County Attorney

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: September 1, 2026

NEW BUSINESS

Department: County Manager

Presenter(s): Josh Hallingse, Intergovernmental Relations Director

Contact: Josh Hallingse, Intergovernmental Relations Director

Subject: Notification of Award for WNC Future Factories and Authorization for the County Manager to Execute Agreements

Brief Summary:

The WNC Futures Factory is a development of a 70,000-square-foot workforce training and innovation center designed to support Western North Carolina's economic recovery following Tropical Storm Helene. AB Tech, Buncombe County, and Land of Sky collaborated to pursue funding through the EDA's FY2025 Disaster Supplemental program, ultimately securing a total project budget of more than $37 million. The award was announced on July 27, 2026, with grant agreements issued shortly thereafter and requiring signatures by September 8, 2026. A 60-day special conditions period must be completed before funds can be used, including the subdivision and transfer of a 13.18-acre property from Biltmore Farms to AB Tech. A 52-month project timeline encompassing design, construction, review, and closeout phases. The County is managing construction and financial administration, while Land of Sky is leading grant management and AB Tech is overseeing programming and procurement for innovation components.

Upcoming steps include finalizing a subrecipient agreement between the County and AB Tech and the Board is asked to authorize the County Manager to accept the grant award and execute all necessary agreements to implement the project.

Recommended Motion & Requested Action:

Authorize the County Manager to accept the grant award and execute all necessary agreements to implement the project.

Attachments:

1. Presentation
2. Resolution
3. EDA Award Package

WNC Futures Factory

EDA Grant Award

Board of Commissioners

September 1, 2026

Background

- **June 4, 2025**, the U.S. Economic Development Administration (EDA) published their FY2025 Disaster Supplemental Notice of Funding Opportunity (NOFO)
  - Made $1.4 Billion available nationally for communities with declared disasters in calendar years 2023 and 2024
  - This NOFO included Western North Carolina for T.S. Helene
- **August 19, 2025,** Board of Commissioners approved a reallocation of Article 46 tax funds to support match for the grant application and adopted Resolution No. 25-08-16 allowing the county to be a co-applicant in grant
- **January 28, 2026**, Land of Sky, AB Tech (Lead Recipient) and Buncombe County (Co-Recipient) entered into a MOU to participate in the grant opportunity and submitted a proposal for the “WNC Futures Factory” in response to the EDA NOFO

***NC General Statute 115D-15.1 c: Acquisition and Construction**

- Provides authority to community colleges and county government to negotiate terms for construction among other activities.

Next Steps and Request

Next Steps

- Staff will execute grant agreement and work with AB Tech to develop a subrecipient agreement and work towards project milestones

Request for Board Action

- Authorize the County Manager to accept the Notification of Award and the terms of the Economic Development Administration grant agreement and enter into supporting agreements to implement project.

Grant Application

WNC Futures Factory Project Scope

- Build a 70,000 square foot workforce training and innovation center
  - AB Tech will program the workforce training center
  - An implementation partner for the innovation center will be selected through a competitive procurement process
- Support regional recovery from T.S. Helene by boosting economic opportunity, reskilling workforce, and repositioning our manufacturing base
- Partner with six universities in the North Carolina system, six regional community colleges, and industry partners



Notification of Award

Timeline for Notification of Award

- Announced July 27, 2026
- Grant Agreement received August 6, 2026
  - Lead Applicant: AB Tech
  - Co-applicant: Buncombe County
- Agreement must be signed by applicants by September 8, 2026
  - County Manager required to sign Acknowledgment of Grant
  - Kicks off 60-day Special Conditions Time period

Funding Award

	Awarded
Federal Share (EDA)	$29,219,755
AB Tech (Article 46)	$5,000,000
North Carolina (State Improvement Capital Fund)	$3,195,785
Total	$37,415,540

Special Conditions and Grant Construction Periods

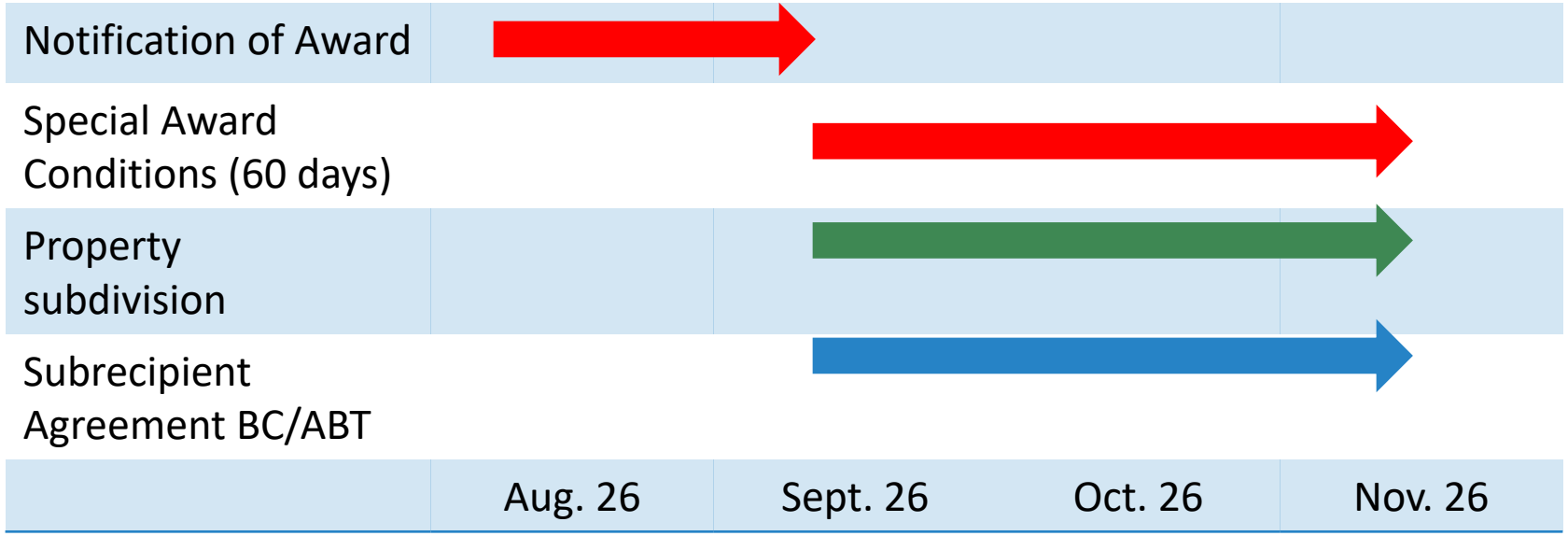
Special Conditions (60-Day period)

- Transfer of 13.18 acre parcel from Biltmore Farms to AB Tech
  - Will require survey and subdivision of property
  - No expenditure of funds permitted until this step is completed

Grant Construction Period (52-Month performance period)

- 24 months for design from date of award notification
- 48 months for construction from date of award notification
- 52 months for project completion and close out from date of award notification

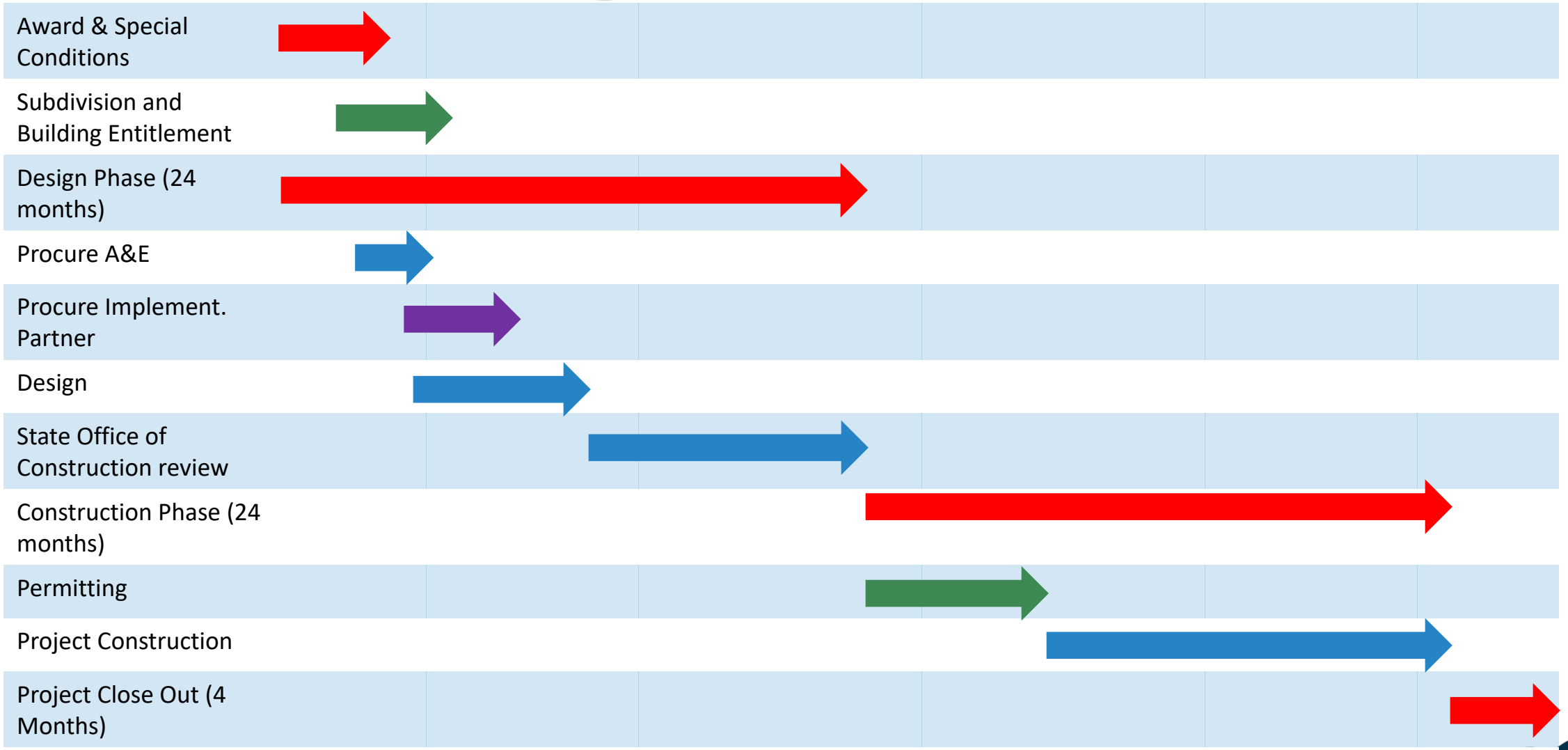
Award and Special Conditions Timeline



Roles & Responsibilities

- **Land of Sky**
  - EDA Grant Management
  - Primary point of contact for EDA
  - Participant in all procurements
- **AB Tech**
  - Lead Applicant
  - Programming of workforce space
  - Lead procurement of innovation operating partner
  - Participant in construction-related procurement(s)
- **Buncombe County**
  - Co-Applicant
  - Construction Management
    - Lead procurement of Architecture and Engineering and Construction
    - Provide Construction Management Services
    - Financial management of related project expenses
  - Participant in procurement of innovation partner
  - Compliance with State Office of Construction design review

Estimated Design and Construction Timeline



Grant Follow Up Time Period

- For construction awards, recipients must report job creation/retention and private investment leverage at three, six, and nine years after an EDA investment

Next Steps and Request

Next Steps

- Staff will execute grant agreement and work with AB Tech to develop a subrecipient agreement and work towards project milestones

Request for Board Action

- Authorize the County Manager to accept the Notification of Award and the terms of the Economic Development Administration grant agreement and enter into supporting agreements to implement project.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MANAGER TO ENTER INTO A GRANT AGREEMENT WITH THE ECONOMIC DEVELOPMENT ADMINISTRATION AND OTHER NECESSARY AGREEMENTS TO CONSTRUCT THE WESTERN NORTH CAROLINA FUTURES FACTORY PROJECT.

WHEREAS, the County has authority, pursuant to N.C. Gen. Stat. §153A-14, to apply for and receive grants from the federal government and to enter into contracts for the administration of said grants; and

WHEREAS, A-B Technical Community College (herein "AB Tech") and Buncombe County applied for approximately $30M in federal grant funding from the Economic Development Administration (US Department of Commerce) for the Western North Carolina (WNC) Futures Factory Project; and

WHEREAS, AB Tech and U.S. Economic Development Administration requested that Buncombe County serve as a co-recipient on the grant award; and

WHEREAS, the U.S. Economic Development Agency has provided a notice of award for $29,219,755 to be used in conjunction with non-federal matching funds to construct the project; and

WHEREAS, the Board of Commissioners believe that this grant is important and necessary to assist in the economic development of Buncombe County.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

1. The County Manager is hereby authorized to enter into an agreement with the Economic Development Administration, to accept a grant as a co-recipient in the amount of $29,219,755 to be used to construct the WNC Futures Factory Project.

2. The County Manager is authorized to execute any agreements necessary to effectuate the intent of this resolution.

ADOPTED this the 1st day of September, 2026

ATTEST

_____
Sarah Gross, Clerk to the Board

BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE

BY: _____
Martin Moore, Vice Chair

APPROVED AS TO FORM

_____

County Attorney

Attachment 1

Asheville-Buncombe Technical Community College

ED26ATL0G0174

Authorized Scope of Work

SCOPE OF WORK: Recipient(s) agrees to undertake, prosecute and complete the Scope of Work (SOW) for this Project funded by this Award which SOW is approved and agreed to by the Government as subsequently amended in mutually agreed upon written change order(s) and/or SOW amendment(s), if any. The SOW shall be as set forth and described in a.) the application submitted by Recipient(s) and/or Recipient's authorized representative(s) to the Government for this Award together with b.) all enclosures, materials, documents and other submittals accompanying and supporting the application, c.) all additional materials, documents and/or correspondence requested by the Government and submitted by Recipient(s) and/or Recipient's authorized representative(s) in support and furtherance of the application and d.) such change(s) and/or SOW amendments, if any, requested in writing by the Recipient(s) and/or Recipient's authorized representative subsequent to the date of this Award and approved and agreed to in writing by the Government. To the extent such additional materials, documents and/or correspondence amends and/or clarifies the application, such amendment or clarification shall be controlling. It is agreed that the Recipient(s) and Government intend that the SOW describes a discrete, detailed and specific project that is funded and authorized by this Award and to that end the application and the above-described additional information shall be fairly construed to and shall describe the SOW. As more particularly described in the items B-1 and B-2 of the ED-900 of the grantee's application.

This project will construct a new 70,000 sq foot advanced manufacturing innovation hub (the Future's Factory) on a 13-acre site in Buncombe County, with associated site work, parking, utility connections on site (water, sewer, and fiber) and stormwater management measures included as part of the proposed scope of work. The project is intended to be both a training center and a manufacturing center of innovation, helping converge necessary partners to help ideate, develop and commercialize new products that can be manufactured in the region. The project proposes a single facility with two primary components: (1) High Bay Industrial Program Space consisting of approximately 52,000 sq feet and (2) 18,000 sq ft of two-story training and office space for workforce training.

Line Item Budget

Asheville-Buncombe Technical Community College

ED26ATL0G0174

Authorized Budget

Estimated Funding ($)	Proposed	Approved
Federal Share (EDA Amount)	$ 29,219,755	$ 29,219,755
Non-Federal Matching Share	$ 8,195,785	$ 8,195,785
Total Project Costs	**$ 37,415,540**	**$ 37,415,540**

Construction

Cost Classification	Proposed	Approved
Administrative and Legal Expenses	$ 40,000	$ 40,000
Land, Structures, Rights-of-Way, etc.	$ 0	$ 0
Relocation Expenses and Payments	$ 0	$ 0
Architectural and Engineering Fees	$ 2,599,554	$ 2,599,554
Other Architectural and Engineering Fees	$ 775,872	$ 775,872
Project Inspection Fees	$ 224,000	$ 224,000
Site Work	$ 5,615,036	$ 5,615,036
Demolition and Removal	$ 0	$ 0
Construction	$ 26,379,386	$ 26,379,386
Equipment	$ 0	$ 0
Miscellaneous	0	$ 0
Contingencies	$ 1,781,692	$ 1,781,692
Total Project Costs	**$ 37,415,540**	**$ 37,415,540**

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS

March 17, 2026

Table of Contents

PART I: GENERAL PROVISIONS 4
A. Construction Award Purpose 4
B. Authorities 4
1. In General 4
2. PWEDA 4
3. EDA Regulations 4
4. Conflicts Among Authorities 4
C. Updates to Authorities 4
1. Updates to Regulations and Requirements 4
2. Applicability to the Award 5
D. Variances 5
E. Recipient as Trustee 5
F. Additional Funding 5
G. Definitions 5
H. Reaffirmation of Application and Award Acceptance 5
PART II: SPECIAL REQUIREMENTS FOR EDA CONSTRUCTION PROJECTS 7
A. Financial Requirements 7
1. Financial Reports 7
2. Disbursements 7
3. Federal and Non-Federal Cost Sharing 8
4. Budget Revisions and Transfer of Funds 8
5. Indirect Costs and Facilities and Administrative Costs 9
6. Incurring Costs Prior to Award 10
7. Program Income 10
B. Programmatic Requirements 10
1. Project Progress and Performance Reporting 10
2. Time Extensions 11
3. Interim Reporting of Significant Project Developments 12
4. Programmatic Changes 12
5. Government Performance and Results Act 12
6. Beneficiary Compliance 13
7. Hold Harmless 13
8. Prohibition on Use of Third Parties to Secure Award 13
9. Payment of Attorneys' or Consultants' Fees 13
10. Recipient's Duty to Refrain from Employing Certain Government Employees 13
11. Commencement of Construction 14
12. Project Sign and Use of EDA Logo 14
13. Efficient Administration of Project 15
14. Conflicts-of-Interest Rules 15

15. Records-Keeping Requirements 16
16. Termination Actions 17
17. Project Closeout Procedures 18
18. Freedom of Information Act 20

C. Additional Requirements Related to Construction Projects 20
1. The Davis-Bacon Act, as amended (40 U.S.C. §§ 3141–3144, 3146, 3147; 42 U.S.C. § 3212) 20
2. The Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§ 3701-3708) 20
3. The National Historic Preservation Act of 1966, as amended (54 U.S.C. § 300101 et seq.), and the Advisory Council on Historic Preservation Guidelines (36 CFR part 800) 20
4. Preservation of Historical and Archeological Data (54 U.S.C. § 312502) 20
5. The Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 et seq.) 21
6. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 et seq.) 21
7. The Energy Conservation and Production Act (42 U.S.C. § 6834 et seq.) 21
8. Executive Order 13717, "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction 21
9. Compliance with Local Construction Requirements 21

D. Non-Discrimination Requirements 21

E. Audits 21
1. General 21
2. Requirement to Submit a Copy of the Audit to EDA 22

F. Tribal Employment Rights Ordinances 22

G. EDA Contracting Provisions for Construction Projects 22

H. Property 22
1. Standards 22
2. Title 23
3. EDA's Interest in Award Property 23
4. Insurance and Bonding 25
5. Leasing Restrictions 25
6. Eminent Domain 26
7. Disposal of Real Property 26
8. Reporting on Property 26

I. Environmental Requirements 27
1. General 27
2. Compliance with Other Applicable Environmental Requirements 27

J. Buy America Preferences 28

PART III: DEPARTMENT OF COMMERCE GENERAL TERMS AND CONDITIONS 29

PART I:
GENERAL PROVISIONS

A. Construction Award Purpose

This financial assistance award (the Award), executed by the Economic Development Administration (EDA) and the recipient (Recipient), is awarded for the purpose of carrying out the design, engineering, or construction of certain physical infrastructure as specifically set forth in the Award's scope of work.

B. Authorities

1. In General

Recipient must administer this Award in conformance with the terms of the Award, including any properly executed amendment thereto, the EDA-approved budget and scope of work, these EDA General Terms and Conditions for Construction Projects (EDA Construction GTCs) and the Department of Commerce (DOC) Financial Assistance General Terms and Conditions (DOC General Terms and Conditions), as well as any specific award conditions; relevant policies issued by EDA; applicable Federal statutes, regulations, and Executive Orders; and the provisions of the Office of Management and Budget (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* codified at 2 CFR part 200 (OMB Uniform Guidance).

2. EDA's Statutory Authorities

EDA's construction programs are authorized as follows:

a. The Public Works and Economic Development (Public Works) program is authorized under section 201 and the Economic Adjustment Assistance program is authorized under section 209 of the Public Works and Economic Development Act of 1965, as amended (PWEDA) (42 U.S.C. §§ 3141 and 3149, respectively).

b. The Regional Technology and Innovation Hubs Program (Tech Hubs) is authorized under section 28 and the Distressed Area Recompete Pilot Program (Recompete) is authorized under section 29 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (Stevenson-Wydler) (15 U.S.C. §§ 3722a and 3722b, respectively).

3. EDA Regulations

The regulations implementing PWEDA are contained in chapter III of title 13 of the Code of Federal Regulations (CFR), and apply in full to this Award. The regulations specific to EDA construction projects can be found at 13 CFR parts 305 and 314, and subpart A to part 307.[1]

4. Conflicts Among Authorities

Any inconsistency or conflict among the authorities governing the Recipient's administration of this Award will be resolved in the following order of precedence: Federal laws and regulations (including the OMB Uniform Guidance), applicable notices published in the *Federal Register*, Executive Orders, OMB circulars, these EDA Construction GTCs, specific award conditions, and

[1] For construction projects awarded under Tech Hubs and Recompete, only the following regulations specific to EDA construction projects apply: subpart B to 13 CFR part 305 and 13 CFR part 314.

any written policy guidance issued by EDA. However, a specific award condition may amend or take precedence over a provision of these EDA Construction GTCs on a case-by-case basis, when warranted by the specific circumstances of the Award. In the event of a conflict between Parts I or II of these EDA Construction GTCs and Part III, which incorporates the DOC General Terms and Conditions, Parts I and II will control.

C. **Updates to Authorities**

1. **Updates to Regulations and Requirements**

The DOC, EDA, or OMB may issue changes from time to time to the regulations and other policies and requirements that apply to this Award. Such changes may upon occasion increase administrative or programmatic flexibility in administering this Award in a manner that is mutually beneficial to EDA and the Recipient. In addition, if required by law, these changes may impose new requirements. The implementation of any such regulatory, administrative, or programmatic change in administering this Award requires EDA's prior written approval.

2. **Applicability to the Award**

These EDA Construction GTCs apply to the Award as of the Federal award date, as defined at 2 CFR § 200.1, or, if attached to the Award by amendment, as of the effective date of such amendment.

D. **Variances**

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

E. **Recipient as Trustee**

The Recipient holds grant funds and any property acquired or improved with EDA assistance in trust for the public purposes of an Award. The Recipient's obligation to the Federal Government continues for the estimated useful life of the Project, as determined by EDA, during which EDA retains an undivided equitable reversionary interest (the Federal Interest) in property acquired or improved, in whole or in part, with EDA investment assistance. *See* 13 CFR § 314.2 ("Federal Interest").

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

F. **Additional Funding**

EDA has no obligation to provide any additional funding in connection with the Award. Any change to the Award to increase funding or to extend the period of performance is at the discretion of EDA, subject to the availability of funds, via an amendment executed by the Grants Officer.

G. **Definitions**

Capitalized terms and acronyms used but not otherwise defined in these EDA Construction GTCs have the meaning ascribed to them at 13 CFR §§ 300.3, 302.20, 307.8, and 314.1, and subpart A to 2 CFR part 200.

H. **Reaffirmation of Application and Award Acceptance**

By accepting this Award, the Recipient's authorized representative hereby reaffirms and states that:

a. All data in the Application were true and correct when the Application was submitted and remain true and correct as of the date of this Award;
b. The Application was, as of the date of submission and the date of this Award, duly authorized as required by local law by the governing body of the Recipient; and
c. The Recipient has read, understood, and will comply with all terms of this Award, including the assurances and certifications submitted as part of the Application (including assurances submitted through the System for Award Management (SAM.gov)).

Acceptance of the Award is established by any action on the part of the Recipient indicating an intent to accept the Award, including by signing the Notice of Award, or any successor Award document, (either via a "wet" signature or electronically) or by requesting any disbursement of Award funds. "Application" means all forms, documentation, and any information submitted to EDA as part and in furtherance of a request for an Award and includes submissions made in response to any request by EDA after submission of the initial Application.

PART II:
SPECIAL REQUIREMENTS FOR EDA CONSTRUCTION PROJECTS

A. Financial Requirements

1. Financial Reports

a. During the period of performance, the Recipient must submit financial reports as follows, unless otherwise specified in a specific award condition.

i. *Reports on Award reimbursements*. In accordance with 2 CFR § 200.328 ("Financial reporting"), the Recipient must submit a "Federal Financial Report" (Form SF-425 or any successor form) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a specific award condition. Reports are due no later than 30 calendar days following the end of each reporting period, and instructions for completing and submitting Form SF-425 will be discussed during the Project kick-off meeting. Recipients may contact their EDA Project Officer with questions on how to complete or submit the report, if necessary, but they must submit reports on time and are encouraged to pose such questions sufficiently before the deadline to allow for complete, accurate, and timely submission of required reports.

ii. *Reports on Award advances*. While EDA generally does not advance funds for construction projects, when the agency does so, the Recipient must submit Form SF-425 within 15 business days following the end of each quarter for an award where the Federal share of costs is under $1 million. In accordance with 2 CFR § 200.328, because of increased risk and the need to ensure the appropriate use of Federal funds, where EDA advances funds under an award where the Federal share of costs is $1 million or more the Recipient must submit Form SF-425 within 15 business days following the end of each month, or as otherwise specified in a specific award condition.

b. The Recipient must submit a final Form SF-425 no later than 120 calendar days after the end date of the period of performance, or as otherwise specified in the specific award conditions. *See also* Part II, section B.17.c "Final reporting deadline" of these EDA Construction GTCs.

c. Noncompliance with the financial reporting requirements may result in appropriate enforcement action under this Award, including but not limited to suspension of Award payments, disallowance of costs or termination of an award. A Recipient's non-compliance with financial reporting requirements will also be taken into account in EDA's consideration of any future applications for EDA financial assistance (*see* 2 CFR § 200.206(b)(2)(iii) and section A.06 ("Unsatisfactory Performance or Non-Compliance with Award Provisions") of the DOC General Terms and Conditions, which are incorporated in Part III of these EDA Construction GTCs).

d. Financial reports should be submitted to the Project Officer in electronic format, unless otherwise specified in the specific award conditions.

2. Disbursements

a. *Method of payment*. The Grants Officer determines the appropriate method of payment. Unless otherwise specified in a specific award condition, the method of payment under this Award

will be reimbursement. Payments will be made through electronic funds transfers directly to the Recipient's bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3720B *et seq.*). The Award number must be included on all payment-related correspondence, information, and forms.

b. *Disbursement requests*. The Recipient must use Form SF-271, "Outlay Report and Request for Reimbursement for Construction Programs," to request reimbursement under the Award. Substantiating invoices and/or vouchers also must be provided. Each request for the disbursement of funds must be made to the Project Officer. Form SF-271 can be downloaded from the Grants.gov post-award reporting forms website at https://www.grants.gov/forms/forms-repository/post-award-reporting-forms.

   i. *Initial disbursement request*. For the initial disbursement only, the Recipient must complete and submit Form SF-3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," along with Form SF-271, to the Project Officer.

   ii. *Interim disbursement requests*. All requests for interim disbursement must be submitted using Form SF-271 and include substantiating invoices and/or vouchers.

   iii. *Final disbursement request*. *See* Part II, section B.17 "Project Closeout Procedures" of these EDA Construction GTCs.

3. **Federal and Non-Federal Cost Sharing**

   a. For purposes of this Award, the Federal share is the amount of EDA funds invested under the Award, while the non-Federal share, or "Matching Share," means non-EDA funds and any in-kind contributions that are approved by EDA and provided by the Recipient or by third parties as a condition of the Award. The non-Federal share does not include "commitments" that are often requested under EDA's Stevenson-Wydler programs.

   b. By accepting the Award, the Recipient certifies that the Matching Share of Project costs is committed to the Project, available as needed, and not conditioned or encumbered in any way that precludes its use consistent with the requirements of the Award. *See* 13 CFR § 301.5 ("Matching share requirements").

   c. In the case of an overrun at the construction bid opening, the Recipient may augment the Matching Share by an amount sufficient to cover the excess cost. The Recipient must furnish a letter to EDA identifying the source of the additional funds and confirming that all Matching Share meets the requirements of 13 CFR § 301.5. *See* 13 CFR § 305.10 ("Bid underrun and overrun").

4. **Budget Revisions and Transfer of Funds**

   a. *Approved budget plan; notification of deviations*. The EDA-approved budget set forth in the specific award conditions or otherwise incorporated under the Award is the budget plan for the Project. The Recipient must notify EDA of deviations from the budget in accordance with 2 CFR § 200.308 ("Revision of budget and program plans"). If prior written approval is not required under 2 CFR § 200.308, the Recipient may request the Grants Officer's review of and guidance on proposed revisions to the budget.

b. *Requesting budget revisions*. Requests for budget revisions to the EDA-approved budget must be submitted through the Project Officer to the Grants Officer, who will make the final determination on such requests and notify the Recipient in writing.

c. *Budget revisions that require an amendment*. In accordance with 2 CFR § 200.308(f) and (i), an amendment executed by the Grants Officer are required for budget revisions when:

   i. The revision results from changes in the scope or the objective of the Project;

   ii. The need arises for additional EDA funds to complete the Project;

   iii. The Federal share exceeds the simplified acquisition threshold as set in the Federal Acquisition Regulations (FAR) at 48 CFR part 2, subpart 2.1, and the cumulative amount of transfers among direct cost categories exceeds or is expected to exceed 10 percent of the total budget, including cost share, as last approved by EDA; and

   iv. A revision is desired that involves specific costs for which prior written approval requirements may be imposed consistent with applicable cost principles listed in subpart E of 2 CFR part 200 ("Cost Principles").

d. *Prior approval for transfers between construction and non-construction items*. When an Award supports both construction and non-construction work, the Recipient must obtain prior written approval from the Grants Officer before making any fund or budget transfer from non-construction to construction or vice versa. *See* 2 CFR § 200.308(f)(9).

e. *Project underrun amounts*. Underrun amounts will be transferred to the contingencies line item. Contingency funds are to be used to address situations resulting from unknown conditions and changes required for the fulfillment of authorized activities under this Award. EDA may approve the use of underrun funds to increase the Federal share of the Project or further improve the Project, as long as EDA determines that the use is consistent with the original purpose of the Award. *See* 13 CFR § 308.1 ("Use of funds in projects constructed under projected cost").

f. *Additional EDA funding in case of Project overrun amounts*. In accepting this Award, the Recipient agrees to fund any overrun amounts from non-Federal sources, or if the Recipient is unable or unwilling to do so, to request termination of the Award. Additional EDA assistance for the Project is at the discretion of EDA and may not be approved.

5. **Indirect Costs and Facilities and Administrative Costs**

   a. Indirect costs, or facilities and administrative (F&A) costs for educational institutions, are generally not applicable under this Award. See the definition of "indirect cost" at 2 CFR § 200.1.

   b. When indirect costs are applicable, they will not be allowable charges against the Award unless approved under the Award and specifically included as a line item in the Award's approved budget. *See* section B.06 of the DOC General Terms and Conditions ("Indirect or Facilities and Administrative Costs"), which are incorporated into these EDA Construction GTCs in Part III.

6. **Incurring Costs Prior to Award**
   Project activities, including the procurement of goods and services, which may include construction activities, carried out prior to EDA's approval of this Award are done at the sole risk of the Recipient and at the risk of not being reimbursed by EDA. Such activity may result in the rejection of the Application, the disallowance of costs, or other adverse consequences as a result of noncompliance with EDA or Federal requirements, including but not limited to procurement requirements, civil rights requirements, Federal labor standards, or environmental and historic preservation requirements. The Grants Officer must authorize pre-award costs and activities in writing, and such costs must also be allowable under relevant Federal cost principles and the specific award terms and be included in the EDA-approved budget. Pre-award costs not included in the authorized budget are not allowable and will not be reimbursed. *See* 2 CFR § 200.458 and 13 CFR § 302.8 ("Pre-approval Investment Assistance costs").

7. **Program Income**
   For Projects that generate revenue (*e.g.*, rent for buildings or real property constructed or improved with EDA funds, rent or fees charged for use of equipment purchased with EDA funds, fees charged by the Recipient or a third party in connection with Project operations, etc.), the Recipient agrees, for the estimated useful life of the EDA-assisted facility or equipment, to use income generated from the facility or equipment, in the following order of priority unless modified by a specific award condition:

   a. Administration, operation, maintenance, and repair of Project facilities in a manner consistent with good property management practice and in accordance with established building codes. This includes, where applicable, repayment of indebtedness resulting from any EDA-approved encumbrance (*e.g.*, approved mortgage) on the EDA-assisted facility. In the case of equipment, administration, operation, maintenance, and repair of the equipment, or the facility in which the equipment is located as required to maintain and operate the equipment, for the equipment's estimated useful life.

   b. Economic development activities that are authorized for support by EDA, provided such activities meet the economic development purposes of PWEDA or, as appropriate, the purposes of the relevant authorizing statute, and are located within the designated Project region.

   c. Any program income in excess of paragraphs a. and b. of this section that is generated during the period of performance must be deducted from total allowable Project costs in accordance with 2 CFR § 200.307(b)(1). *See also* 2 CFR § 200.307 ("Program income").

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

B. **Programmatic Requirements**

1. **Project Progress and Performance Reporting**
   a. Project progress reports must be submitted in accordance with the procedures set out in 2 CFR § 200.329 ("Monitoring and reporting program performance"), as applicable, and as

indicated below. Failure to submit required reports in a complete, accurate, and timely manner may result in the withholding of payments under this Award; deferral of processing of new awards, amendments, or supplemental funding; or other appropriate enforcement action. *See* 13 CFR § 302.18 ("Post-approval requirements") and section A.06 ("Unsatisfactory Performance or Non-Compliance with Award Provisions") of the DOC General Terms and Conditions, which are incorporated in Part III of these EDA Construction GTCs.

b. Unless otherwise specified in a specific award condition, the Project progress report must contain the following information for each Project program, function, or activity:

   i. A comparison of planned and actual accomplishments according to the timetable or list of Project objectives in this Award;
   ii. An explanation of any delays or failures to meet the Project timetable or Project goals; and
   iii. Any other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

   Project progress reports must be submitted for each calendar quarter to the Project Officer. Each Project progress report must be submitted in accordance with the deadlines outlined in the specific award conditions, or, when not otherwise specified, Project progress reports will be due on a quarterly basis not later than January 31, April 30, July 31, and October 31 for the immediately previous quarter. The final Project progress report must be submitted to EDA no later than 120 calendar days after the end date of the period of performance, or as otherwise specified in the specific award conditions. *See* Part II, section B.17.c "Project Closeout Procedures" of these EDA Construction GTCs for more information on Project Closeout.

c. The Recipient must submit quarterly Project progress reports to the EDA Project Officer electronically unless otherwise specified in the specific award conditions.

2. **Time Extensions**

   a. Unless otherwise authorized by a specific award condition, any extension of the period of performance can only be authorized by the Grants Officer in writing.

   b. The Recipient is responsible for implementing the Project in accordance with the development time schedule contained in this Award. As soon as the Recipient becomes aware that it may not be possible to meet the development time schedule, the Recipient must notify the Grants Officer. The Recipient's notice to EDA must contain the following:

      i. An explanation of the Recipient's inability to complete work by the specified date (*e.g.*, a lengthy period of unusual weather delayed the contractor's ability to excavate the site, major re-engineering required in order to obtain State or Federal approvals, unplanned environmental mitigation required, etc.);

      ii. A statement describing any other contemplated changes to the Project;

      iii. Documentation that demonstrates there is still a bona fide need for the Project; and

      iv. A statement that no further delay is anticipated and that the Project can be completed within the revised time schedule.

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

3. **Interim Reporting of Significant Project Developments**

   The Recipient must promptly report any event that may have a significant impact upon the Project, including delays or adverse conditions that may materially affect the ability of the Recipient to attain Project objectives within established time periods or meet the development time schedule without waiting for the next quarterly progress report. The Recipient should report such events to the Project Officer in the most time-expedient way possible and then, if the initial report was not in writing, report the event to the Project Officer in writing. Such a report must include a statement of the event or issue, a statement of the course of action taken or contemplated to resolve the matter, and any Federal assistance needed to resolve the situation. If budget changes are required, the Recipient must submit a written budget revision request. *See* 2 CFR § 200.329(e) ("Monitoring and reporting program performance") and Part II, section A.4. "Budget Revisions and Transfers of Funds" of these EDA Construction GTCs.

4. **Programmatic Changes**

   a. In accordance with 2 CFR § 200.308 ("Revision of budget and program plans"), the Recipient must submit a written request for any proposed programmatic changes, including all changes to the scope of the Award, to the Project Officer. *See* Part II, section A.4 "Budget Revisions and Transfers of Funds" of these EDA Construction GTCs for budget revisions that may require the prior written approval of EDA. In these cases, the Project Officer will forward the request to the Grants Officer, who makes the final decision on approving the request. In addition, the Recipient must request prior written approvals for certain items of cost in accordance with 2 CFR § 200.407 ("Prior written approval (prior approval)").

   b. Any changes made to the Project without EDA's approval are made at the Recipient's own risk, and may result in disallowance of costs, suspension, termination, or other EDA action with respect to the Award. *See* 13 CFR § 302.7(b) ("Amendments and changes").

   c. *Contract Change Orders*. After construction contracts for the Project have been executed, it may become necessary to alter them through a formal contract change order that must be issued by the Recipient and accepted by the contractor. All contract change orders must be reviewed by EDA, even if EDA is not participating in the cost of the change order or the contract price is to be reduced. Work on the Project may continue pending EDA review and approval of the change order, but all such work will be at the Recipient's risk as to whether the cost of the work is eligible for EDA reimbursement. *See* 13 CFR § 305.13 ("Contract change orders").

5. **Government Performance and Results Act**

   In addition to quarterly Project progress reports, EDA may require the Recipient to report on Project performance beyond the end date of the period of performance for Government Performance and Results Act (GPRA) or other purposes. In no case will the Recipient be required to submit any GPRA report more than ten years after the date of Award closeout. Data used by the Recipient in preparing reports must be accurate and, whenever possible, from independent sources. *See* 13 CFR § 302.16 ("Accountability").

6. **Beneficiary Compliance**
   In the event a beneficiary of the Project fails to comply in any manner with certifications, assurances, or agreements that such beneficiary has entered into in accordance with EDA's requirements, the Recipient will reimburse EDA the Award amount or an amount to be determined by the EDA pursuant to 13 CFR §§ 314.4 ("Unauthorized use of property") and 314.5 ("Federal Share"). When EDA determines that the failure of a beneficiary to comply with EDA requirements affects a portion of the property benefited by the Award, the Recipient will reimburse EDA proportionately.

7. **Hold Harmless**
   To the maximum extent permitted by law, the Recipient agrees to indemnify and hold the United States harmless from and against all liabilities that the United States may incur due to the actions or omissions of the Recipient, including to the extent that such liabilities are incurred because of toxic or hazardous contamination or groundwater, surface water, soil, or other conditions caused by actions of the Recipient or any of its predecessors (other than the United States or its agents) on the property. *See* 13 CFR § 302.19 ("Indemnification").

8. **Prohibition on Use of Third Parties to Secure Award**
   Unless otherwise specified in the application materials supporting this Award, the Recipient warrants that no person or selling agency has been employed or retained to solicit or secure this Award upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by the Recipient for the purpose of securing business. For breach or violation of this warranty, EDA has the right to terminate this Award for material noncompliance, or at its discretion, to deduct from the Award amount, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

9. **Payment of Attorneys' or Consultants' Fees**
   No Award funds may be used, directly or indirectly, to reimburse attorneys' or consultants' fees incurred in connection with obtaining an award under PWEDA, such as, for example, preparing an application for EDA assistance. However, ordinary and reasonable attorneys' and consultants' fees incurred for meeting Award requirements (*e.g.*, conducting a title search or preparing plans and specifications) may be eligible Project costs and may be paid out of Award funds, provided such costs are otherwise eligible. *See* 13 CFR § 302.10 ("Attorneys' and consultants' fees, employment of expediters, and post-employment restriction").

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

       i. On the date EDA executes this Award or within the one-year period ending on that date, served as an officer, attorney, agent, or employee of the Department, and
       ii. Occupied a position or engaged in activities that the Assistant Secretary determines involved discretion with respect to the funding of an Award.

b. In addition to the types of Recipients noted in paragraph a. above, EDA may require another Eligible Applicant to execute an agreement to abide by the above-described post-employment restriction on a case-by-case basis—for example, when an institution of higher education implements activities under or related to the Award through a separate nonprofit organization or association.

c. The two-year period and associated restrictions referenced above also will apply beginning on the date that EDA executes any cost amendment to this Award that provides additional funds to the Recipient.

See also 13 CFR § 302.10 ("Attorneys' and consultants' fees, employment of expediters, and post-employment restriction").

11. **Commencement of Construction**

a. *Delayed construction starts*. If significant construction (as determined by EDA) is not commenced within two years of the Award date or by the date estimated for start of construction in this Award (or the expiration of any extension granted in writing by EDA), whichever is later, this Award will be automatically suspended by a written notification issued by the Grants Officer and may be terminated if EDA determines, after consultation with the Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously.

b. *Early construction starts*. The Recipient must make a written request to EDA for early construction start permission (that is, after the date of Award, but before EDA gives formal approval for construction to commence). Costs incurred under a contract are only allowable after EDA determines that the award of the contract is in compliance with all terms and conditions of the Award. If construction commences prior to EDA's determination, the Recipient proceeds at its own risk until EDA's review and concurrence. *See* 13 CFR § 305.11 ("Contract awards; early construction start").

12. **Project Sign and Use of EDA Logo**

a. *Project sign*. The Recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign (or signs) in a conspicuous place at the Project site indicating that the Federal Government is participating in the Project. EDA will provide specifications for the sign and may require more than one sign if site conditions so warrant. If the EDA-recommended sign specifications conflict with State or local law, the Recipient may modify such recommended specifications so as to comply with State or local law. *See* 13 CFR § 305.12 ("Project sign").

b. *Use of EDA logo*. With EDA's prior written permission, the Recipient may use the EDA logo to publicize the Award as well as to amplify the impact of the Award. In such cases, the EDA logo may be displayed on Award-related materials that discuss or advertise the purpose or use of the Project (*e.g.*, websites, social media, fliers, pamphlets, brochures). To seek permission to use the EDA logo in other manners, the Recipient must contact the EDA Project Officer and provide a written description of how the Recipient proposes to use the EDA logo. In general, the EDA logo may be used either alone or next to Recipient's logo. The EDA logo may not be used to endorse a third party as interpreted at EDA's sole

discretion. The Recipient must not use the EDA logo in a negative or defamatory manner, and the Recipient must not use the U.S. Department of Commerce (DOC) logo. EDA may rescind such permission at any time.

13. **Efficient Administration of Project**

The Recipient agrees to properly and efficiently administer, operate, and maintain the Project for its estimated useful life, as required by section 504 of PWEDA (42 U.S.C. § 3194). If EDA determines at any time during the estimated useful life of the facility that the Project is not being properly and efficiently administered, operated, and maintained, EDA may terminate this Award (if it is still active) and/or may take appropriate enforcement action to protect the Federal Interest in the Project, including requiring the Recipient to repay the Federal Share. *See* 13 CFR §§ 302.12 ("Project administration, operation and maintenance"), 302.18 ("Post-approval requirements"), and 314.2 ("Federal Interest") through 314.5 ("Federal Share").

14. **Conflicts-of-Interest Rules**

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

b. The Recipient must disclose in writing any potential conflicts of interest to EDA or the pass-through entity as soon as practicable after the identification of such potential conflict. In addition, the Recipient must maintain written standards of conduct to establish safeguards to prohibit an Interested Party from using its position for a purpose that constitutes or presents the appearance of personal or organizational conflicts-of-interest or of personal gain in the administration of an award. *See* 13 CFR § 302.17(a) and (b) ("Conflicts of interest"), 2 CFR § 200.112 ("Conflict of interest"), as applicable, and assurances submitted as part of the Application, including assurances submitted through SAM.gov or via Form SF-424D ("Assurances – Construction Projects").

c. An Interested Party must not receive any direct or indirect financial or personal benefit in connection with this Award or its use for payment or reimbursement of costs by or to the Recipient. A conflict of interest generally exists when an Interested Party participates in a matter that has a direct and predictable effect on the Interested Party's personal or financial interests. A conflict also may exist where there is an appearance that an Interested Party's objectivity in performing his or her responsibilities under the Project is impaired. For example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an Interested Party is unable to render impartial assistance, services or advice to the Recipient, a participant in the Project or to the Federal government. Additionally, a conflict of interest

may result from non-financial gain to an Interested Party, such as benefit to reputation or prestige in a professional field. *See* 13 CFR § 302.17(a) and (b).

d. Section F.01.c of the DOC General Terms and Conditions, which are incorporated as Part III of these EDA Construction GTCs, specifies procurement-related conflicts of interest requirements. *See also* 2 CFR §§ 200.317-200.327 ("Procurement Standards").

15. **Records-Keeping Requirements**

a. *Records.* The Recipient must maintain records that document compliance with the terms and conditions of this Award. At a minimum, the Recipient's records must fully disclose:

i. The amount and disposition of all EDA funding under the Award;

ii. All Project expenditures and procurement actions;

iii. The total cost of the Project that the Award funds;

iv. Copies of all reports and disbursement requests submitted to EDA;

v. The benefits/impacts of the Project, as reported through GPRA and other reports to EDA;

vi. The amount and nature of the portion of Project costs provided by non-EDA sources;

vii. Contractor compliance with applicable Federal requirements; and

viii. Such other records as EDA requires the Recipient to maintain, including such records as will facilitate an effective audit.

b. *Records retention*. In general, and in accordance with 2 CFR § 200.334 ("Record retention requirements"), all records pertinent to this Award must be retained for a period of three years from the date of submission of the final Project financial report (the final Form SF-271 for disbursement). The only exceptions are the following:

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

ii. When the Recipient or any subrecipient is notified in writing by EDA, its cognizant agency for either audit or indirect costs, its oversight agency for audit, or the relevant pass-through entity to extend the retention period, it must retain the records as directed.

iii. Records for property and equipment acquired with the support of Federal funds must be retained for three years after final disposition of the relevant property or equipment.

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

v. *Records for program income transactions after the period of performance*. In some cases, Recipients and any subrecipient must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the Recipient's or any subrecipient's fiscal year in which the program income is earned. *See also* Part II, section A.7 "Program Income" of these EDA Construction GTCs.

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

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

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

c. **Monitoring and reporting obligations**. The Recipient is responsible for monitoring any subrecipients and contractors to ensure their compliance with the records retention requirements. The Recipient must immediately notify the Project Officer if records are lost. *See* 2 CFR §§ 200.331 – 200.333 ("Subrecipient Monitoring and Management").

16. **Termination Actions**

a. In accordance with 2 CFR § 200.340 ("Termination"), this Award may be terminated in whole or in part as follows:

i. *Termination by EDA for the Recipient's failure to comply with the terms and conditions of the Award*. EDA may terminate this Award, in whole or in part, if the Recipient fails to comply with the Terms and Conditions of the Award, including but not limited to:

(1) Any representation made by the Recipient to the Federal awarding agency in connection with the Application for Federal assistance is incorrect or incomplete in any material respect;

(2) The Project has changed substantially, without EDA prior approval, so as to affect significantly the accomplishment of the Project as intended (including an unauthorized use of property as provided in 13 CFR § 314.4 ("Unauthorized Use of Project Property");

(3) The Recipient has violated representations it made in its Application and supporting documents or has violated any of the Terms and Conditions of the Award;

(4) The conflicts-of-interest rules at 13 CFR § 302.17 ("Conflicts of interest") are violated; or

(5) The Recipient fails to report immediately to EDA any change of authorized representative acting in lieu of or on behalf of the Recipient.

See also section A.06 ("Unsatisfactory Performance or Non-Compliance with Award Provisions") of the DOC General Terms and Conditions, which are incorporated in Part III of these EDA Construction GTCs.

ii. *Termination by EDA for convenience*. To the extent authorized by law, EDA may terminate this Award in whole or in part, if the termination is in the interest of EDA, including if the Award no longer effectuates program goals, agency priorities, or the national interest.

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

iv. *Termination pursuant to Award termination provisions*. EDA may terminate this Award pursuant to termination provisions included in the Award. Any Award-specific termination provision will be included as a specific award condition.

v. *Termination by mutual agreement*. EDA with the consent of the Recipient may terminate this Award in whole or in part. In such cases, EDA and the Recipient must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

b. If the Award is wholly or partially terminated, the Recipient remains responsible for compliance with the requirements in 2 CFR §§ 200.344 ("Closeout") and 200.345 ("Post-closeout adjustments and continuing responsibilities").

17. **Project Closeout Procedures**

a. *Project Closeout*. As defined at 2 CFR § 200.1, Project Closeout means the process by which EDA determines that all applicable administrative actions and all required work of the Award have been completed and takes actions as described at 2 CFR § 200.344 ("Closeout"). In the context of an EDA construction award, Project Closeout generally begins with the Recipient's acceptance of the Project from the contractor(s).

b. *Final disbursement*. When Project construction and final inspection have been completed, or substantially completed as determined by EDA, and the Recipient has accepted the Project from the contractor(s), the Recipient can begin the Closeout process by submitting the following documentation to EDA:

i. A request for final disbursement on an executed Form SF-271;

ii. A written certification that all costs charged against this Award (Federal and non-Federal shares) are for eligible activities and represent allowable costs, for which there is documentation in the Recipient's records;

iii. An executed certificate of final acceptance signed by the Recipient and the Recipient's architect/engineer;

iv. The Recipient's certification that its current audit (in accordance with subpart F of 2 CFR part 200), if applicable, has been submitted to the Federal Audit Clearinghouse;

v. The Recipient's certification that its currently valid single or program-specific audit in accordance with subpart F of 2 CFR part 200 ("Audit Requirements"), if applicable, does not contain any material findings (if the Recipient's currently valid audit does contain material findings, the Recipient must submit the applicable audit to the Project Officer, who will review with the Grants Officer before final disbursement); and

vi. Other documentation as may be required by EDA.

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

c. *Final reporting deadline*. The Recipient must submit, no later than 120 calendar days after the end date of the period of performance, or as otherwise specified in the specific award conditions, all financial, performance, and other reports as required by the Terms and Conditions of this Award. The Grants Officer may extend the 120 calendar day submission period upon a written request from the Recipient.

d. *Deadline to liquidate obligations*. Unless EDA authorizes an extension, the Recipient must liquidate all financial obligations incurred under this Award no later than 120 calendar days after the end date of the period of performance.

e. *Post-Closeout requirements*. As noted above in section B.13 "Efficient Administration of Project" of these EDA Construction GTCs, after construction is completed and the Project is closed out financially, the Recipient has an ongoing responsibility to properly administer, operate, and maintain the Project for its estimated useful life (as determined by EDA) in accordance with Award purposes. *See* 13 CFR § 302.12 ("Project administration, operation and maintenance"). The Recipient must comply with all Award requirements and maintain records to document such compliance, which must be made available for inspection by EDA or other Government officials as required.

In addition, in accordance with 2 CFR § 200.345 "Post-closeout adjustments and continuing responsibilities," the Closeout of this Award does not affect any of the following:

i. The right of EDA to disallow costs and recover funds on the basis of a later audit or other Project review;

ii. The Recipient's obligation to return any funds due as a result of later corrections or other transactions;

iii. Audit requirements per subpart F of 2 CFR part 200; and

iv. Requirements for property management and disposition, records retention, and performance measurement reports. *See* subpart D of 2 CFR part 200 ("Post Federal Award Requirements"), as applicable.

f. *GPRA reporting*. As required under GPRA and in accordance with a schedule that will be provided by EDA, the Recipient must submit additional Performance Measurement Reports, generally three, six, and nine years after the date of the Award to accurately and completely

report the impacts of the Project, especially in terms of job creation and private investment leveraging.

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

C. **Additional Requirements Related to Construction Projects**

The Recipient and any subrecipients, must, in addition to other statutory and regulatory requirements detailed in these EDA Construction GTCs and the assurances made to EDA in connection with the Award, comply and require each of its contractors and subcontractors employed in the completion of the Project to comply with all applicable Federal, State, territorial, and local laws, and in particular, the following Federal laws (and the regulations issued thereunder), executive orders, OMB circulars, OMB Uniform Guidance, and local law requirements.

1. **The Davis-Bacon Act, as amended (40 U.S.C. §§ 3141–3144, 3146, 3147; 42 U.S.C. § 3212)**, which requires minimum wages for mechanics and laborers employed on Federal Government public works projects to be based on the wages that the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the Project is to be performed, or in the District of Columbia if the Project is to be performed there.

2. **The Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§ 3701-3708)**, which provides work hour standards for every laborer and mechanic employed by any contractor or subcontractor in the performance of a Federal public works project.

3. **The National Historic Preservation Act of 1966, as amended (54 U.S.C. § 300101 *et seq*.), and the Advisory Council on Historic Preservation Guidelines (36 CFR part 800)**, which require stewardship of historic properties in projects involving Federal funds.

4. **Preservation of Historical and Archeological Data (54 U.S.C. § 312502)**, which requires appropriate surveys and preservation efforts if a Federally licensed project may cause

irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data.

5. **The Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 *et seq*.)**, and the regulations issued thereunder, which prescribe standards for the design and construction of any building or facility intended to be accessible to the public or that may house handicapped employees.

6. **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq*.)**, and implementing regulations issued at 49 CFR part 24 ("Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs"), which establish uniform policies for the fair and equitable treatment of persons, businesses, or farm operations affected by the acquisition, rehabilitation, or demolition of real property acquired for a project financed wholly or in part with Federal financial assistance.

7. **The Energy Conservation and Production Act (42 U.S.C. § 6834 *et seq*.)**, which establishes energy efficiency performance standards for the construction of new residential and commercial structures undertaken with Federal financial assistance.

8. **Executive Order 13717, "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction"**, which requires that new buildings constructed with Federal assistance comply with the earthquake-resistant design provisions of the 2015 editions of the International Building Code (IBC) or the International Residential Code (IRC), nationally recognized building codes promulgated by the International Code Council (ICC), or equivalent codes, consistent with the provisions of and to the extent required by 40 U.S.C. § 3312.

9. **Compliance with Local Construction Requirements**. The Recipient will comply with current local building codes, standards, and other requirements applicable to the Project.

D. **Non-Discrimination Requirements**

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. In addition to the non-discrimination requirements set forth in section G.02 "Non-Discrimination Requirements" of the DOC General Terms and Conditions, which are incorporated in Part III of these Construction GTCs, the Recipient and any subrecipient agrees to comply with Pub. L. No. 92-65, 42 U.S.C. § 3123, which proscribes discrimination on the basis of sex in assistance provided under PWEDA.

E. **Audits**

1. **General**

   a. Non-Federal entities must comply with the audit requirements set out as subpart F to 2 CFR part 200 ("Audit Requirements"). Generally, if the non-Federal entity expends $1,000,000 or more in Federal awards during the non-Federal entity's fiscal year, the non-Federal entity must have a single or program-specific audit conducted for that fiscal year. The cost of preparing the audit may be included in the Project budget.

b. For program specific audits, EDA's Public Works and Economic Adjustment Assistance programs generally have specific audit guidelines that will be incorporated into the Award and may be found in the annual Compliance Supplement, which is Appendix XI to 2 CFR part 200 and available on OMB's website. When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in 2 CFR § 200.507 ("Program-specific audits").

2. **Requirement to Submit a Copy of the Audit to EDA**

If the Recipient's current audit required under subpart F of 2 CFR part 200 ("Audit Requirements") contains material findings, the Recipient must submit a copy of the audit to the Project Officer, who will review it with the Grants Officer. *See also* Part II, section B.17 "Project Closeout Procedures" of these EDA Construction GTCs.

See section D "Audits" of the DOC General Terms and Conditions, which are incorporated in Part III of these EDA Construction GTCs, for additional information related to audit requirements.

F. **Tribal Employment Rights Ordinances**

As set out in 31 U.S.C. § 1352, special provisions are applicable to Indian Tribes, Tribal organizations, and other Indian organizations eligible to receive Federal contracts, grants, loans, or cooperative agreements. In accordance with DOC policy, EDA recognizes Tribal Employment Rights Ordinances ("TEROs"), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Federal awards granted to American Indian and Alaska Native Tribal governments generally may provide for preference to qualified Indians in all aspects of employment, contracting, and other business activities, as well as the payment of a TERO fee. The payment of the TERO fee, which supports the Tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for the performance of the Federal award," as provided under 2 CFR § 200.403 ("Factors affecting allowability of costs").

G. **EDA Contracting Provisions for Construction Projects**

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

H. **Property**

1. **Standards**

With respect to any property acquired or improved in whole or in part with Award funds, the Recipient and any subrecipient must comply with the Property Standards set forth at 2 CFR §§ 200.310 ("Insurance coverage") through 200.316 ("Property trust relationship"), and EDA's regulations at 13 CFR part 314. Property acquired or improved in whole or in part by the Recipient or any subrecipient under this Award may consist of real property; personal property, including equipment and supplies; and intangible property, such as money, notes, contractual rights, and security interests. Any property reports required under 2 CFR §§ 200.310 through 200.316, such as periodic inventories and requests for disposition instructions, must be submitted to the Grants Officer through the Project Officer on Form SF-428 and/or SF-429, as applicable. *See also* section A.01.d "Real Property, Tangible Personal Property and Intangible Property Reports and Requests for Dispositions" of the DOC General Terms and Conditions, which are

incorporated in Part III of these EDA Construction GTCs.

2. **Title**

   a. Title to equipment, supplies, and intangible property acquired in whole or in part under this Award generally vests upon acquisition in the Recipient or subrecipient of equipment, supplies, and intangible property acquired in whole or in part under this Award must be in accordance with 2 CFR §§ 200.313 ("Equipment"), 200.314 ("Supplies"), and 200.315 ("Intangible property"), as applicable, and EDA regulations at 13 CFR part 314. *See also* section C.03 "Intellectual Property Rights" of the DOC General Terms and Conditions, which are incorporated in Part III of these EDA Construction GTCs.

   b. Title to real property acquired in whole or in part under this Award generally vests upon acquisition in the Recipient, subject to the condition that the Recipient uses the real property for the authorized purpose of the Project. *See* 2 CFR § 200.311 ("Real property") and EDA regulations at 13 CFR part 314.

3. **EDA's Interest in Award Property**

   a. *General - evidence of title*. As stated in Part I, section E, of these EDA Construction GTCs "Recipient as Trustee", real property, equipment, and intangible property acquired or improved under this Award must be held in trust by the Recipient or subrecipient as trustee for the public purposes of an Award. This trust relationship exists throughout the duration of the property's estimated useful life, as determined by EDA, during which time EDA retains an undivided, equitable reversionary interest in the property ("Federal Interest"). *See* 13 CFR § 314.2.

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

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

      i. For all Projects involving the acquisition, construction, or improvement of a building, infrastructure, or other real property, as determined by EDA, the Recipient must execute and furnish to EDA, prior to initial Award disbursement or at such other time as EDA requires, a lien, covenant, or other statement, satisfactory to EDA in form and substance, of EDA's interest in the property acquired or improved in whole or in part with the funds made available under this Award. EDA may permit such statement to be recorded after initial Award disbursement in the event that grant funds are being used to acquire such property or for authorized costs, such as design and engineering services. The statement must specify the estimated useful life of the Project and must include the disposition,

encumbrance, and the Federal Share compensation requirements, as well as any other requirements specified by EDA in its reasonable discretion. *See* 13 CFR §§ 314.1 ("Definitions") and 314.8(a) ("Recorded statement for Project Real Property"). *See also* 2 CFR § 200.316 ("Property trust relationship").

ii. This lien, covenant, or other statement of the Federal interest must be perfected and placed of record in the real property records of the jurisdiction in which the property is located, all in accordance with applicable law. EDA may require an opinion of counsel for the Recipient to substantiate that the document was validly executed and properly recorded. *See* 13 CFR § 314.8(b).

iii. Facilities in which the EDA assistance is only a small part of a larger project, as determined by EDA, may be exempted from the requirements listed in paragraphs H.3.b.i and ii above. *See* 13 CFR § 314.8(c).

iv. In extraordinary circumstances and at EDA's discretion, EDA may choose to accept another instrument to protect EDA's interest in the Project property, such as an escrow agreement or letter of credit, provided that EDA determines such instrument is adequate and a recorded statement in accord with section H.3.b.i above is not reasonably available. The terms and provisions of the relevant instrument must be satisfactory to EDA. The costs and fees for escrow services or letters of credit must be paid by the Recipient. *See* 13 CFR § 314.8(d).

c. *Recording EDA's Interest in Personal Property*. For all Projects involving the acquisition or improvement of significant items of equipment or other tangible personal property, including but not limited to watercraft, motor vehicles, machinery, equipment, removable fixtures, or structural components of buildings, the Recipient or subrecipient must execute a security interest, covenant, or other statement of EDA's reversionary interest in the personal property acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with applicable law (usually accomplished by filing a Uniform Commercial Code Financing Statement (Form UCC-1), as provided by State law), with continuances re-filed as appropriate. EDA may require an opinion of counsel for the Recipient or subrecipient to substantiate that the Form UCC-1 or other filing was validly executed and properly recorded. *See* 13 CFR § 314.9 ("Recorded statement for Project Personal Property").

d. *EDA's Interest and the Estimated Useful Life*. The Recipient and any subrecipient acknowledges that EDA retains an undivided equitable reversionary interest in property acquired or improved in whole or in part with grant funds made available through this Award throughout the estimated useful life (as determined by EDA) of the Project, except in applicable instances set forth at 13 CFR § 314.7(c) ("Title"). *See* 13 CFR § 314.2(a) ("Federal interest").

e. *Unauthorized Use of Award Property*. The Recipient and any subrecipient agrees that if any interest in property acquired or improved in whole or in part with Award funds is disposed of, encumbered, or alienated in any manner, or no longer used for the authorized purposes of the Award during the Project's estimated useful life without EDA's written approval, EDA will be entitled to recover the Federal Share, as defined at 13 CFR § 314.5 ("Federal Share"). *See* 13 CFR § 314.4 ("Unauthorized Use of Project Property"). Examples of alienation of Award property include sale or other conveyance of the

Recipient's or subrecipient's interest, leasing or mortgaging the property, or granting an option for any of the foregoing.

If, during the Project's estimated useful life, the property is no longer needed for the purposes of the Award, as determined by EDA, EDA may permit its use for other acceptable purposes consistent with those authorized by PWEDA and 13 CFR Chapter III. *See* 13 CFR § 314.3(b) ("Authorized use of Project Property") or may direct the Recipient or subrecipient to sell the property and remit the Federal Share of the sales proceeds to EDA. *See* 2 CFR §§ 200.311, 200.313.

f. *Calculating the Federal Share*. For purposes of any lien or security interest, the amount of the Federal Share is the portion of the current fair market value of any property (after deducting any actual and reasonable selling and repair expenses incurred to put the property into marketable condition) attributable to EDA's participation in the Project. *See* 13 CFR § 314.5 ("Federal Share").

4. **Insurance and Bonding**

a. *Insurance*. The Recipient must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided for property owned by the Recipient. Federally owned property need not be otherwise insured unless required by the Terms and Conditions of the Award. *See* 2 CFR § 200.310 ("Insurance coverage").

b. *Bonding*. If the Award exceeds the simplified acquisition threshold as defined at 2 CFR § 200.1, EDA may accept the Recipient's or subrecipient's bonding policy and requirements if EDA or the pass-through entity determines that the Federal Interest is adequately protected. If not, the following minimum requirements will apply:

i. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

ii. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

iii. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to ensure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

See 2 CFR § 200.326 ("Bonding requirements").

5. **Leasing Restrictions**

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

a. That said lease arrangement is consistent with the authorized general and special purpose of the Award;

b. That said lease arrangement is for adequate consideration;

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

d. That all revenue derived from said leasing arrangement shall be subject to Part II, section A.7 "Program Income" of these EDA Construction GTCs.

6. **Eminent Domain**

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

a. Not to exercise any power of eminent domain available to the Recipient (including the commencement of eminent domain proceedings) for use in connection with the Project for the purpose of advancing the economic interests of private parties; and

b. Not to accept title to land, easements, or other interests in land acquired by the exercise of any power of eminent domain for use in connection with the Project for such purposes. The Recipient agrees that any use of the power of eminent domain to acquire land, easements, or interests in land, whether by the Recipient or any other entity that has the power of eminent domain, in connection with the Project without the prior written consent of EDA is an unauthorized use of the Project. If the Recipient puts the Project to an unauthorized use, the Recipient must compensate EDA for the Federal Share in accordance with 13 CFR §§ 314.4 ("Unauthorized use of property") and 314.5 ("Federal Share"), as the same may be amended from time to time.

7. **Disposal of Real Property**

a. During the estimated useful life of the Project, if EDA and the Recipient determine that property acquired or improved in whole or in part with Award funds is no longer needed for the original purposes of this Award, EDA may, in its discretion, approve use of the property in other Federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and 13 CFR chapter III. *See* 13 CFR § 314.3(b) ("Authorized use of property").

b. When property is not authorized for other uses as provided in section H.7.a above, EDA will provide disposition instructions to the Recipient, which may include directing the Recipient to sell the property and remit the Federal Share of the sales proceeds to EDA.

8. **Reporting on Property**.

a. *Real Property status reports and requests for disposition*. In accordance with 2 CFR § 200.330 ("Reporting on real property"), the Recipient must submit reports using Form SF-429 (Real Property Status Report), including appropriate attachments, at least annually on the status of real property in which EDA retains an interest, which generally includes real property acquired or improved under the award, unless such interest extends 15 years or longer. If EDA's interest is for a period of 15 years or longer, unless otherwise specified in a specific award condition, the Recipient must submit an annual report for the

first three years of the award and thereafter submit a real property status report every five years. If the Recipient wishes to dispose of real property acquired or improved under an EDA award, the Recipient must request disposition instructions, including the submission of Form SF-429, with appropriate attachments, from the Grants Officer in accordance with 2 CFR § 200.311(d).

b. *Tangible Personal Property status reports and requests for dispositions*. The Recipient or subrecipient must submit periodic reports as specified in the terms of the Award using Form SF-428 (Tangible Personal Property Report), including appropriate attachments thereto, concerning tangible personal property that is Federally owned or tangible personal property in which EDA retains an interest. In addition, if the Recipient or subrecipient wishes to dispose of tangible personal property acquired or improved under an EDA award, the Recipient or subrecipient must request disposition instructions, including the submission of Form SF-428, with appropriate attachments, from the Grants Officer in accordance with 2 CFR § 200.313(e).

See also section A.01.d of the DOC General Terms and Conditions, which are incorporated in Part III of these EDA Construction GTCs.

I. **Environmental Requirements**

1. **General**. In addition to the environmental statutes, executive orders, and requirements set forth in section G.04 of the DOC General Terms and Conditions "Environmental Requirements," which are incorporated in Part III of these EDA Construction GTCs, the Recipient and subrecipient must comply with the following:

   a. **Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. §§ 4371-4375)**. Federally supported public works facilities and activities that affect the environment must be implemented in compliance with policies established under existing law.

   b. **The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4821 *et seq*.)**. Use of lead-based paint in residential structures improved with Federal assistance is prohibited.

   c. **The Farmland Protection Policy Act (7 U.S.C. §§ 4201–4209)**. Projects are subject to review under this Act if they may irreversibly directly or indirectly convert farmland, including forest land, pastureland, cropland, or other land, to nonagricultural use.

   d. **The Noise Control Act of 1972 (42 U.S.C. § 4901 *et seq*.)**. Federally supported facilities and activities must comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements.

   e. **The Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 *et seq*.)**. This Act provides a process for returning certain Native American cultural items to lineal descendants, culturally affiliated Indian tribes, and Native Hawaiian organizations.

2. **Compliance with Other Applicable Environmental Requirements**

   The Recipient agrees to promptly notify the Grants Officer in writing of any environmental requirement or restriction, regulatory or otherwise, with which it must comply. Before Closeout

and final disbursement of Award funds, the Recipient further agrees to provide evidence satisfactory to the Grants Officer that any required environmental remediation has been completed: (1) in compliance with all applicable Federal, State and local regulations; and (2) in accordance with any legally enforceable restrictions related to environmental restriction on the property such as environmental easements, deed restrictions, no further action determinations, or voluntary cleanup certifications. Compliance with said laws or restrictions must be included in any contract documents for Project construction. The Recipient must certify compliance before final disbursement of grant funds.

J. **Buy America Preferences**

Recipients of funds for infrastructure projects must comply with the Buy America preferences set forth in 2 CFR part 184. In accordance with 2 CFR § 184.4(b), the Buy America Preference must be included in all subawards, contracts, and purchase orders for the work performed, or products supplied under the Award. The terms and conditions of an Award flow down to subawards to subrecipients unless a particular section of the terms and conditions of the Award specifically indicate otherwise.

See also section G.05.a (Build America, Buy America) of the DOC General Terms and Conditions, which are incorporated in Part III of these EDA Construction GTCs.

Note that funds awarded by EDA pursuant to a disaster supplemental are not subject to the Buy America preferences in 2 CFR § 184.8. However, the domestic preferences for procurements in 2 CFR § 200.322 still apply to the greatest extent practicable and consistent with law.

PART III:
DEPARTMENT OF COMMERCE
GENERAL TERMS AND CONDITIONS

The DOC General Terms and Conditions dated September 22, 2025 are incorporated by reference herein as Part III of these EDA Construction GTCs.

In the event of a conflict between Parts I or II of these EDA Construction GTCs and Part III, which incorporates the DOC General Terms and Conditions, Parts I and II will control.

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
GENERAL TERMS AND CONDITIONS



22 September 2025

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE GENERAL TERMS AND CONDITIONS

Table of Contents

PREFACE 5
A. PROGRAMMATIC REQUIREMENTS 6
.01 Reporting Requirements 6
.02 Revisions of Program Plans 8
.03 Other Federal Awards with Similar Programmatic Activities 8
.04 Prohibition against Assignment by a Recipient or Subrecipient 8
.05 Disclaimer Provisions 9
.06 Unsatisfactory Performance or Non-Compliance with Award Provisions 9
.07 Termination 9
B. FINANCIAL REQUIREMENTS 11
.01 Financial Management 11
.02 Award Payments 11
.03 Federal and Non-Federal Sharing 12
.04 Budget Changes and Transfer of Funds among Categories 13
.05 Program Income 13
.06 Indirect or Facilities and Administrative Costs 14
.07 Incurring Costs or Obligating Federal Funds Before and After the Period of Performance 16
.08 Tax Refunds 16
.09 Internal Controls 17
C. PROPERTY STANDARDS 17
.01 Standards 17
.02 Real and Personal Property 17
.03 Intellectual Property Rights 18
D. AUDITS 19
.01 Single and Program-Specific Audits 20
.02 Audit Resolution Process 21
E. DEBTS 21
.01 Payment of Debts Owed to the Federal Government 21
.02 Late Payment Charges 22

.03 Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees 22
.04 Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs 22
F. CONFLICT OF INTEREST, CODE OF CONDUCT, AND OTHER REQUIREMENTS PERTAINING TO DOC FINANCIAL ASSISTANCE AWARDS, INCLUDING SUBAWARD AND PROCUREMENT ACTIONS 23
.01 Conflict of Interest and Code of Conduct 23
.02 Nonprocurement Debarment and Suspension 23
.03 Requirements for Subawards 24
.04 Requirements for Procurements 24
.05 Whistleblower Protections 24
G. NATIONAL POLICY REQUIREMENTS 25
.01 United States Laws and Regulations 25
.02 Non-Discrimination Requirements 25
a. Statutory Provisions 25
b. Other Provisions 26
c. Title VII Exemption for Religious Organizations 26
.03 Lobbying Restrictions 27
a. Statutory Provisions 27
b. Disclosure of Lobbying Activities 27
.04 Environmental Requirements 27
a. The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*) 27
b. The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*) 28
c. Executive Order 11990 (Protection of Wetlands) 28
d. Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*) (Clean Water Act), and Executive Order 11738 ("Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans") 28
e. The Flood Disaster Protection Act (42 U.S.C. §§ 4002 *et seq*.) 29
f. The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*) 29
g. The Coastal Zone Management Act (16 U.S.C. §§ 1451 *et seq*.) 29
h. The Coastal Barriers Resources Act (16 U.S.C. §§ 3501 *et seq*.) 29
i. The Wild and Scenic Rivers Act (16 U.S.C. §§ 1271 *et seq*.) 29
j. The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. §§ 300f *et seq.*) 29
k. The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq*.) 29

l. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) (42 U.S.C. §§ 9601 *et seq*.) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 note *et seq*.)30
m. The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*) 30
n. Clean Water Act (CWA) Section 404 (33 U.S.C. § 1344) 30
o. Rivers and Harbors Act (33 U.S.C. § 407) 30
p. The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 *et seq.*), and Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds, January 10, 2001) 30
q. Executive Order 13112 (Invasive Species, February 3, 1999) as Amended by Executive Order 13751 (Safeguarding the Nation from Impacts of Invasive Species) 31
r. Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*) 31
.05 OTHER NATIONAL POLICY REQUIREMENTS 31
a. Build America, Buy America 31
b. Criminal and Prohibited Activities 32
c. Drug-Free Workplace 33
d. Foreign Travel 33
e. Increasing Seat Belt Use in the United States 34
f. Federal Employee Expenses and Subawards or Contracts Issued to Federal Employees or Agencies 34
g. Research Misconduct 34
h. Research Involving Human Subjects 35
i. Care and Use of Live Vertebrate Animals 36
j. Management and Access to Data and Publications 36
k. Homeland Security Presidential Directive 37
l. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations 38
m. Prohibiting Oppressive Child Labor 40
n. The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 CFR Part 175 41
o. The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note) 43
p. Recipient Integrity and Performance Matters (Appendix XII to 2 CFR Part 200) 48
q. Never Contract with the Enemy (2 CFR Part 183; 2 CFR § 200.215) 50
r. Prohibition on certain telecommunications and video surveillance equipment or services (Public Law 115-232, section 889; 2 CFR § 200.216) 51

s. Cargo Preference Act of 1954 – 46 U.S.C. § 55305 52
t. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown 52

PREFACE

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

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in terms and conditions specified in the award will be resolved according to the following order of precedence: Federal laws and regulations, applicable notices published in the *Federal Register*, EOs, OMB Circulars, these DOC GT&Cs, agency standard award conditions (if any), and specific award conditions. A specific award condition may amend or take precedence over another award term on a case-by-case basis, when indicated in the specific award condition.

Some of the general terms herein contain, by reference or substance, a summary of the pertinent statutes, regulations published in the *Federal Register* or CFR, EOs, OMB Circulars, or the certifications and assurances provided by applicants through Standard Forms (*e.g.*, SF-424s) or through DOC forms (*e.g.*, Form CD-511). To the extent that the general term provision is a summary, it is not in derogation of, or an amendment to, any such statute, regulation, E.O., OMB Circular, certification, or assurance.

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[1]These DOC GT&Cs apply to recipients rather than subrecipients, and use the terms "pass-through entity", "non-Federal entity," "recipient," and "subrecipient" consistent with their respective meanings in the OMB Uniform Guidance. In addition, the OMB Uniform Guidance defines the term "pass-through entity" to mean a "recipient or subrecipient that provides a subaward to a subrecipient (including lower tier subrecipients) to carry out part of a Federal program." As defined at 2 CFR § 200.1:
"Non-Federal entity" is "a State, local government, Indian Tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient."
"Recipient" is "an entity that receives a Federal award directly from a Federal agency to carry out an activity under a Federal program. The term recipient does not include subrecipients or individuals that are participants or beneficiaries of the award."
"Subrecipient" is "an entity that receives a subaward from a pass-through entity to carry out part of a Federal award. The term subrecipient does not include a beneficiary or participant. A subrecipient may also be a recipient of other Federal awards directly from a Federal agency."

[2] *See* 2 CFR § 200.1 for the definitions of "foreign public entity" and "foreign organization."

A. PROGRAMMATIC REQUIREMENTS

.01 Reporting Requirements

a. Recipients must submit all reports as required by DOC, electronically or, if unable to submit them electronically, in hard copy, as outlined below and as may be supplemented by the terms and conditions of a specific DOC award.

b. Performance (Technical) Reports. Recipients must submit performance (technical) reports to the Program Officer. Performance (technical) reports must be submitted at the same frequency as the Form SF-425 (Federal Financial Report), unless otherwise directed by the Grants Officer.

1. Performance (technical) reports must contain the information prescribed in 2 CFR § 200.329 (Monitoring and reporting program performance), unless otherwise specified in the award terms and conditions.

2. As appropriate and in accordance with the format provided by the Program Officer (or other OMB-approved information collections, including the Research Program Performance Report [RPPR] as adopted by DOC for use in research awards), recipients are required to relate financial data to the performance accomplishments of this Federal award. When applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The recipient's performance under this award will be evaluated to help DOC improve program outcomes, share lessons learned, and spread the adoption of best or promising practices. As described in 2 CFR § 200.211 (Information contained in a Federal award), DOC will identify the timing and scope of expected performance by the recipient as related to the outcomes intended to be achieved by the Federal program.

3. Recipients must submit a final performance report within 120 calendar days after the conclusion of the period of performance, in accordance with 2 CFR § 200.344. The subrecipient is required to submit a final performance report to the pass-through entity within 90 calendar days after the conclusion of the period of performance of the subaward, unless an extension has been granted.

c. Financial Reports. In accordance with 2 CFR § 200.328 (Financial reporting), the recipient must submit a Form SF-425 (Federal Financial Report) or any successor form on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a specific award condition. Reports must be submitted to DOC as directed by the Grants Officer, in accordance with the award terms and conditions and are due no later than 30 calendar days following the end of each reporting period. Recipients must submit a final Form SF-425 within 120 calendar days after the conclusion of the period of performance. The subrecipient is required to submit a final financial report to the pass-through entity within 90 calendar days after the conclusion of the period of performance of the subaward, unless an extension has been granted. A recipient may submit a final financial report in lieu of an interim financial report due at the end of the period of performance (*e.g.*, in lieu of submitting a financial

report for the last semi-annual or other reporting under an award, a recipient may submit a final (cumulative) financial report covering the entire award period). *See* 2 CFR § 200.344(b).

d. Real Property, Tangible Personal Property and Intangible Property Reports and Requests for Dispositions. Unless otherwise required by the terms and conditions of a DOC financial assistance award, where real property, tangible personal property or intangible property is acquired or improved (in the case of real property or tangible personal property), or produced or acquired (in the case of intangible property), pursuant to a DOC award, recipients or subrecipients are required to submit the following real property, tangible personal property and intangible property reports (as appropriate):

1. Real Property Status Reports and Requests for Dispositions: Recipients or subrecipients must submit reports using Form SF-429 (Real Property Status Report) or any successor form, including appropriate attachments thereto, at least annually disclosing the status of real property that is Federally-owned property or real property in which the Federal Government retains a Federal Interest, unless the Federal Interest in the real property extends 15 years or longer. In cases where the Federal Interest attached is for a period of 15 years or more, DOC or a pass-through entity, at its option, may require the recipient or subrecipient to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or, DOC or a pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years). In addition, DOC or a pass-through entity may require a recipient or subrecipient to submit Form SF-429, with appropriate attachments, relating to a recipient's or subrecipient's request to acquire, improve, or contribute real property under a DOC financial assistance award. Recipients or subrecipients wishing to dispose of real property acquired or improved, in whole or in part, pursuant to a DOC award must request disposition instructions, including the submission of Form SF-429, with appropriate attachments, from the Grants Officer in accordance with the requirements set forth in 2 CFR § 200.311(d). *See also* the real property standards set forth in Section C. Property Standards of these General Terms.

2. Tangible Personal Property Status Reports and Requests for Dispositions: DOC or a pass-through entity may require a recipient or subrecipient to submit periodic reports using Form SF-428 (Tangible Personal Property Report) or any successor form, including appropriate attachments thereto, concerning tangible personal property that is Federally-owned or tangible personal property in which the Federal Government retains an interest. In addition, DOC or a pass-through entity may require a recipient or subrecipient to submit Form SF-428 in connection with a recipient's or subrecipient's request to dispose of tangible personal property acquired under a DOC financial assistance award. Recipients or subrecipients wishing to dispose of tangible personal property acquired or improved, in whole or in part, pursuant to a DOC financial assistance award must request disposition instructions, including the submission of Form SF-428, with appropriate attachments, from the Grants Officer in accordance with the requirements set forth in 2 CFR § 200.313(e). *See also* the tangible property standards set forth in Section C. Property Standards of these General Terms.

3. Intangible Property Status Reports and Requests for Dispositions: The specific requirements governing the development, reporting, and disposition of rights to intangible property, including inventions and patents resulting from DOC financial assistance awards, are set forth in 37 CFR Part 401, which is hereby incorporated by reference into this award. Recipients or subrecipients are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S. manufacture, electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Recipients or subrecipients may obtain a waiver of this electronic submission requirement by providing to the Grants Officer compelling reasons for allowing the submission of paper reports. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in 2 CFR § 200.313(e). *See also* the intangible property standards set forth in Section C. Property Standards of these General Terms.

e. Subawards and Executive Compensation Reports. For reporting requirements on subawards and Executive Compensation, see paragraph G.05.o of these General Terms (The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)).

f. Recipient Integrity and Performance Matters. For reporting requirements pertaining to integrity and performance matters, see paragraph G.05.p of these General Terms (Recipient Integrity and Performance Matters (Appendix XII to 2 CFR Part 200)).

g. Research Performance Progress Reports. All research awards shall submit the Research Performance Progress Report (RPPR) in accordance with instructions set forth at the following link: RPPR Instructions.

.02 Revisions of Program Plans

In accordance with 2 CFR § 200.308 (Revision of budget and program plans) and 2 CFR § 200.407 (Prior written approval (prior approval)), the recipient or subrecipient must obtain prior written approval from the DOC Grants Officer for certain proposed programmatic change requests, unless otherwise provided by the terms and conditions of a DOC award. Requests for prior approval for changes to program plans must be submitted to the Federal Program Officer. Requests requiring prior DOC approval are not effective unless and until approved in writing by the DOC Grants Officer.

.03 Other Federal Awards with Similar Programmatic Activities

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

.04 Prohibition against Assignment by a Recipient or Subrecipient

A recipient or subrecipient must not transfer, pledge, mortgage, assign, encumber or hypothecate any portion of a DOC financial assistance award or subaward, or any rights to,

interests therein or claims arising thereunder, to any party or parties, including but not limited to banks, trust companies, other financing or financial institutions, or any other public or private organizations or individuals without the express prior written approval of the DOC Grants Officer or the pass-through entity (which, in turn, may need to obtain prior approval from the DOC Grants Officer), as appropriate.

.05 Disclaimer Provisions

a. The United States expressly disclaims all responsibility or liability to the recipient, subrecipient, or third persons (including but not limited to contractors) for the actions of the recipient, subrecipient, or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any subaward, contract, or subcontract under this award.

b. The acceptance of this award or any subaward by the recipient or subrecipient, as appropriate, does not in any way constitute an agency relationship between the United States and the recipient or subrecipient or the recipient's or subrecipient's contractors or subcontractors.

.06 Unsatisfactory Performance or Non-Compliance with Award Provisions

a. Failure of the recipient to perform the work in accordance with the terms and conditions of this award and to maintain satisfactory performance, as determined by DOC, may result in the imposition of additional award conditions pursuant to 2 CFR § 200.208 (Specific conditions) or other appropriate action as specified in 2 CFR § 200.339 (Remedies for noncompliance).

b. Failure of the recipient to comply with the provisions of this award will be considered grounds for appropriate action pursuant to 2 CFR § 200.339 (Remedies for noncompliance), including but not limited to: the imposition of additional award conditions in accordance with 2 CFR § 200.208 (Specific conditions); temporarily withholding award payments pending the correction of the deficiency; changing the payment method to reimbursement only; the disallowance of award costs and the establishment of an accounts receivable; wholly or partially suspending or terminating an award; initiating suspension or debarment proceedings in accordance with 2 CFR Parts 180 and 1326; and such other remedies as may be legally available.

c. The OMB Uniform Guidance at 2 CFR §§ 200.340 (Termination) through 200.343 (Effects of suspension and termination) apply to an award that is terminated prior to the end of the period of performance due to the recipient's or subrecipient's material failure to comply with the award terms and conditions. In addition, the failure to comply with the provisions of a DOC award may adversely impact the availability of funding under other active DOC or Federal awards and may also have a negative impact on a recipient's or subrecipient's eligibility for future DOC or Federal awards.

.07 Termination

In accordance with 2 CFR § 200.340(a), Federal award termination provisions, a Federal award may be terminated in part or in its entirety as follows:

a. For noncompliance by the recipient or subrecipient. DOC or the pass-through entity may terminate a Federal award in part or its entirety if the recipient or subrecipient fails to comply with the terms and conditions of this Federal award, including a failure of the recipient to report subawards on SAM.gov pursuant to the award term required by part 170.

b. For convenience of DOC or the pass-through entity. DOC or the pass-through entity, to the extent authorized by law, may terminate a Federal award in part or its entirety if DOC or the pass-through entity determines that a termination is in the interest of DOC or the pass-through entity, including if a Federal award no longer effectuates the program goals, agency priorities, or the national interest[3].

c. By mutual agreement of the parties. DOC or the pass-through entity may terminate a Federal award in part or its entirety 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 of the termination and, in the case of partial termination, the portion to be terminated;

d. Upon notification by the recipient. The recipient or subrecipient, may terminate a Federal award in part or its entirety, upon sending DOC or the 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 DOC or the pass-through entity determines that the remaining portion of this Federal award will not accomplish the purposes for which this Federal award was made, DOC or the pass-through entity may terminate this Federal award in its entirety;

e. Pursuant to additional terms and conditions. DOC or the pass-through entity, to the extent authorized by law, may terminate a Federal award in part or its entirety pursuant to any additional termination provisions included in the terms and conditions of the Federal award.

f. Based on national interest. DOC or the pass-through entity, to the extent authorized by law, may terminate a Federal discretionary award in part or its entirety for foreign assistance if DOC or the pass-through entity determines the award no longer advances the national interest.

[3] Agreements entered into in furtherance of international trade agreements or those awarded by the Department of Commerce under Title XCIX of the Willam M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021(Public Law 116-283), the CHIPS Act of 2022 (Public Law 117-167), or division F of the Infrastructure Investment and Jobs Act (Public Law 117-58), and non-discretionary grants, are excepted from the award term at A.07.b, Termination for Convenience. *See Executive Order 14332, Improving Oversight of Federal Grantmaking.*

B. FINANCIAL REQUIREMENTS

.01 Financial Management

a. In accordance with 2 CFR § 200.302(a) (Financial Management), each State must expend and account for the Federal award in accordance with State laws and procedures for expending and accounting for the State's funds. All recipient's and subrecipient's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by the terms and conditions; and tracking expenditures to establish that funds have been used in accordance with Federal statutes, regulations, and the terms and conditions applicable to the Federal award. *See* 2 CFR § 200.450 (Lobbying) for restrictions on lobbying costs and use of Federal financial assistance funds for certain activities.

b. The financial management system of each recipient and subrecipient must provide all information required by 2 CFR § 200.302(b). *See also* 2 CFR §§ 200.334 (Record retention requirements); 200.335 (Requests for transfer of records); 200.336 (Methods for collection, transmission and storage of information); 200.337 (Access to records); and 200.338 (Restrictions on public access to records).

.02 Award Payments

a. Consistent with 2 CFR § 200.305(a) (Federal payment), payments made to recipients and subrecipients that are states are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR Part 205 (Rules and Procedures for Efficient Federal-State Funds Transfers) and Treasury Financial Manual Volume I, 4A-2000 (Overall Disbursing Rules for All Federal Agencies).

b. Consistent with 2 CFR § 200.305(b), for recipients and subrecipients other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the Federal Agency or the pass-through entity and the disbursement of funds by the recipient or subrecipient.

1. The Grants Officer determines the appropriate method of payment and, unless otherwise stated in a specific award condition, the advance method of payment must be authorized. Advances must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient or subrecipient in carrying out the purpose of the approved program or project. Unless otherwise provided by the terms and conditions of a DOC award, non-Federal entities must time advance payment requests so that Federal funds are on hand for a maximum of 30 calendar days before being disbursed by the non-Federal entity for allowable award costs.

2. If a recipient or subrecipient demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between the transfer of funds and disbursement by the recipient or subrecipient or if a recipient or subrecipient otherwise fails to continue to qualify for the advance method of payment, the Grants Officer or the pass-through entity may change the method of payment to reimbursement only.

c. Unless otherwise provided for in the award terms and conditions, payments from DOC to the recipient under this award will be made using the Department of Treasury's Automated Standard Application for Payment (ASAP) system. Under the ASAP system, payments are made through preauthorized electronic funds transfers directly to the recipient's bank account, in accordance with the requirements of the Debt Collection Improvement Act of 1996. To receive payments under ASAP, recipients are required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information is required to make withdrawals under ASAP:

1. ASAP account number – the Federal award identification number found on the cover sheet of the award;

2. Agency Location Code (ALC); and

3. Region Code.

d. Recipients enrolled in the ASAP system do not need to submit a Form SF-270 (Request for Advance or Reimbursement) for payments relating to their award. Awards paid under the ASAP system will contain a specific award condition, clause, or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system.

e. When the Form SF-270 or successor form is used to request payment, the recipient must submit the request no more than monthly, and advances must be approved for periods to cover only expenses reasonably anticipated over the next 30 calendar days. Prior to receiving payments via the Form SF-270, the recipient must complete and submit to the Grants Officer the Form SF-3881 (ACH Vendor Miscellaneous Payment Enrollment Form) or successor form along with the initial Form SF-270. Form SF-3881 enrollment must be completed before the first award payment can be made via a Form SF-270 request.

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

g. Recipients or subrecipients receiving advance award payments must adhere to the depository requirements set forth in 2 CFR §§ 200.305(b)(9) through (b)(13). Interest amounts up to $500 per the recipient's or subrecipient's fiscal year may be retained by the recipient or subrecipient for administrative expenses.

.03 Federal and Non-Federal Sharing

a. Awards that include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares must be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs exceed the total approved budget, the Federal share must not exceed the total Federal dollar amount authorized by the award.

b. The non-Federal share, whether in cash or third-party in-kind contributions, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or third-party in-kind contributions. In any case, the recipient must meet its cost share commitment as set forth in the terms and conditions of the award; failure to do so may result in the assignment of specific award conditions or other further action as specified in General Term A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions). The recipient or subrecipient must create and maintain sufficient records justifying all non-Federal sharing requirements to facilitate questions and audits; see Section D. Audits of these General Terms for audit requirements. *See* 2 CFR § 200.306 for additional requirements regarding cost sharing funds and third-party in-kind contributions.

.04 Budget Changes and Transfer of Funds among Categories

a. Recipients or subrecipients are required to report deviations from the approved award budget and request prior written approval from DOC in accordance with 2 CFR § 200.308 (Revision of budget and program plans) and 2 CFR § 200.407 (Prior written approval (prior approval)). Requests for such budget changes must be submitted to the Grants Officer who will notify the recipient or subrecipient of the final determination in writing. Requests requiring prior DOC approval do not become effective unless and until approved in writing by the DOC Grants Officer.

b. In accordance with 2 CFR § 200.308(i), transfers of funds among direct cost categories are permitted for awards in which the Federal share of the Federal award is equal to or less than the simplified acquisition threshold. Transfers of funds among direct cost categories must be approved in writing by the Grants Officer for awards in which the Federal share of the project exceeds the simplified acquisition threshold, and the cumulative amount of the transfer exceeds or is expected to exceed 10 percent of the total budget, including cost share, as last approved by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same requirements apply to the cumulative amount of transfer of funds among programs, functions, and activities. This transfer authority does not authorize the recipient to create new budget categories within an approved budget without Grants Officer approval. Any transfer that causes any Federal appropriation, or part thereof, to be used for an unauthorized purpose is not and will not be permitted. In addition, this provision does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget. *See* 2 CFR § 200.308 (Revision of budget and program plans) for specific requirements concerning budget revisions and transfer of funds between budget categories.

.05 Program Income

Unless otherwise indicated in the award terms and conditions, program income may be used for any required cost sharing or added to the project budget, consistent with 2 CFR § 200.307 (Program income).

.06 Indirect or Facilities and Administrative Costs

a. Indirect costs (or facilities and administration costs (F&A)) for major institutions of higher education and major nonprofit organizations can generally be defined as costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Indirect costs will not be allowable charges against an award unless permitted under the award and specifically included as a line item in the award's approved budget.

b. Unrecovered indirect costs, including unrecovered indirect costs on cost sharing, may be included as part of cost sharing as allowed under 2 CFR § 200.306(c) (Cost sharing) or the terms and conditions of a DOC award.

c. Cognizant Agency for Indirect Costs. OMB established the cognizant agency concept, under which a single agency represents all others in dealing with non-Federal entities in common areas. The cognizant agency for indirect costs reviews and approves recipients' indirect cost rates. In accordance with Appendices III – VII to 2 CFR Part 200, the cognizant agency for indirect costs reviews and approves recipients' indirect cost rates. With respect to for-profit organizations, the term cognizant Federal agency generally is defined as the agency that provides the largest dollar amount of negotiated contracts, including options. *See* 48 CFR § 42.003. If the only Federal funds received by a commercial organization are DOC financial assistance award funds, then DOC becomes the cognizant Federal agency for purposes of indirect cost negotiations.

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

   i. Within 90 calendar days of the award start date, the recipient must submit to the Grants Officer any documentation (indirect cost proposal, cost allocation plan, etc.) necessary to allow DOC to perform the indirect cost rate proposal review. The Department of Labor developed guidance for commercial and non-profit organizations on how to put an indirect cost plan together, located at https://www.dol.gov/oasam/boc/dcd/np-comm-guide.htm.

   ii. The recipient or subrecipient may use the rate proposed in the indirect cost plan as a provisional rate until DOC provides a response to the submitted plan.

   iii. The recipient or subrecipient is required to annually submit indirect cost proposals no later than six months after the recipient's fiscal year end, except as otherwise provided by 2 CFR § 200.414(g).

2. When DOC is not the oversight or cognizant Federal agency, the recipient or subrecipient must provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency, requesting a negotiated rate agreement within 30 calendar days of receipt of a negotiated rate agreement or submission of a negotiated rate proposal.

3. If the recipient or subrecipient is proposing indirect costs as part of a project budget, but is not required to have a negotiated rate agreement pursuant to 2 CFR Part 200, Appendix VII, Paragraph D.1.b (*i.e.*, a governmental department or agency that receives $35 million or less in direct Federal funding), the recipient or subrecipient may be required to provide the Grants Officer with a copy of its Certificate of Indirect Costs as referenced in 2 CFR Part 200, Appendix VII, Paragraph D.3. or such other documentation, acceptable in form and substance to the Grants Officer, sufficient to confirm that proposed indirect costs are calculated and supported by documentation in accordance with 2 CFR Part 200, Appendix VII. In cases where DOC is the recipient's or subrecipient's cognizant Federal agency, DOC reserves the right, pursuant to 2 CFR Part 200, Appendix VII, Paragraph D.1.b, to require the recipient or subrecipient to submit its indirect cost rate proposal for review by DOC.

d. If the recipient or subrecipient fails to submit required documentation to DOC within 90 calendar days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DOC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the recipient's or subrecipient's delay in submitting the documentation, an extension of the 90-day time frame may be approved by the Grants Officer.

e. The maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient or subrecipient is the lesser of:

1. The line-item amount for the Federal share of indirect costs contained in the approved award budget, including all budget revisions approved in writing by the Grants Officer; or

2. The Federal share of the total indirect costs allocable to the award based on the indirect cost rate approved by the cognizant agency for indirect costs and applicable to the period in which the cost was incurred, in accordance with 2 C.F.R 200 Appendix III, C.7, provided that the rate is approved on or before the award end date.

f. In accordance with 2 CFR § 200.414(c)(3), DOC sets forth policies, procedures, and general decision-making criteria for deviations from negotiated indirect cost rates. These policies and procedures are applicable to all Federal financial assistance programs awarded and administered by DOC bureaus as Federal awarding agencies and may be found at https://www.commerce.gov/oam/policy/financial-assistance-policy.

g. In accordance with 2 CFR § 200.414(g), any recipient or subrecipient with a current Federal negotiated indirect cost rate may apply to the cognizant agency for indirect costs for a one-time extension of a current Federal negotiated indirect cost rate for up to four years, reducing the frequency of rate calculations and negotiations between an institution and its cognizant agency.

h. In accordance with 2 CFR § 200.414(f), any recipient and subrecipient that does not have a current Federal negotiated indirect cost rate (including provisional rate) may elect to charge a de minimis rate of up to 15 percent of modified total direct costs. No documentation is required to justify the up to 15 percent de minimis indirect cost rate.

.07 Incurring Costs or Obligating Federal Funds Before and After the Period of Performance

a. In accordance with 2 CFR § 200.309 (Modifications to Period of Performance) and the terms and conditions of a DOC award, a recipient may charge to the Federal award only allowable costs incurred during the period of performance, which is established in the award document. As defined at 2 CFR § 200.1, the "period of performance" means the time interval between the start and end date a Federal award, which may include one or more budget periods. Identification of the period of performance in the Federal award consistent with § 200.211(b)(5) does not commit the Federal agency to fund the award beyond the currently approved budget period. The period of performance may sometimes be referred to as the project period or award period. This General Term is subject to exceptions for allowable costs pertaining to: (i) pre-award costs (*see* 2 CFR § 200.458); (ii) publication and printing costs (*see* 2 CFR § 200.461); and (iii) administrative costs incurred relating to the close-out of an award (*see* 2 CFR § 200.344).

b. Reasonable, necessary, allowable and allocable administrative award closeout costs are authorized for a period of up to 120 calendar days following the conclusion of the period of performance. For this purpose, award closeout costs are those strictly associated with close-out activities and are typically limited to the preparation of final performance, financial, and other required reports (e.g., audit reports), unless otherwise approved in writing by the Grants Officer. A recipient or subrecipient, as appropriate, may request an extension of the 120-day closeout period, as provided in 2 CFR § 200.344 (Closeout).

c. Unless authorized by a specific award condition, any extension of the period of performance may only be authorized by the Grants Officer in writing. This is not a delegable authority. Verbal or written assurances of funding from anyone other than the Grants Officer do not constitute authority to obligate funds for programmatic activities beyond the end of the period of performance specified in the DOC award.

d. DOC has no obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the period of performance is at the sole discretion of DOC.

.08 Tax Refunds

The recipient or subrecipient shall contact the Grants Officer immediately upon receipt of the refund of any taxes, including but not limited to Federal Insurance Contributions Act (FICA) taxes, Federal Unemployment Tax Act (FUTA) taxes, or Value Added Taxes (VAT) that were allowed as charges to a DOC award, regardless of whether such refunds are received by the recipient or subrecipient during or after the period of performance. The Grants Officer will provide written disposition instructions to the recipient or subrecipient, which may include the refunded taxes being credited to the award as either a cost reduction or a cash refund or may allow the recipient or subrecipient to use such refunds for approved activities and costs under a DOC award. *See* 2 CFR § 200.470 (Taxes (including Value Added Tax)).

.09 Internal Controls

In accordance with 2 CFR § 200.303 (Internal controls), each recipient and subrecipient must establish, document, and maintain effective internal controls over the Federal award that provides reasonable assurance that the recipient or subrecipient is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should align with the guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States, or the "Internal Control-Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

C. PROPERTY STANDARDS

.01 Standards

Each recipient and subrecipient must comply with the Property Standards set forth in 2 CFR §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship).

.02 Real and Personal Property

a. In accordance with 2 CFR § 200.316 (Property trust relationship), real property, equipment, and other personal property acquired or improved with a Federal award must be held in trust by the recipient or subrecipient, as appropriate, as trustee for the beneficiaries of the project or program under which the property was acquired or improved. This trust relationship exists throughout the duration of the property's estimated useful life, as determined by the Grants Officer in consultation with the Program Office, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest). During the duration of the Federal Interest, the recipient or subrecipient must comply with all use and disposition requirements and restrictions as set forth in 2 CFR §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship), as applicable, and in the terms and conditions of the Federal award.

b. The Grants Officer may require a recipient or subrecipient to execute and to record (as applicable) a statement of interest, financing statement (form UCC-1), lien, mortgage or other public notice of record to indicate that real or personal property acquired or improved in whole or in part with Federal funds is subject to the Federal Interest, and that certain use and disposition requirements apply to the property. The statement of interest, financing statement (Form UCC 1), lien, mortgage or other public notice must be acceptable in form and substance to DOC and must be placed on record in accordance with applicable State and local law, with continuances re-filed as appropriate. In such cases, the Grants Officer may further require the recipient or subrecipient to provide DOC with a written statement from a licensed attorney in the jurisdiction where the property is located, certifying that the Federal Interest has been protected, as required under the award and in accordance with applicable State and local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, must be returned to the Grants Officer. Without releasing or excusing the recipient or subrecipient from these obligations, the recipient or subrecipient, by execution of the financial assistance award or by

expending Federal financial assistance funds (in the case of a subrecipient), authorizes the Grants Officer and/or program office to file such notices and continuations as it determines to be necessary or convenient to disclose and protect the Federal Interest in the property. The Grants Officer may elect not to release any or a portion of the Federal award funds until the recipient or subrecipient has complied with this provision and any other applicable award terms or conditions, unless other arrangements satisfactory to the Grants Officer are made.

.03 Intellectual Property Rights

a. General. The rights to any work or other intangible property produced or acquired under a Federal award are determined by 2 CFR § 200.315 (Intangible property). The recipient or subrecipient owns any work produced or purchased under a Federal award subject to DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work or authorize others to receive, reproduce, publish, or otherwise use the work for Government purposes.

b. Inventions. Unless otherwise provided by law, the rights to any invention made by a recipient or subrecipient under a DOC financial assistance award are determined by the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified in 35 U.S.C. § 200 *et seq*., and modified by E.O. 12591 (52 FR 13414), as amended by E.O. 12618 (52 FR 48661). 35 U.S.C. § 201(h) defines "small business firm" as "a small business concern as defined at section 2 of Public Law 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration." Section 1(b)(4) of E.O. 12591 extended the Bayh-Dole Act to recipients and subrecipients "regardless of size" to the extent permitted by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from Federal awards are described in more detail in 37 CFR Part 401, which implements 35 U.S.C. 202 - 204 and includes standard patent rights clauses in 37 CFR § 401.14, which is hereby incorporated by reference into this award.

The Bayh-Dole regulations set forth in 37 CFR parts 401 and 404 were amended by 83 FR 15954, with an effective date of May 14, 2018 (Amended Bayh-Dole Regulations). The Amended Bayh-Dole Regulations apply to all new financial assistance awards issued on or after May 14, 2018. The Amended Bayh-Dole Regulations do not apply to financial assistance awards issued prior to May 14, 2018, including amendments made to such awards, unless an award amendment includes a specific condition incorporating the Amended Bayh-Dole Regulations into the terms and conditions of the subject award.

1. Ownership. A recipient or subrecipient may have rights to inventions in accordance with 37 CFR Part 401. These requirements are technical in nature and recipients and subrecipients are encouraged to consult with their Intellectual Property counsel to ensure the proper interpretation of and adherence to the ownership rules. Unresolved questions pertaining to a recipient's or subrecipient's ownership rights may further be addressed to the Grants Officer.

2. Responsibilities - iEdison. The recipient or subrecipient must comply with all the requirements of the standard patent rights clause and 37 CFR Part 401, including the standard patent rights clause in 37 CFR § 401.14. Recipients and subrecipients are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S.

manufacture, electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Recipients and subrecipients may obtain a waiver of this electronic submission requirement by providing the Grants Officer with compelling reasons for allowing the submission of paper reports.

c. Patent Notification Procedures. Pursuant to E.O. 12889 (58 FR 69681), DOC is required to notify the owner of any valid patent covering technology whenever DOC or a recipient or subrecipient, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the recipient or subrecipient uses or has used patented technology under this award without a license or permission from the owner, the recipient or subrecipient must notify the Grants Officer.

This notice does not constitute authorization or consent by the Government to any copyright or patent infringement occurring under the award.

d. A recipient or subrecipient may copyright any work produced under a Federal award, subject to DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work, or authorize others to do so for Government purposes. Works jointly authored by DOC and recipient or subrecipient employees may be copyrighted, but only the part of such works authored by the recipient or subrecipient is protectable in the United States because, under 17 U.S.C. § 105, copyright protection is not available within the United States for any work of the United States Government. On occasion and as permitted under 17 U.S.C. § 105, DOC may require the recipient or subrecipient to transfer to DOC a copyright in a particular work for Government purposes or when DOC is undertaking primary dissemination of the work.

e. Freedom of Information Act (FOIA). In response to a FOIA request for research data relating to published research findings (as defined by 2 CFR § 200.315(e)(2)) produced under a Federal award that were used by the Federal government in developing an agency action that has the force and effect of law, DOC will request, and the recipient or subrecipient must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA.

D. AUDITS

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, §§ 1 *et seq.,* an audit of this award may be conducted at any time. The Inspector General of DOC, or any of his or her duly authorized representatives, must have the right to access any pertinent books, documents, papers, and records of the recipient or subrecipient, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. This right also includes timely and reasonable access to the non-Federal entity's personnel for interview and discussion related to such documents. *See* 2 CFR § 200.337 (Access to records). If the DOC Office of Inspector General (OIG) requires a program audit on a DOC award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG

personnel, an independent accountant under contract with DOC, another Federal audit entity, or a State or local audit entity.

.01 Single and Program-Specific Audits

a. A non-Federal entity must, within 90 days of the end of its fiscal year, notify the Grants Officer of the total amount of Federal awards, including all DOC and non-DOC awards, that the non-Federal entity expended during its fiscal year.

b. A non-Federal entity that expends $1,000,000 or more in Federal awards during the non-Federal entity's fiscal year must have a single or program-specific audit conducted for that year in accordance with the requirements contained in Subpart F of 2 CFR Part 200. See 2 CFR § 200.501(a). Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted electronically to the Federal Audit Clearinghouse (FAC) located at www.FAC.gov. In accordance with 2 CFR § 200.425 (Audit services), the non-Federal entity may include a line item in the budget for the allowable costs associated with the costs of an audit required by and performed in accordance with the Single Audit Act Amendments of 1996, which is subject to approval by the Grants Officer.

c. Unless otherwise specified in the terms and conditions of the award, non-Federal entities that are not subject to Subpart F of 2 CFR Part 200 (e.g., for-profit entities, foreign public entities and foreign organizations) and that expend $1,000,000 or more in DOC funds during their fiscal year (including both as a recipient and a subrecipient) must submit to the Grants Officer either: (i) a financial related audit of each DOC award or subaward in accordance with Generally Accepted Government Auditing Standards (GAGAS); or (ii) a project specific audit for each award or subaward in accordance with the requirements contained in 2 CFR § 200.507. Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted to the Grants Officer. Entities that are not subject to Subpart F of 2 CFR Part 200 and that expend less than $1,000,000 in DOC funds in a given fiscal year are not required to submit an audit(s) for that year but must make their award-related records available to DOC or other designated officials for review and audit.

d. Non-Federal entities are responsible for compliance with the audit requirements referenced above and for informing the Grants Officer of the status of their audit, including when the relevant audit has been completed and submitted in accordance with the requirements of this section. Failure to provide audit reports within the timeframes specified above may result in appropriate enforcement action, up to and including termination of the award, and may jeopardize eligibility for receiving future DOC awards.

e. In accordance with 2 CFR § 200.332(e)(3), pass-through entities are responsible for issuing a management decision for audit findings pertaining only to the Federal award provided by the pass-through entity to a subrecipient.

.02 Audit Resolution Process

a. An audit of the award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (account receivable) due to DOC. For this reason, the recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.

b. A recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:

1. The recipient has 30 calendar days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.

2. The recipient has 30 calendar days from the date of the transmittal of the final audit report to submit written comments and documentary evidence.

3. DOC will review the documentary evidence submitted by the recipient and will notify the recipient of the results in a *Management Decision Letter*. The recipient has 30 calendar days from the date of receipt of the *Management Decision Letter* to submit a written appeal, unless this deadline is extended in writing by DOC. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence to DOC to dispute the validity of the audit resolution determination.

4. An appeal of the Management Decision does not prevent the establishment of any audit-related debt, nor does it prevent the accrual of applicable interest, penalties and administrative fees on the debt in accordance with 15 CFR Part 19. If the Management Decision is overruled or modified on appeal, appropriate corrective action will be taken retroactively.

5. DOC will review the recipient's appeal and notify the recipient of the results in an *Appeal Determination Letter*. After the opportunity to appeal has expired or after the appeal determination has been rendered, DOC will not accept any further documentary evidence from the recipient. No other administrative appeals are available in DOC.

E. DEBTS

.01 Payment of Debts Owed to the Federal Government

a. The recipient or subrecipient must promptly pay any debts determined to be owed to the Federal Government. Any financial assistance award funds paid to a recipient in excess of the amount DOC determines, at any time, the recipient is authorized to receive or retain under the terms and conditions of this Federal award constitutes a debt to the Federal government. In accordance with 2 CFR § 200.346 (Collection of amounts due), DOC must collect all debts arising out of its Federal awards in accordance with the Standards for the Administrative Collection of Claims (31 CFR part 901).

The foregoing does not waive any claim on a debt that DOC may have against another entity, and all rights and remedies to pursue other parties are preserved.

b. DOC debt collection procedures are set out in 15 CFR Part 19. In accordance with 15 CFR Part 19 and 31 U.S.C. § 3717, failure to pay a debt owed to the Federal Government must result in the assessment of interest, penalties, and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 CFR § 901.9. Commerce entities will transfer any Commerce debt that is delinquent for more than 120 calendar days to the U.S. Department of the Treasury's Financial Management Service for debt collection services, a process known as cross-servicing, pursuant to 31 U.S.C. § 3711(g), 31 CFR § 285.12, and 15 CFR § 19.9. DOC may also take further action as specified in DOC GT&C A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions). Funds for payment of a debt must not come from other Federally-sponsored programs, and DOC may conduct on-site visits, audits, and other reviews to verify that other Federal funds have not been used to pay a debt. See also 2 CFR § 200.346 (Collection of amounts due).

.02 Late Payment Charges

a. Interest will be assessed on the delinquent debt in accordance with section 11 of the Debt Collection Act of 1982, as amended (31 U.S.C. § 3717(a)). The minimum annual interest rate to be assessed is the U.S. Department of the Treasury's Current Value of Funds Rate (CVFR). The CVFR is available online at https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr_home.htm and also published by the Department of the Treasury in the *Federal Register* (http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR) and in the *Treasury Financial Manual Bulletin*. The assessed rate must remain fixed for the duration of the indebtedness.

b. Penalties will accrue at a rate of not more than six percent per year or such other higher rate as authorized by law.

c. Administrative charges, i.e., the costs of processing and handling a delinquent debt, will be determined by the Commerce entity collecting the debt, as directed by the Office of the Chief Financial Officer and Assistant Secretary for Administration.

.03 Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees

Pursuant to 31 U.S.C. § 3720B and 31 CFR § 901.6, unless waived by DOC, DOC is not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

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

Pursuant to 28 U.S.C. § 3201(e), unless waived by DOC, a debtor who has a judgment lien against the debtor's property for a debt to the United States is not eligible to receive any grant or

loan that is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

F. CONFLICT OF INTEREST, CODE OF CONDUCT, AND OTHER REQUIREMENTS PERTAINING TO DOC FINANCIAL ASSISTANCE AWARDS, INCLUDING SUBAWARD AND PROCUREMENT ACTIONS

.01 Conflict of Interest and Code of Conduct

a. DOC Conflict of Interest Policy. In accordance with 2 CFR § 200.112 (Conflict of interest), the recipient or subrecipient must disclose in writing to DOC or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds. It is DOC's policy to maintain the highest standards of conduct and to prevent real or apparent conflicts of interest in connection with DOC financial assistance awards.

b. A conflict of interest generally exists when an interested party participates in a matter that has a direct and predictable effect on the interested party's personal or financial interests. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. A conflict also may exist where there is an appearance that an interested party's objectivity in performing his or her responsibilities under the project is impaired. For example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an interested party is unable to render impartial assistance, services or advice to the recipient, a participant in the project or to the Federal Government. Additionally, a conflict of interest may result from non-financial gain to an interested party, such as benefit to reputation or prestige in a professional field. For purposes of the DOC Conflict of Interest Policy, an interested party includes, but is not necessarily limited to, any officer, employee or member of the board of directors or other governing board of a recipient or subrecipient, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. This also includes immediate family and other persons directly connected to the interested party by law or through a business arrangement.

c. Procurement-related conflict of interest. In accordance with 2 CFR § 200.318 (General procurement standards), recipients and subrecipients must maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award and administration of contracts. *See* paragraph F.04 of these General Terms (Requirements for Procurements).

.02 Nonprocurement Debarment and Suspension

Recipients and subrecipients must comply with the provisions of 2 CFR Part 1326 (Nonprocurement Debarment and Suspension), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement

transactions either through primary or lower tier covered transactions, and which set forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

.03 Requirements for Subawards

a. The recipient must require all subrecipients, including lower tier subrecipients, to comply with the terms and conditions of a DOC financial assistance award, including applicable provisions of the OMB Uniform Guidance (2 CFR Part 200), and applicable terms and conditions set forth herein. *See* 2 CFR § 200.101(b)(2) (Applicability to Federal financial assistance), which describes the applicability of 2 CFR Part 200 to various types of Federal financial assistance and §§ 200.331-333 (Subrecipient monitoring and management).

b. The recipient or pass-through entity may have more restrictive policies for their subrecipients. Such restrictive policies must be addressed in applicable subawards and in accordance with 2 CFR § 200.331.

.04 Requirements for Procurements

a. States and Indian Tribes. Pursuant to 2 CFR § 200.317 (Procurements by States and Indian Tribes), when procuring property and services under this Federal award, a State or Indian Tribe must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State and Indian Tribe must comply with 2 CFR §§ 200.321 (Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms), 200.322 (Domestic preferences for procurements), and 200.323 (Procurement of recovered materials), and ensure that every purchase order or other contract includes any clauses required by 2 CFR § 200.327 (Contract provisions).

b. Other Recipients and Subrecipients. All other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow the procurement standards in 2 CFR §§ 200.318 (General procurement standards) through 200.327 (Contract provisions), which include the requirement that recipients and subrecipients maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award, and administration of contracts supported by a Federal award. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.

.05 Whistleblower Protections

This award is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information), which generally provide that an employee or contractor (including subcontractors and personal services contractors) of a recipient or subrecipient may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subaward or contract under a Federal award or

subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subaward, or contract under a Federal award or subaward. These persons or bodies include:

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

Recipients, subrecipients, and contractors under Federal awards and subawards, as appropriate, must inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

G. NATIONAL POLICY REQUIREMENTS

.01 United States Laws and Regulations

This award is subject to the laws and regulations of the United States. The recipient and subrecipient, as appropriate, must comply with all applicable requirements of Federal laws, executive orders, regulations and policies governing this program.

.02 Non-Discrimination Requirements

No person in the United States may, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity receiving Federal financial assistance. The recipient and subrecipient, as appropriate, agree to comply with the requirements listed below:

a. Statutory Provisions

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and DOC implementing regulations published at 15 CFR Part 8, prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;

2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;

3. The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or

made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;

4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 CFR Part 8b, prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance.

For purposes of complying with the accessibility standards set forth in 15 CFR § 8b.18(c), recipients and subrecipients must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) (28 CFR part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 CFR part 36; 75 FR 56164, as amended by 76 FR 13286). The revised regulations adopted new enforceable accessibility standards called the "2010 ADA Standards for Accessible Design" (2010 Standards), which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects;

5. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and DOC implementing regulations published at 15 CFR Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance; and

6. Any other applicable non-discrimination law(s).

b. Other Provisions

1. In accordance with E.O 13798, Promoting Free Speech and Religious Liberty, and Office of Management and Budget, M-20-09 – Guidance Regarding Federal Grants, states or other public recipients may not condition sub-awards of Federal financial assistance in a manner that would disadvantage applicants based on their religious affiliation.

c. Title VII Exemption for Religious Organizations

Generally, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq*., provides that it is an unlawful for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination based on religion, "a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities."

.03 Lobbying Restrictions

a. Statutory Provisions

Recipients and subrecipients must comply with 2 CFR § 200.450 (Lobbying), which incorporates the provisions of 31 U.S.C. § 1352 and OMB guidance and notices on lobbying restrictions. In addition, recipients and subrecipients must comply with DOC regulations published at 15 CFR Part 28, titled "New Restrictions on Lobbying." These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal Government in connection with a financial assistance award and require the disclosure of the use of non-Federal funds for lobbying. Lobbying includes attempting to improperly influence, meaning any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter, either directly or indirectly. Costs incurred to improperly influence are unallowable. *See* 2 CFR § 200.450(b) and (c).

b. Disclosure of Lobbying Activities

Any recipient or subrecipient that receives more than $100,000 in Federal funding and conducts lobbying with non-federal funds relating to a covered Federal action must submit a completed Form SF-LLL (Disclosure of Lobbying Activities). The Form SF-LLL must be submitted within 30 calendar days following the end of the calendar quarter in which any event occurs that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit all required Form SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

.04 Environmental Requirements

Each recipient and subrecipient must comply with all environmental standards, to include those prescribed under the following statutes and EOs and must identify to the awarding agency any impact the award may have on the environment. In some cases, award funds can be withheld by the Grants Officer under a specific award condition requiring the recipient or subrecipient to submit additional environmental compliance information sufficient to enable DOC to make an assessment on any impacts that a project may have on the environment.

a. The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*)

The National Environmental Policy Act (NEPA) requires that an environmental analysis be completed for all major Federal actions to determine whether they have significant impacts on the environment. Recipients and subrecipients are required to identify to the awarding agency the proposed action's reasonable foreseeable effects and assist the agency in complying with NEPA. Recipients and subrecipients may also be requested to assist DOC in drafting an environmental assessment or environmental impact statement if DOC determines such documentation is required, but DOC remains responsible for the sufficiency and approval of the final documentation. Until the appropriate NEPA documentation is complete and in the event that any additional information is required during the period of

performance to assess project environmental impacts, funds can be withheld by the Grants Officer under a specific award condition requiring the recipient and subrecipient to submit the appropriate environmental information and NEPA documentation sufficient to enable DOC to make an assessment on any impacts that a project may have on the environment.

b. The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*)

Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f) and the Advisory Council on Historic Preservation (ACHP) implementing regulations (36 CFR Part 800) require that Federal agencies take into account the effects of their undertakings on historic properties and, when appropriate, provide the ACHP with a reasonable opportunity to comment. Historic properties include but are not necessarily limited to districts, buildings, structures, sites and objects. In this connection, archeological resources and sites that may be of traditional religious and cultural importance to Federally-recognized Indian Tribes, Alaskan Native Villages and Native Hawaiian Organizations may be considered historic properties. Recipients and subrecipients are required to identify to the awarding agency any effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Recipients and subrecipients may also be requested to assist DOC in consulting with State or Tribal Historic Preservation Officers, ACHPs or other applicable interested parties necessary to identify, assess, and resolve adverse effects to historic properties. Until such time as the appropriate NHPA consultations and documentation are complete and in the event that any additional information is required during the period of performance in order to assess project impacts on historic properties, funds can be withheld by the Grants Officer under a specific award condition requiring the recipient and subrecipient to submit any information sufficient to enable DOC to make the requisite assessment under the NHPA.

Additionally, recipients and subrecipients are required to assist DOC in assuring compliance with the Archeological and Historic Preservation Act of 1974 (54 U.S.C. § 312502 et seq., formerly 16 U.S.C. § 469a-1 et seq.); Executive Order 11593 (Protection and Enhancement of the Cultural Environment, May 13, 1971);) and Executive Order 13007 (Indian Sacred Sites, May 24, 1996).

c. Executive Order 11990 (Protection of Wetlands)

Recipients and subrecipients must identify proposed actions in Federally defined wetlands to enable DOC to evaluate and, if applicable, identify an alternative to minimize any potential harm.

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

Recipients and subrecipients must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 *et seq*.), Clean Water Act (33 U.S.C. §§ 1251 *et seq*.), and E.O. 11738 (38 FR 25161), and must not use a facility on the Excluded Parties List (EPL) (located on the

System for Award Management (SAM) website, SAM.gov) in performing any award that is nonexempt under 2 CFR § 1532, and must notify the Program Officer in writing if it intends to use a facility that is on the EPL or knows that the facility has been recommended to be placed on the EPL.

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

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas. Per 2 CFR § 200.447(a), the cost of required flood insurance is an allowable expense, if it is reflected in the approved project budget.

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

Recipients and subrecipients must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions under Federal assistance awards and conduct the reviews required under the Endangered Species Act, as applicable.

g. The Coastal Zone Management Act (16 U.S.C. §§ 1451 *et seq.*)

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

h. The Coastal Barriers Resources Act (16 U.S.C. §§ 3501 *et seq.*)

Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

i. The Wild and Scenic Rivers Act (16 U.S.C. §§ 1271 *et seq.*)

This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

j. The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. §§ 300f *et seq.*)

This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer which threatens public health.

k. The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*)

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

l. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) (42 U.S.C. §§ 9601 *et seq.*) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 note *et seq.*)

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

m. The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*)

Recipients and subrecipients must identify to DOC any effects the award may have on essential fish habitat (EFH). Federal agencies which fund, permit, or carry out activities that may adversely impact EFH are required to consult with the National Marine Fisheries Service (NMFS) regarding the potential effects of their actions and respond in writing to NMFS recommendations. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. In addition, NMFS is required to comment on any state agency activities that would impact EFH. Provided the specifications outlined in the regulations are met, EFH consultations will be incorporated into interagency procedures previously established under NEPA, the ESA, Clean Water Act, Fish and Wildlife Coordination Act, or other applicable statutes.

n. Clean Water Act (CWA) Section 404 (33 U.S.C. § 1344)

CWA Section 404 regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as levees and some coastal restoration activities), and infrastructure development (such as highways and airports). CWA Section 404 requires a permit from the U.S. Army Corps of Engineers before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities).

o. Rivers and Harbors Act (33 U.S.C. § 407)

A permit may be required from the U.S. Army Corps of Engineers if the proposed activity involves any work in, over or under navigable waters of the United States. Recipients and subrecipients must identify any work (including structures) that will occur in, over or under navigable waters of the United States and obtain the appropriate permit, if applicable.

p. The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 *et seq.*), and Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds, January 10, 2001)

Many prohibitions and limitations apply to projects that adversely impact migratory birds and bald and golden eagles. Executive Order 13186 directs Federal agencies to enter a Memorandum of Understanding with the U.S. Fish and Wildlife Service to promote

conservation of migratory bird populations when a Federal action will have a measurable negative impact on migratory birds.

q. Executive Order 13112 (Invasive Species, February 3, 1999) as Amended by Executive Order 13751 (Safeguarding the Nation from Impacts of Invasive Species)

Recipients and subrecipients must identify any actions that may affect the status of invasive species. Federal agencies have the responsibility to take steps to prevent the introduction and spread of invasive species, and to support efforts to eradicate and control invasive species that are established, as applicable.

r. Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*)

During the planning of water resource development projects, agencies are required to give fish and wildlife resources equal consideration with other values. Additionally, the U.S. Fish and Wildlife Service and fish and wildlife agencies of states must be consulted whenever waters of any stream or other body of water are "proposed or authorized, permitted or licensed to be impounded, diverted… or otherwise controlled or modified" by any agency under a Federal permit or license.

.05 OTHER NATIONAL POLICY REQUIREMENTS

a. Build America, Buy America

Recipients of construction awards for infrastructure are subject to § 70914(a) of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtitle A, 135 Stat. 429, 1294 (2021), 2 C.F.R. part 184, and Office of Management and Budget (OMB) Memorandum M-24-02, "Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure."

Buy America Preference. Recipients of an award of Federal financial assistance from a program for infrastructure construction 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.

In accordance with 2 C.F.R. § 184.4(b), the Buy America Preference must be included in all subawards, contracts, and purchase orders for the work performed, or products supplied under the Federal award. The terms and conditions of a Federal award flow down to subawards to subrecipients unless a particular section of the terms and conditions of the Federal award specifically indicate otherwise.

b. Criminal and Prohibited Activities

1. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including money representing grants, loans, or other benefits).

2. The False Claims Amendments Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively), provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States must be subject to imprisonment of not more than five years and must be subject to a fine in the amount provided by 18 U.S.C. § 287.

3. The Civil False Claims Act (31 U.S.C. §§ 3729 - 3733), provides that suits can be brought by the government, or a person on behalf of the government, for false claims made under Federal assistance programs.

4. The Copeland Anti-Kickback Act (18 U.S.C. § 874), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract. The Copeland Anti-Kickback Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

5. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and implementing regulations issued at 15 CFR Part 11, which provides for fair and equitable treatment of displaced persons or persons whose property is acquired as a result of Federal or Federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

6. The Hatch Act (5 U.S.C. §§ 1501-1508 and 7321-7326) limits the political activities of employees or officers of state or local governments whose principal employment activities are funded in whole or in part with Federal funds.

7. To ensure compliance with Federal law pertaining to financial assistance awards, an authorized representative of a recipient or subrecipient may be required to periodically provide certain certifications to DOC regarding federal felony and federal criminal tax

convictions, unpaid federal tax assessments, delinquent federal tax returns, and such other certifications that may be required by law.

c. Drug-Free Workplace

The recipient and subrecipient must comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8102) and DOC implementing regulations published at 2 CFR Part 1329 (Requirements for Drug-Free Workplace (Financial Assistance)), which require that the recipient and subrecipient take certain actions to provide a drug-free workplace.

d. Foreign Travel

1. Each recipient and subrecipient must comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 CFR §§ 301-10.131 through 301-10.143.

2. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.

3. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral "Open Skies Agreements" (U.S. Government Procured Transportation) that allow federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple "Open Skies Agreements" currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA Fly America website: Fly America Act | GSA. Information on the Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State's website.

4. If a foreign air carrier is anticipated to be used for any portion of travel under a DOC financial assistance award, the recipient or subrecipient must receive prior approval from the Grants Officer. When requesting such approval, the recipient or subrecipient must provide a justification in accordance with guidance provided by 41 CFR § 301-10.142, which requires the recipient or subrecipient to provide the Grants Officer with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel; name of the air carrier and flight number for each leg of the trip; and a statement explaining why the recipient or subrecipient meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the recipient or subrecipient must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer must make the final determination and notify the recipient

in writing (which may be done through the recipient in the case of subrecipient travel). Failure to adhere to the provisions of the Fly America Act will result in the recipient or subrecipient not being reimbursed for any transportation costs for which any recipient or subrecipient improperly used a foreign air carrier.

Note: When using code-sharing flights (two or more airlines having flight numbers assigned to the same flight) involving U.S. flag carriers and non-U.S. flag carriers, the airline symbol and flight number of the U.S. flag carrier must be used on the ticket to qualify as a U.S. flag carrier (e.g. "*Delta Airlines Flight XXXX, operated by KLM*"). Conversely, if the ticket shows "[*Foreign Air Carrier*] *XXX, operated by Delta*," that travel is using a foreign air carrier and is subject to the Fly America Act and must receive prior approval from the Grants Officer as outlined in paragraph G.05.d.4.

e. Increasing Seat Belt Use in the United States

Pursuant to E.O. 13043 (62 FR 19217), as amended by E.O. 13652 (78 FR 61817), recipients and subrecipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally owned vehicles.

f. Federal Employee Expenses and Subawards or Contracts Issued to Federal Employees or Agencies

1. Use of award funds (Federal or non-Federal) or the recipient's or subrecipient's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy may prohibit the acceptance of gifts, including travel payments for federal employees, from recipients or subrecipients regardless of the source. Therefore, before award funds may be used by Federal employees, recipients or subrecipients must submit requests for approval of such action to the Federal Program Officer who must review and make a recommendation to the Grants Officer. The Grants Officer will notify the recipient or subrecipient in writing (generally through the recipient) of any final determination, as appropriate.

2. A recipient or subrecipient or its contractor may not issue a subaward, contract or subcontract of any part of a DOC award to any agency or employee of DOC or to other Federal employee, department, agency, or instrumentality, without the advance prior written approval of the DOC Grants Officer.

g. Research Misconduct

DOC adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 FR 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Recipients and subrecipients that conduct extramural research funded by DOC must foster an atmosphere

conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipients and subrecipients also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Recipients and subrecipients must notify the Grants Officer of any allegation that meets the definition of research misconduct and detail the entity's inquiry to determine whether there is sufficient evidence to proceed with an investigation, as well as the results of any investigation. DOC may take appropriate administrative or enforcement action at any time under the award, up to and including award termination and possible suspension or debarment, and referral to the Commerce OIG, the U.S. Department of Justice, or other appropriate investigative body.

h. Research Involving Human Subjects

1. Any research involving human subjects included in this award must be conducted in accordance with 15 CFR Part 27 (Protection of Human Subjects). No research involving human subjects is permitted under this award unless expressly authorized by a specific award condition or in writing by the Grants Officer.

2. Under 45 CFR § 46.102, a human subject is defined as a "living individual about whom an investigator (whether professional or student) conducting research (1) obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or (2) obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens." Research means "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." See 45 CFR § 46.102.

3. DOC regulations at 15 CFR Part 27 require that recipients and subrecipients maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the recipient and subrecipient (generally through the recipient) must submit appropriate documentation to the Federal Program Officer for approval by the appropriate DOC officials. As applicable, this documentation must include:

i. Documentation establishing approval of an activity in the project by an Institutional Review Board (IRB) under a Federal wide Assurance issued by Department of Health and Human Services or other Federal agency guidelines (*see also* 15 CFR § 27.103);

ii. Documentation to support an exemption for an activity in the project under 15 CFR § 27.104(d);

iii. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form;

iv. Documentation of an IRB approval of continuing review approved prior to the expiration date of the previous IRB determination; and

v. Documentation of any reportable events, such as serious adverse events, unanticipated problems resulting in risk to subjects or others, and instances of noncompliance.

4. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. In accordance with 15 CFR § 27.118, if research involving human subjects is proposed after an award is made, the recipient or subrecipient (generally through the recipient) must contact the Federal Program Officer and provide required documentation. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

i. Care and Use of Live Vertebrate Animals

Recipients and subrecipients must comply with the Laboratory Animal Welfare Act of 1966, as amended, (Pub. L. No. 89-544, 7 U.S.C. §§ 2131 *et seq*.) (animal acquisition, transport, care, handling, and use in projects), and implementing regulations (9 CFR Parts 1, 2, and 3); the Endangered Species Act (16 U.S.C. §§ 1531 *et seq*.); Marine Mammal Protection Act (16 U.S.C. §§ 1361 *et seq*.) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. §§ 4701 *et seq*.) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC financial assistance award unless authorized by the Grants Officer.

j. Management and Access to Data and Publications

1. In General. The recipient and subrecipient acknowledges and understands that information and data contained in applications for financial assistance, as well as information and data contained in financial, performance and other reports submitted by recipients and subrecipients, may be used by DOC in conducting reviews and evaluations of its financial assistance programs. For this purpose, recipient and subrecipient information and data may be accessed, reviewed and evaluated by DOC employees, other Federal employees, Federal agents and contractors, and/or by non-Federal personnel, all of who enter into appropriate or are otherwise subject to confidentiality and nondisclosure agreements covering the use of such information. Recipients and subrecipients are expected to support program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperating with DOC and external program evaluators. In accordance with 2 CFR § 200.303(e), recipients and subrecipients are reminded that they must take reasonable cybersecurity and other measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained relating to a DOC financial assistance award.

2. Scientific Data. Recipients and subrecipients must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Specific Award Conditions.

3. Publications, Videos, and Acknowledgment of Sponsorship.

i. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded projects (*e.g.*, scientific research). Recipients and subrecipients must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Specific Award Conditions.

ii. Recipients and subrecipients may be required to submit a copy of any publication materials, including but not limited to print, recorded, or Internet materials, to the funding agency.

iii. When releasing information related to a funded project, recipients and subrecipients must include a statement that the project or effort undertaken was or is sponsored by DOC and must also include the applicable financial assistance award number.

iv. Recipients and subrecipients are responsible for assuring that every publication of material based on, developed under, or otherwise produced pursuant to a DOC financial assistance award contains the following disclaimer or other disclaimer approved by the Grants Officer:

This [report/video/etc.] was prepared by [recipient or subrecipient name] using Federal funds under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce.

k. Homeland Security Presidential Directive

If the performance of this DOC financial assistance award requires recipient or subrecipient personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term "routine access" is defined as more than 180 calendar days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, DOC will conduct a check with U.S. Citizenship and Immigration Services' (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under a financial assistance award must comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12 (Policy for a Common Identification Standard for Federal

Employees and Contractors), Federal Information Processing Standard (FIPS) PUB 201, and OMB Memorandum M-05-24. The recipient must ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The recipient must insert the following term in all subawards and contracts when the subaward recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

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

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

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

1. This clause applies to the extent that this financial assistance award encompasses activities that involve export-controlled items.

2. In performing the approved scope of work under this financial assistance award, a recipient or subrecipient may participate in activities involving items subject to export control (export-controlled items) under the Export Administration Regulations (EAR). The recipient and any subrecipient is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and re-exports provisions. The recipient and subrecipient must establish and maintain effective export compliance procedures at DOC and non-DOC facilities, including facilities located abroad, throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate restrictions on export-controlled items, to guard against any unauthorized exports, including in the form of releases or transfers to foreign nationals. Such releases or transfers may occur through visual inspection, including technology transmitted electronically, and oral or written communications.

3. Definitions

i. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 CFR §§ 730-774), implemented by DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with a military and commercial application. The export (shipment, transmission, or release/transfer) of export-controlled items may require a license from DOC.

ii. Deemed Export/Re-export. The EAR defines a deemed export as a release or transfer of export-controlled items (specifically, technology or source code) to a foreign person (foreign national) in the U.S. Such release is "deemed" to be an export to the foreign person's most recent country of citizenship or permanent residency (*see* 15 CFR § 734.13(a)(2) & (b)). A release may take the form of visual inspection or oral or written exchange of information. See 15 CFR § 734.15(a). If such a release or transfer is made abroad to a foreign person of a country other than the country where the release occurs, it is considered a deemed re-export to the foreign person's most recent country of citizenship or permanent residency. See 15 CFR § 734.14(a)(2). Licenses from DOC may be required for deemed exports or re-exports. An act causing the release of export-controlled items to a foreign person (e.g., providing or using an access key or code) may require authorization from DOC to the same extent that an export or re-export of such items to the foreign person would. See 15 CFR § 734.15(b).

4. The recipient or subrecipient must secure all export-controlled items that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that the export of such items, including in the form of release or transfer to foreign persons, is prevented, or licensed, as required by applicable Federal laws, E.O.s, and/or regulations, including the EAR.

5. As applicable, recipient and subrecipient personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items from unauthorized export.

6. To the extent the recipient or subrecipient wishes to release or transfer export-controlled items to foreign persons, the recipient or subrecipient will be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed re-exports. Failure to obtain any export licenses required under the EAR may subject the recipient or subrecipient to administrative or criminal enforcement. See 15 CFR part 764.

7. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, E.O.s or regulations.

8. Compliance with this term will not satisfy any legal obligations the recipient or subrecipient may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports and re-exports of defense articles and services subject to the International Traffic in Arms Regulations (ITAR) (22 CFR §§ 120-130), including the release of defense articles to foreign persons in the United States and abroad.

9. The recipient must include the provisions contained in this term in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve research or other activities that implicate export-controlled items.

m. Prohibiting Oppressive Child Labor

Pursuant to the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201 et seq.), recipients, subrecipients, contractors, and subcontractors shall not employ any oppressive child labor.

Under 29 U.S.C. § 203, "Oppressive child labor" means a condition of employment under which:

1. any employee under the age of 16 years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of 16 years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of 16 and 18 years or detrimental to their health or well-being) in any occupation, or

2. any employee between the ages of 16 and 18 years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child-labor age.

The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of 14 and 16 years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

Exclusions. Exclusions to Prohibiting Oppressive Child Labor can be found at 29 USC § 213(c).

n. The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 CFR Part 175

The Trafficking Victims Protection Act of 2000 authorizes termination of Federal financial assistance provided to a private entity, without penalty to the Federal Government, if any recipient or subrecipient engages in certain activities related to trafficking in persons. DOC hereby incorporates the following award term required pursuant to 2 CFR § 175.200:

I. ***Trafficking in persons***.

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

1. Under this award, the recipient, its employees, subrecipients under this award, and subrecipients' employees must not engage in:

i. Severe forms of trafficking in persons;

ii. The procurement of a commercial sex act during the period of time that this award or any subaward is in effect;

iii. The use of forced labor in the performance of this award or any subaward; or

iv. Acts that directly support or advance trafficking in persons, including the following acts:

(A) Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;

(B) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:

(1) Exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant or cooperative agreement; or

(2) The employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action;

(C) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment:

(D) Charging recruited employees as a placement or recruitment fee; or

(E) Providing or arranging housing that fails to meet the host country's housing and safety standards.

2. The Federal awarding agency may unilaterally terminate this award or take any remedial actions authorized by 22 USC 7104b(c), without penalty, if any private entity under this award:

i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or

ii. Has an employee that is determined to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

(A) Associated with performance under this award; or

(B) Imputed to the recipient or 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 DOC at 2 CFR Part 1326 (Nonprocurement Debarment and Suspension).

b. ***Provision applicable to a recipient other than a private entity****. (1) We as the Federal awarding agency may unilaterally terminate this award or take any remedial actions authorized by 22 USC 7104b(c), without penalty, if a subrecipient that is a private entity under this award:*

i. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

ii. Has an employee that is determined to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

(A) Associated with performance under this award; or

(B) Imputed to 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 DOC at 2 CFR Part 1326, (Nonprocurement Debarment and Suspension).

c. ***Provisions applicable to any recipient****.*

1. The recipient must inform the Federal agency and the Inspector General of the Federal Agency immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. The Federal Agency's right to unilaterally terminate this award as described in paragraph a.2 or b.1 of this section:

i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to the Federal agency under this award.

3. The recipient must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

4. If applicable, the recipient must also comply with the compliance plan and certification requirements in 2 CFR 175.105(b).

d. ***Definitions. For purposes of this award term****:*

Employee means either:

1. An individual employed by the recipient 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 the recipient 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.

Private entity means any entity, including for-profit organizations, nonprofit organizations, institutions of higher education, and hospitals. The term does not include foreign public entities, Indian Tribes, local governments, or states as defined in 2 CFR § 200.1.

The terms "severe forms of trafficking in persons," "commercial sex act," "sex trafficking," "Abuse or threatened abuse of law or legal process," "coercion," "debt bondage," and "involuntary servitude" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).

o. The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)

1. **Reporting Subawards and Executive Compensation.** Under FFATA, recipients of financial assistance awards of $30,000 or more are required to report periodically on executive compensation and subawards, as described in the following term from 2 CFR Part 170, Appendix A, which is incorporated into this award:

Reporting Subawards and Executive Compensation

a. ***Reporting of first-tier subawards***

1. Applicability. Unless the recipient is exempt as provided in paragraph d. of this award term, the recipient must report each subaward that equals or exceeds $30,000 in Federal funds for a subaward to an entity or Federal agency.

The recipient must also report a subaward if a modification increases the Federal funding to an amount that equals or exceeds $30,000. All reported subawards should reflect the total amount of the subaward.

2. Reporting Requirements.

i. The entity or Federal agency must report each subaward described in paragraph a.1. of this award term to the Federal Funding Accountability And Transparency Act Subaward Reporting System (FSRS) at https://sam.gov/fsrs.

ii. For subaward information, report no later than the end of the month following the month in which the subaward was issued. (For example, if the subaward was made on November 7, 2025, the subaward must be reported by no later than December 31, 2025.)

b. ***Reporting Total Compensation of Recipient Executives for entities***

1. Applicability. The recipient must report the total compensation for each of the recipient's five most highly compensated executives for the preceding completed fiscal year if:

i. the total Federal funding authorized to date under this Federal award equals or exceeds $30,000;

ii. in the preceding fiscal year, the recipient received:

(A) 80 percent or more of the recipient's annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act; and,

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 after receiving this subaward. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Reporting Requirements. The recipient must report executive total compensation described in paragraph b.1. of this award term:

i. As part of the recipient's registration profile found at the System for Award Management (SAM) website located at https://www.sam.gov.

ii. No later than the month following the month in which this award is made, and annually after that. (For example, if this Federal award was made on November 7, 2025, the executive total compensation must be reported no later than December 31, 2025.)

c. ***Reporting of Total Compensation of Subrecipient Executives****.*

1. Applicability. Unless a first-tier subrecipient is exempt as provided in paragraph d. of this award term, the recipient must report the executive total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

i. The total Federal funding authorized to date under the subaward equals or exceeds $30,000;

ii. In the subrecipient's preceding fiscal year, the subrecipient received:

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act; and,

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal awards (and subawards) subject to the Transparency Act; and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 after receiving this subaward. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.).

2. Reporting Requirements. Subrecipients must report to the recipient their executive total compensation described in paragraph c.1. of this award term. The recipient is required to submit this information to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at http://www.sam.gov/fsrs no later than the end of the month following the month in which the subaward was made. (For example, if the subaward was made on November 7, 2025, the subaward must be reported no later than December 31, 2025).

d. ***Exemptions****.*

1. A recipient with gross income under $300,000 in the previous tax year is exempt from the requirements to report: (i) Subawards, and (ii) The total compensation of the five most highly compensated executives of any subrecipient.

e. ***Definitions****. For purposes of this award term:*

Entity includes:

1. Whether for profit or nonprofit:

i. A corporation;

ii. An association;

iii. A partnership;

iv. A limited liability company;

v. A limited liability partnership;

vi. A sole proprietorship;

vii. Any other legal business entity;

viii. Another grantee or contractor that is not excluded by subparagraph (2) and;

ix. Any State or locality;

2. Does not include:

i. An individual recipient of Federal financial assistance; or

ii. A Federal employee

Executive means an officer, managing partner, or any other employee holding a management position.

Subaward has the meaning given in 2 CFR 200.1.

Subrecipient has the meaning given in 2 CFR 200.1

Total Compensation means the cash and noncash dollar value an executive earns during an entity's preceding fiscal year. This includes all items of compensation as prescribed in 17 CFR § 229.402(c)(2).

2. <u>System for Award Management (SAM) and Universal Identifier Requirements</u> -- as described in 2 CFR Part 25, Appendix A, which is incorporated into this award:

System for Award Management (SAM.gov) and Universal Identifier Requirements

a. ***Requirement for System for Award Management****.*

1. Unless exempt from this requirement under 2 CFR § 25.110, the recipient must maintain a current and active registration in SAM.gov. The recipient's registration must always be current and active until the recipient submits all final reports required under this Federal award or receives final payment, whichever is later. The recipient must review and update its information in SAM.gov at least annually from the date of its initial registration or any subsequent updates to ensure it is current, accurate, and complete. If applicable, this includes identifying the recipient's immediate and highest-level owner and subsidiaries and providing information about the recipient's predecessors that have received a Federal award or contract within the last three years.

b. ***Requirement for Unique Entity Identifier (UEI).***

1. If the recipient is authorized to make subawards under this Federal award, the recipient:

i. Must notify potential subrecipients that no entity may receive a subaward until the entity has provided its UEI to the recipient.

ii. Must not make a subaward to an entity unless the entity has provided its UEI to the recipient. Subrecipients are not required to complete full registration in SAM.gov to obtain a UEI.

c. ***Definitions****:*

For the purposes of this award term:

System for Award Management (SAM.gov) means the Federal repository into which a recipient must provide the information required for the conduct of business as a recipient. Additional information about registration procedures may be found in SAM.gov (currently at https://www.sam.gov).

Unique entity identifier means the universal identifier assigned by SAM.gov to uniquely identify an entity.

Entity is defined at 2 CFR § 25.400 and includes all of the following types as defined in 2 CFR § 200.1:

1. *Non-Federal entity;*
2. *Foreign organization;*
3. *Foreign public entity;*
4. *Domestic for-profit organization; and*
5. *Federal agency.*

Subaward has the meaning given in 2 C.F.R § 200.1.

Subrecipient has the meaning given in 2 C.F.R § 200.1.

p. Recipient Integrity and Performance Matters (Appendix XII to 2 CFR Part 200)

Reporting of Matters Related to Recipient Integrity and Performance

1. General Reporting Requirement. If the total value of your active grants, cooperative agreements, and procurement contracts from all Federal agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient must ensure the information available in the responsibility/qualification records through the System for Award Management (SAM.gov) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition is current and complete. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report. Submit the information required about each proceeding that:

i. Is relating to the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

ii. Reached its final disposition during the most recent five-year period; and

iii. Is one of the following:

(A) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

(B) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;

(C) An administrative proceeding, as defined in paragraph 5 of this award term and condition, that resulted in a finding of fault and liability and your payment of either

a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or

(D) Any other criminal, civil, or administrative proceeding if:

I. It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

II. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

III. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures. Enter in the SAM.gov Entity Management area the information that SAM.gov 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.gov because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency. During any period when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM.gov for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions. For purposes of this award term and condition:

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

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

iii. Total value of currently active grants, cooperative agreements, and procurement contracts includes:

(A) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

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

q. Never Contract with the Enemy (2 CFR Part 183; 2 CFR § 200.215)

Under 2 CFR § 200.215 (Never contract with the enemy) Federal agencies and recipients and subrecipients, are subject to the guidance implementing Never Contract with the Enemy in 2 CFR Part 183. The guidance affects covered contracts, grants, and cooperative agreements that are expected to exceed $50,000 during the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

1. **Applicability.** This term applies only to recipients and subrecipients of covered grants or cooperative agreements, as defined in 2 CFR § 183.35 Definitions.

2. **Requirements.** As applicable, recipients and subrecipients must fulfill the requirements as described in the following terms from 2 CFR Part 183, Appendix A, which is incorporated into this award:

a. Term 1. Prohibition on Providing Funds to the Enemy.

1. The recipient must—

i. Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through 2 CFR Part 180.300 prior to issuing a subaward or contract and;

ii. Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.

2. The recipient may include the substance of this clause, including this paragraph (1), in subawards under this grant or cooperative agreement that have an estimated value over $50,000 and will be performed outside the United States, including its outlying areas.

3. The Federal awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the recipient failed to exercise due diligence as required by paragraph (1) of this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities

b. Term 2. Additional Access to Recipient Records.

1. In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations

2. The substance of this clause, including this paragraph (2), is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over $50,000 and will be performed outside the United States, including its outlying areas.

r. Prohibition on certain telecommunications and video surveillance equipment or services (Public Law 115-232, section 889; 2 CFR § 200.216)

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain covered telecommunications equipment or services;
(2) Extend or renew a contract to procure or obtain covered telecommunications equipment or services; or
(3) Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.

(b) As described in Public Law 115-232, section 889, "covered telecommunications equipment or services" means any of the following:

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities;

(2) 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;

(3) Telecommunications or video surveillance services provided by such entities or using such equipment.

(4) 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.

(c) For the purposes of this section, "covered telecommunications equipment or services" also include 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.

(d) In implementing the prohibition under section 889 of Public Law 115-232, heads of executive agencies administering loan, grant, or subsidy programs must prioritize available funding and technical support to assist affected businesses, institutions, and organizations as is reasonably necessary for those affected entities to transition from covered telecommunications equipment or services, to procure replacement equipment or services, and to ensure that communications service to users and customers is sustained.

(e) When the recipient or subrecipient accepts a loan or grant, it is certifying that it will comply with the prohibition on covered telecommunications equipment and services in this section. The recipient or subrecipient is not required to certify that funds will not be expended on covered telecommunications equipment or services beyond the certification provided upon accepting the loan or grant and those provided upon submitting payment requests and financial reports.

(f) For additional information, see section 889 of Public Law 115-232 and 2 CFR § 200.471.

s. Cargo Preference Act of 1954 – 46 U.S.C. § 55305

If applicable to this award, recipients and subrecipients must comply with the requirements of the Cargo Preference Act of 1954 (CPA), codified at 46 U.S.C. § 55305, and promulgated by regulation under 46 CFR parts 381 and 382. The CPA requires that at least 50% of cargoes procured, furnished, or financed by the U.S. Government, which may be transported on ocean vessels, are transported on privately-owned U.S. commercial vessels, to the extent those vessels are available at fair and reasonable rates.

t. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown

This term sets forth initial guidance that will be implemented for Federal financial assistance awards in the event of a lapse in appropriations, or a government shutdown. The Grants Officer may issue further guidance prior to an anticipated shutdown.

1. Unless there is an actual rescission of funds for a specific obligation, non-Federal entities under Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the award during a funding hiatus. Non-Federal entities are advised that ongoing activities by Federal employees involved in financial assistance award administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse.

Therefore, there may be delays, including payment processing delays, in the event of a shutdown.

2. All award actions will be delayed during a government shutdown; if it appears that a non-Federal entity's performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible government shutdown, the Program Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise non-Federal entities that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, non-Federal entities whose ability to withdraw funds is subject to prior agency approval, which in general are non-Federal entities that have been designated high risk, non-Federal entities under construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able to draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Non-Federal entities should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Non-Federal entities whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.

3. The ASAP system should remain operational during a government shutdown. Recipients that do not require any Grants Officer or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. Unless otherwise provided by the terms and conditions of the DOC award, the 30-day limitation on the drawdown of advance funds will still apply notwithstanding a government shutdown (see Section B.02.b.1 of these General Terms).

ECONOMIC DEVELOPMENT ADMINISTRATION

ACKNOWLEDGMENT AND AGREEMENT OF CO-RECIPIENT

[Attachment to Notice of Award. By this reference, this Attachment is made a part of the Notice of Award to which it is attached.]

EDA Award No.
(If Amended) Amendment No. ED26ATL0G0174

The undersigned (a) acknowledges that it is a co-recipient of the above-referenced EDA Notice of Award, (b) as co-recipient of the Award agrees to be bound by and comply with all terms and conditions of the Award and the attachments to the Award, and (c) acknowledges that as co-recipient it is jointly responsible for implementing and complying with the terms and conditions of the Award.

Buncombe County

Authorized Official Signature: _____

Print name: _____

Title: _____

Department of Commerce
Economic Development Administration

Notice of Award (NoA)
ED26ATL0G0174

RECIPIENT INFORMATION

1. Recipient Name(s)
Asheville-Buncombe Technical Community College
340 Victoria RD
Asheville, NC 28801-4816 US

Buncombe County
200 College Street
Asheville, NC 28801-3005 US

2. Congressional District of Recipient
NC-11

3. Employer Identification Number (EIN)
560792170

4. UEI
LD6DF1BSZMG6

5. Recipient POC
Tanya Burdette
tanyacburdette@abtech.edu

6. Authorized Official
John Gossett
johndgossett@abtech.edu

FEDERAL AGENCY CONTACT INFORMATION

7. Grant Specialist
TaSheena Spearman
tspearman@eda.gov

8. Program Officer
Stacey Mills
smills@eda.gov

9. Grant Officer
Lee Mertins
lmertins@eda.gov

FEDERAL AWARD INFORMATION

10. Award Number / FAIN
ED26ATL0G0174

11. Award Type
Grant

12. Period of performance Start Date & End Date
8/01/2025 - 12/01/2030

13. Federal Share of Cost
$ 29,219,755

14. Recipient Share of Cost
$ 8,195,785

15. Total Federal and Recipient Cost
$ 37,415,540

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16. Statutory Authority
Public Works and Economic Development Act of 1965, as amended

17. NOFO/RFA #
EDA-DISASTER-2025

18. Project Title
WNC Futures Factory - Advanced Manufacturing for the Future

19. Assistance Listing Number and Name
11.307 - Economic Adjustment Assistance

20. Award Action Type
New Competing

21. Multiyear Award?
No

22. R&D Award?
No

23. Construction Award?
Yes

24. Grants Officer – Signature and Date
LEE MERTINS Digitally signed by LEE MERTINS
Date: 2026.07.22 01:41:01 -04'00'

25. Recipient – Signature and Date
–

BY ACCEPTING THIS AWARD, THE RECIPIENT IS AFFIRMING THAT IT WILL COMPLY WITH ALL THE TERMS AND CONDITIONS OF THE AWARD. THE AWARD MUST BE ACCEPTED BY THE APPLICANT'S AUTHORIZED OFFICIAL.

RECIPIENT NAME: Asheville-Buncombe Technical Community College
PROJECT TITLE: WNC Futures Factory - Advanced Manufacturing for the Future
AWARD NUMBER: ED26ATL0G0174

This Notice of Award includes the following sections and incorporates all regulations, documents and authorities referenced therein.

I. BUDGET INFORMATION
II. GENERAL TERMS AND CONDITIONS
III. SPECIFIC AWARD CONDITIONS
IV. OTHER

Should there be a discrepancy among these documents, the Specific Award Conditions, including any references, shall control.

SECTION I – BUDGET INFORMATION
The following is the Authorized Budget for this award. Reference Section III – Specific Award Conditions for conditions related to the Authorized Budget.
See Line-Item Budget

SECTION II – GENERAL TERMS AND CONDITIONS
The following regulations and general terms and conditions apply to this award:
□ 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements, as Adopted Pursuant to 2 CFR § 1327.101 for Federal Awards
□ EDA Standard Terms and Conditions for Construction Projects
□ Department of Commerce Financial Assistance General Terms and Conditions
□ Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements
□ 13 CFR Chapter III Economic Development Administration, Department of Commerce Regulations
□ Other: N/A

SECTION III – SPECIFIC AWARD CONDITIONS
The following Specific Award Conditions apply to this award:
See attachment

SECTION IV – OTHER
Co-Recipient Acknowledgement

This document represents the true and correct version of the Official Specific Award Conditions for this EDA Grant Award.

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

Construction Projects: Public Works and Economic Adjustment Assistance Programs under Sections 201 and 209 of the Public Works and Economic Development Act, as amended, 42 U.S.C. §§ 3141 and 3149

Project Title: WNC Futures Factory – Advanced Manufacturing for the Future	
Recipient Name: Asheville-Buncombe Technical Community College and Buncombe County	**Project Number:** ED26ATL0G0174

This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award as the *Authorized Scope of Work*. All work on this project must be consistent with the *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work in writing through an amendment memorialized by a fully executed Amendment.

The project is located in Ashville, North Carolina and will support construction of a new 70,000 sq foot advanced manufacturing innovation hub (the Future's Factory) on a 13-acre site in Buncombe County, with associated site work, parking, utility connections on site (water, sewer, and fiber) and stormwater management measures included as part of the proposed scope of work. The project is intended to be both a training center and a manufacturing center of innovation, helping converge necessary partners to help ideate, develop and commercialize new products that can be manufactured in the region. The project proposes a single facility with two primary components: (1) High Bay Industrial Program Space consisting of approximately 52,000 sq feet and (2) 18,000 sq ft of two-story training and office space for workforce training.

1. The Grants Officer is authorized to award, amend, suspend, and terminate financial assistance awards. The Grants Officer is:

   Lee H. Mertins
   Acting Regional Director

   Economic Development Administration
   Atlanta Regional Office
   401 West Peachtree Street, N.W.
   Suite 1820
   Atlanta, Georgia 30308-3508

2. The Federal Program Officer (Area Director) oversees the programmatic aspects of this Award. The Federal Program Officer is:

Stacey Mills
Supervisory Program Manager
Email: smills@eda.gov

Economic Development Administration
Atlanta Regional Office
401 West Peachtree Street, N.W.
Suite 1820
Atlanta, Georgia 30308-3508

3. The EDA Project Officer is responsible for day-to-day administration and liaison with the Recipient and receives all reports and payment requests. The Project Officer is:

TaSheena Spearman
Email: tspearman@eda.gov

Economic Development Administration
Atlanta Regional Office
401 West Peachtree Street, N.W.
Suite 1820
Atlanta, Georgia 30308-3508

4. **UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS:** Along with other controlling law, this Award is governed by the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) as set forth in 2 C.F.R. part 200.

5. **PROJECT CONTACT INFORMATION:** Recipient agrees to notify EDA promptly of any changes to Recipient's contact information as specified in the Notice of Award.

6. **MATCHING SHARE:** The Recipient agrees to provide the Recipient's Non-Federal Matching Share contribution for eligible project expenses in proportion to the Federal Share requested for such project expenses. The EDA participation in total eligible project costs will be limited to the EDA grant amount or the EDA share of total allowable project costs, as stated on the Notice of Award, whichever is less. By accepting the Award, the Recipient also certifies that the Matching Share of the project costs is committed to the project, is not encumbered in any way that would prevent its use for the project and will be available as needed for the project.

7. **FEDERAL SHARE:** The EDA participation in total eligible project costs will be limited to the lesser of the EDA grant amount or the EDA share of total allowable project costs (as stated on the Notice of Award or the most recent Amendment).

8. **REFUND CHECKS, INTEREST, OR UNUSED FUNDS:** If the Recipient needs to return money to EDA, it may use one of the following two methods: i. The first is the pay.gov website, which allows the Recipient to pay EDA online. The Recipient will have the option to make a one-time payment or to set up an account to make regular payments. ii. The second is paper check conversion. All checks must be made payable to "Department of Commerce, Economic Development Administration" and include the award number and a description of no more than two words identifying the reason for the

payment. A copy of the check should be provided to the EDA Project Officer. The check should be mailed to NOAA's Accounting Office, which processes EDA's accounting functions, at the following address: NOAA OCFO Attn: Finance Office, Travel Dept. 1315 East West Highway, SSMC3 Silver Spring, MD 20910 When funds are remitted to EDA by check, the check will be converted into an electronic funds transfer (EFT) by using the account information on the check to debit the payor's account electronically. The debit from the payor's account will usually occur within 24 hours. If the EFT cannot be completed because of insufficient funds, EDA will charge a one-time fee of $25.00, which will be collected by EFT.

9. **WASTE, FRAUD AND ABUSE:** Consistent with 2 C.F.R. part 200, at EDA's direction, at any time(s) during the estimated useful life of the Project, Recipient's key personnel will take a training on preventing waste, fraud and abuse as provided by the Government. Key personnel include those responsible for managing the Recipient's finances and overseeing any contractors, sub-contractors, or sub-grantees (for financial matters and/or general oversight related to this Project). EDA will provide instructions on when and how to take the training. Within 60 days of the date of Award, the Recipient shall provide to the Project Officer all Certificates of Completion for the Waste, Fraud, and Abuse training. In the event there are co-recipients of this Award, the obligations in the Specific Award Condition shall apply to all recipients whether or not designated in this Award as the Lead Recipient. Further, Recipient will monitor award activities for common fraud schemes (hereinafter "Fraud Schemes"), such as but not limited to: • false claims for materials and labor, • bribes related to the acquisition of materials and labor, • product substitution, • mismarking or mislabeling on products and materials, and • time and materials overcharging. Should Recipient detect any Fraud Schemes or any other suspicious activity, Recipient will contact the EDA staff listed above and the Department of Commerce, Office of Inspector General, as indicated at https://www.oig.doc.gov/Pages/Contact-Us.aspx, as soon as possible.

10. **ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined after the final financial documents are submitted in accordance with the applicable authorities specified on the Notice of Award, including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. part 200, and the Authorized Budget. Except as otherwise expressly provided for within these Specific Award Conditions, the federal share of the allowable costs will be based on the Investment Rate for the Award, as established on the Notice of Award or any subsequent Amendment. In the event of an underrun in total allowable costs for this project, the federal share of allowable costs will be determined by the Investment Rate. The federal share of total allowable costs may not exceed the dollar amount specified on the original Award or any subsequent amendments.

11. **CONSTRUCTION COMPLETION:** In keeping with prudent grants management policy, EDA construction projects must be completed within five years from the date of Award. If construction is not completed by that date and the Grants Officer determines that construction will not be completed promptly and expeditiously, the grant may be terminated. Extensions beyond the five-year project period are exceedingly rare and can

only be authorized by the Assistant Secretary or their delegee. Nothing in this paragraph is intended to alter the Project Development Time Schedule.

12. **EVIDENCE OF GOOD TITLE:** Prior to advertising for construction bids, the Recipient must provide an opinion of counsel, satisfactory to EDA, that the Recipient has acquired good and marketable title to land, free of all encumbrances, to all real property necessary for completion of the project, as well as any necessary rights-of-way, easements, state or local government land use permits, long-term lease interests, or other items necessary for the completion of the project in accordance with 13 C.F.R. part 314.

13. **USEFUL LIFE:** The useful life of this project is hereby determined to be 20 years from the Date of Award.

14. **FINAL FINANCIAL REPORT:** A final Form SF-425 must be submitted no more than 120 calendar days after the date the Recipient accepts the completed project from the contractor(s) unless an extension is granted in writing by the project officer. Final Financial Reports should follow the guidance outlined in the instructions for submitting mid-term financial reports, but should ensure that all fields accurately reflect the total outlays for the entire project period and that all matching funds and program income (if applicable) are fully reported. Determination of the final grant rate and final balances owed to the government will be determined based on the information on the final Form SF-425, so it is imperative that it be submitted in a timely and accurate manner.

15. **PROJECT PROGRESS REPORTS:** The Recipient must submit project progress reports to the Project Officer on a quarterly basis for the periods ending March 31, June 30, September 30, and December 31, or any portion thereof, until the final disbursement is made by EDA. Reports should be submitted using the approved EDA template, which will be provided by the Project Officer and discussed during the project kick-off meeting. Reports are due no later than 1 month following the end of the quarterly period.

16. **PROJECT DEVELOPMENT TIME SCHEDULE:** The Recipient agrees to the following Project Development Time Schedule: Return of executed Notice of Award 30 calendar days after receipt of Notice of Award/Amendment Start of Construction 24 Months from the Date of Award Construction Completed 48 Months from the Date of Award Authorized Award End Date 52 Months from the Date of Award Project Closeout – All project closeout documents, including final financial reports (Form SF-425 or any successor form) and any required program reports, must be submitted to EDA not more than 120 calendar days after the date the Recipient accepts the completed project from the contractor(s) unless an extension is granted in writing by the Project Officer. The Recipient must diligently pursue the development of the project so as to ensure completion within this time schedule and must promptly notify EDA in writing of any event that could substantially delay meeting any of the prescribed time limits for the project as set forth above. The Recipient further acknowledges that failure to meet the development time schedule may result in EDA taking action to terminate the Award in accordance with the regulations set forth at 2 C.F.R. §§ 200.339–200.343, as applicable.

17. **AWARD DISBURSEMENTS:** Reimbursement basis only. EDA will make disbursements under this Award on a reimbursement basis only, based on actual costs incurred, after all preconditions set forth in these Specific Award Conditions have been met. The "Request for Reimbursement" (Form SF-271 or any successor form) is used to request a disbursement, which must be approved in writing by the Project Officer. Prior to the initial disbursement, Recipients must complete the attached Form SF-3881, "ACH Vendor/Miscellaneous Payment Enrollment Form." The form must be completed by the respective parties (EDA, Recipient Bank, and Recipient) at the start of each new award. Instructions for submitting the form will be provided during the project kick-off conference.

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

19. **GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION:** Department of Labor regulations set forth at 41 C.F.R. part 60-4 establish goals and timetables for the participation of minorities and women in the construction industry. Those regulations apply to all federally assisted construction contracts in excess of $10,000. Unless rescinded, or as otherwise directed by Department of Labor guidance, Recipient must comply with these regulations and must require compliance with 41 C.F.R. part 60-4 from contractors and subcontractors employed on the project by including such notices, clauses, and provisions in the Solicitations for Offers or Bids as required by 41 C.F.R. part 60-4. The goal for the participation of women in each trade area shall be as follows: from April 1, 1981, until further notice: 6.9 percent. All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 C.F.R. § 60-4.6, or any successor regulations, shall hereafter be incorporated by reference into these Specific Award Conditions. Goals for minority participation shall be as prescribed by Appendix B-80 of the Federal Register notice published October 3, 1980, at 45 Fed. Reg. 65984–65991, or any subsequently published amendments. The Recipient must include the Standard Federal Equal Employment Opportunity Construction Contract Specifications (or cause them to be included, if appropriate) in all federally assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 C.F.R. § 60-4.6.

20. **PROCUREMENT:** The Recipient agrees that all procurement transactions will be in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. §§ 200.317–200.327.

21. **NONRELOCATION:** By accepting this Award, the Recipient attests that the EDA-funded project will not be used to induce the relocation or the movement of existing jobs from one Region to another Region by a primary beneficiary of the Award (see 13 C.F.R.

§ 300.3). In the event that EDA determines that its assistance was used for such purposes, EDA reserves the right to pursue all rights and remedies, including suspension of disbursements, termination of the Award, and disallowance of any costs attributable, directly or indirectly, to the relocation. For purposes of ensuring that EDA assistance will not be used for relocation purposes, each applicant must inform EDA of all employers that constitute primary beneficiaries of the project. EDA considers an employer to be a "primary beneficiary" if the applicant estimates that such employer will create or save 100 or more permanent jobs as a result of the investment assistance and the applicant specifically names the employer in its application for EDA assistance. In smaller communities, EDA may consider a primary beneficiary to be an employer of 50 or more permanent jobs so identified.

22. **REAFFIRMATION OF APPLICATION:** Recipient acknowledges that Recipient's Application for this Award may have been submitted to EDA and signed by Recipient, or by an authorized representative of Recipient, electronically without providing an original "wet" signature. In addition, the Recipient or an authorized representative of Recipient may have accepted the Award electronically, which includes drawing down any funds under this Award. Regardless of who submitted the Application to EDA or the means by which Recipient submitted the Application or accepted the Award, Recipient hereby reaffirms and states that: i. All data in the applicable Application were true and correct when the Application was submitted and remain true and correct as of the date of this Award; ii. The Application was, as of the date of submission and the date of this Award, duly authorized as required by local law by the governing body of the Recipient; and ii. Recipient has read, understood, and will comply with all terms of this Award, including the Assurances and Certifications submitted with, or attached to, the Application and through the System for Award Management (SAM.gov). The Recipient agrees to immediately notify the EDA of any material changes to the Application within 30 calendar days of the date the Recipient becomes of aware of such changes. For purposes of this provision, the term "Application" includes all documentation and any information provided to EDA as part of, and in furtherance to, the request for funding, including submissions made in response to information requested by EDA after submission of the initial Application.

23. **FREEDOM OF INFORMATION ACT (FOIA):** EDA is responsible for meeting its Freedom of Information Act (FOIA) (5 U.S.C. § 552) responsibilities for its records. DOC regulations at 15 C.F.R. part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications and other information submitted by applicants and recipients may be released in response to a FOIA request. The Recipient should be aware that EDA may make certain application information publicly available. Accordingly, the Recipient should notify EDA if it believes any Application information to be confidential.

24. **USE OF EDA LOGO:** Recipient may use the EDA logo pursuant to the below terms and conditions for the following limited purposes: • Press releases, social media posts, and websites that build awareness of this Award (note that some advertising and

marketing activities are not allowable costs under federal awards as provided at 2 CFR 200.421); • Work products and deliverables developed under this Award (e.g. tools, publications, resource guides, brochures, PowerPoint presentations, technical assistance materials); and • Signage for construction projects funded under this Award and materials that promote the purpose or use of the construction project (e.g. fliers, pamphlets, brochures). Recipient may not use the EDA logo for other purposes, including lobbying or issue advocacy, endorsing a product or organization, or communications to elected officials or federal agencies. Recipient may not use the EDA logo in a negative or defamatory manner. Recipient must request and obtain EDA permission prior to certain uses of the EDA logo (see section B, below). A. Grant of License: EDA hereby grants to Recipient a non-exclusive, royalty-free right to use the EDA logo for the limited purposes described above (the "License"). Recipient agrees that: (1) the EDA logo will not be used in a way that would suggest that it is the property of Recipient or any other third party, and (2) Recipient will include the following notice in conjunction with its use of the EDA logo, as appropriate: "The EDA logo is a trademark of the Economic Development Administration, used with permission." This License does not grant Recipient the right to use any seal, emblem, logo, or other symbol of the U.S. Department of Commerce or EDA that is not the EDA logo. B. Required Approvals for Certain Uses of the EDA Logo: Before Recipient uses the EDA logo for press releases and related materials, Recipient shall send a sample of each print, product, design, or other work to show the proposed use to the EDA Regional Office Public Affairs Specialist (whose contact information may be obtained from the Project Officer for this Award). Recipient shall not use the EDA logo for the above uses until receiving written approval (including via email) from EDA of the proposed use. C. Quality Control: EDA shall have the right, at all reasonable times, to inspect Recipient's goods, services, and promotional activities employing the EDA logo to ensure that such use is of proper quality and otherwise consistent with this License. D. Duration and Termination: The License shall terminate on the Award End Date. Recipient may request a renewal of the License for an additional term subject to the express written consent of EDA. Such consent shall be in the form of a properly executed agreement signed by authorized signatories of EDA and Recipient. Upon termination of the License, all rights of Recipient to use the EDA logo shall immediately terminate. EDA may terminate the License unilaterally and without cause at any time, including if EDA determines that Recipient's use of the EDA logo is inconsistent with the License. E. Validity and Ownership of EDA Logo: Recipient acknowledges and agrees that EDA is the owner of all right, title, and interest in the EDA logo, and all such right, title, interest, and ownership shall remain with EDA. Recipient further acknowledges that Recipient shall not acquire any right, title, interest, or ownership in the EDA logo by virtue of the License or use other than the license granted hereunder and disclaims any such right, title, interest, or ownership. Recipient is prohibited from interfering with EDA's rights in the EDA logo, including challenging EDA's use, registration of, or application to register the EDA logo alone or in combination with other words or designs, as a U.S. or foreign trademark anywhere in the world. Recipient is further prohibited from attempting to register the EDA logo, any derivatives thereof, or any confusingly similar mark, whether or not registered by EDA, alone or in combination with other words or designs, as a U.S. or foreign trademark or as a part of a domain name. F. Assignments and Sub-Licenses: The License is not

assignable, and any attempt by Recipient to assign any portion of the License shall be deemed a breach of the License and will result in immediate termination of the License. Recipient may subcontract, thereby engaging in a limited sublicensing arrangement as applicable, for manufacturing and distribution activities under the License; Recipient shall provide notice to EDA—and must receive prior approval from EDA—of any such subcontract prior to manufacturing and distribution activities. G. Governing Law: The License shall be interpreted and implemented in accordance with the Federal common law as interpreted by the U.S. District Court for the District of Columbia, without giving effect to any conflict of law principle that would result in the application of the substantive law of another jurisdiction. H. Indemnification: Recipient agrees to indemnify and hold EDA harmless from any and all claims, damages, and attorneys' fees arising from the use of the EDA logo by the Recipient and its operations, except to the extent that any such claims, damages, or attorneys' fees arose in connection with any act or failure to act by the U.S. Department of Commerce or any agency, department, or subdivision thereof. I. Obtaining the EDA Logo: For an electronic version of the EDA logo, Recipient should contact the EDA Regional Office Public Affairs Specialist (whose contact information may be obtained from the Project Officer for this Award).

25. **FINANCIAL REPORTS:** Financial Status Reports (SF-425) must be submitted to EDA on a semi-annual basis via EDA's Grants Management Portal for the reporting periods ending March 31 and September 30, or any portion thereof if applicable, for the period of performance set forth in the Notice of Award or as later memorialized through a mutually agreed-upon Amendment to the Award. Form SF-425 (and instructions for completing this form) is available at: https://www.grants.gov/forms/post-award-reporting-forms.html. Reports are due no later than 30 calendar days following the end of the reporting period.

26. **EXECUTIVE ORDER 14173: ENDING ILLEGAL DISCRIMINATION AND RESTORING MERIT-BASED OPPORTUNITY:** This award term implements Executive Order 14173, 90 FR 8633 (Jan. 21, 2025), *Ending Illegal Discrimination and Restoring Merit-Based Opportunity.* By accepting this U.S. Department of Commerce financial assistance award, the recipient: (1) agrees that compliance in all respects with all applicable Federal antidiscrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of Title 31 United States Code; and (2) certifies to the Department that it does not operate any programs promoting diversity, equity, and inclusion that violate any applicable Federal anti-discrimination laws.

27. **PERFORMANCE DATA COLLECTION:** The Recipient agrees to report on program performance measures and program outcomes in such a form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993 and the Government Performance and Results Modernization Act of 2010.
For construction awards, at this time, Recipients must report actual job creation/retention and private investment leverage at three, six, and nine years after an EDA investment. For non-construction awards, EDA anticipates that Recipients must report on specific measures of performance throughout the period of performance and outcomes annually for up to five years after an EDA investment. The Recipient must retain sufficient documentation so that it can submit these required reports. Failure to submit these reports

may adversely impact the ability of the Recipient to secure future funding from EDA. EDA reserves the right to change the content, frequency and duration of required reports. EDA will provide adequate advance notice of any changes to the required reports so that the Recipient can collect the necessary data. Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document. EDA staff will contact the Recipient in writing within a reasonable period before the deadline for submission of the reports with information on how this data should be submitted. The Recipient must ensure adequate records are kept to support the methodology for computing initial and all subsequent actual performance data, and must make this information available at EDA's request, including in the event of an audit or performance site visit.

28. **ADDITIONAL INCLUDED DOCUMENTS:** In addition to the regulations, documents, or authorities incorporated by reference in the Notice of Award, the following additional documents are incorporated by reference into this Award: i. EDA General Terms and Conditions for Construction Projects (March 17, 2026) ii. The Recipient's application, including any attachments, project descriptions, schedules, and subsequently submitted supplemental documentation iii. Authorized Scope of Work (Attachment 1) Should there be a discrepancy among these documents, the Specific Award Conditions, including any attachments, shall control.

29. **LEAD RECIPIENT DESIGNATION AND OBLIGATIONS**: This Award is made to multiple Recipients as identified on the Notice of Award (NoA). EDA has requested that one of the Recipients be designated as the Lead Recipient to facilitate the administration of this Award. The Recipient named first on the NoA agrees to be designated as Lead Recipient. The Co-Recipients acknowledge, agree with and consent to this designation. The Recipients agree that all funds available pursuant to this Award shall be solely disbursed by EDA to the Lead Recipient. The Lead Recipient agrees to be solely responsible for the further disbursement of all such funds received from EDA pursuant to this Award strictly in accordance with the Authorized Budget that is part of this Award and all applicable requirements of EDA as identified and set forth within the Award documents. The Lead Recipient further agrees to be solely responsible for collecting all data and information, including but not limited to coordinating the collection of any and all data and information from other Co-Recipients, and preparing all reports required to be submitted to EDA pursuant to this Award. Any changes to the Lead Recipient designation, including replacement of the Lead Recipient, require advance approval by EDA and will be memorialized through the execution of an amendment to the NoA.

30. **CO-RECIPIENT ACKNOWLEDGEMENT OF AWARD**: The attached Acknowledgment and Agreement of Co- Recipient must be signed by an Authorized Representative of co-recipient, Buncombe Couty, and returned to EDA within 30 calendar days after receipt of the Notice of Award. The Co-Recipient will also be required to sign any amendments to the Notice of Award.

31. **HISTORIC PRESERVATION**: Prior to advertisement for construction bids and prior to any disbursement of funds, the Recipient must complete consultation with the North Carolina Department of Natural and Cultural Resources, State Historic Preservation Office (SHPO).

Recipient agrees to take no destructive actions prior to completion of consultation with the SHPO. Such action includes but is not limited to any action that restricts the subsequent consideration of alternatives to avoid, minimize, or mitigate the project's potential effects on historic properties. Recipient agrees to comply with any and all conditions resulting from completion of the consultation. If the Recipient cannot comply with requirements resulting from completion of consultation, Recipient agrees, at the discretion of the Government, to terminate this Award for convenience.

32. **PLANS AND SPECIFICATIONS**: Recipient agrees to and shall cause the following to be placed on the project plans and specifications: "If archaeological materials are encountered during construction, the procedures codified at 36 CFR 800.13(b) will apply and the North Carolina Department of Natural and Cultural Resources and EDA shall be contacted immediately. Archaeological materials consist of any items, fifty years old or older, which were made or used by man. These items include, but are not limited to, stone projectile points (arrowheads), ceramic sherds, bricks, worked wood, bone and stone, metal and glass objects, and human skeletal materials."

33. **PLANS AND SPECIFICATIONS**: Recipient agrees to and shall cause the following to be placed on the project plans and specifications: "If unmarked human skeletal remains are encountered during construction, the provisions of North Carolina General Statute Chapter 70, Article 3 apply. Construction activities should immediately cease, and the county medical examiner, NC SHPO, and EDA should be contacted."

34. **ENVIRONMENTAL**: Prior to advertising for construction bids, the Recipient shall confirm with EDA that the Endangered Species Act Section 7 consultation with the FWS has been concluded, and mitigation measures resulting from the consultation have been incorporated into the construction plans and specifications. Such mitigation measures may include additional habitat suitability reviews prior to construction, restrictions on timing of construction, or the presence of a construction monitor. The Recipient understands and agrees that it shall not begin any demolition, renovation, habitat-altering, or earth-moving activities until such consultation is complete and EDA provides approval in writing for the project to proceed.

35. **ENVIRONMENTAL:** The project shall employ best management practices (BMPs) during construction to prevent any runoff from entering nearby and adjacent wetlands and waterways.

36. **ENVIRONMENTAL:** Prior to advertisement for construction bids, Recipient shall provide evidence satisfactory to the Government that the US Army Corps of Engineers (USACE) has issued a valid Section 404 permit for the project and that any applicable mitigation requirement set forth by the permit has been completed. If no Section 404 permit is required based on final design, Recipient shall provide written documentation from USACE that no Section 404 permit is required. Recipient shall submit to USACE all documentation necessary for USACE to make a determination as to whether said permit is required. Such documentation typically includes, but is not limited to, a delineation of jurisdictional waters and final site plan for the Project. Recipient shall also provide to EDA a copy of its submission to USACE for the aforementioned permit or determination that no permit is required.

37. **ARCHITECT/ENGINEER AGREEMENT:** The Recipient, prior to invitation for bids, must submit to the Government for approval an Architect/Engineer agreement that meets the requirements of Section IV E of the "Summary of EDA Construction Standard, August 2018" as well as the competitive procurement standards of 2 CFR Part 200, as applicable. The fee for basic Architect/Engineer services shall be a lump sum or an agreed maximum and no part of the fees for other services shall be based upon a cost-plus-a-percentage-of-cost or a cost using a multiplier. The Recipient must also provide to the Government all documents related to the selection of the Architect/Engineer that show the selection was made competitively.

38. **PROJECT ADMINISTRATION SERVICE AGREEMENT:** The Recipient, prior to invitation for bids, must submit to the Government for approval a Project Administration Service Agreement for project administration services charged against the grant award.

39. **Ongoing Collaboration:** Recipient hereby agrees that within 90 days of this Award, it shall furnish to EDA evidence satisfactory to EDA at EDA's sole discretion that a schedule of ongoing quarterly project coordination meetings have been developed with the WNC Futures Factory partners to facilitate the project's continued collaboration toward the program goals as described in the application materials. This condition and the aforementioned date may be amended or extended only by written approval from EDA.

40. **Recorded Mortgage or Covenant**: To better memorialize and protect the Federal Interest in real property improved, in whole or in part, with the funds made available under this Award, Recipient shall, prior to the initial disbursement of funds by EDA, execute and cause to be recorded a first priority mortgage lien or Covenant of Purpose, Use, and Ownership in favor of EDA. The choice of a mortgage or covenant will be in the discretion of EDA, and the document shall be satisfactory to EDA in form and substance. Upon request by EDA, Recipient shall furnish an opinion of counsel for the Recipient that the mortgage or covenant is a valid and enforceable agreement according to its terms and that it has been duly recorded in the appropriate office where mortgages are recorded for the applicable jurisdiction. The Recipient further agrees that: (a) Except as provided in 13 C.F.R. § 314.3(b), (c) or (d), whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of, encumbered, or no longer used for the authorized purpose of the project, the Government must be compensated by Recipient for the Federal Share of the value of the property. (b) If property is disposed of or encumbered without EDA approval, EDA may assert its interest in the property to recover the Federal Share of the value of the property for the Government. EDA may pursue its rights under both paragraphs (a) and (b) of this section to recover the Federal Share, plus costs and interest. (c) The Federal Share of the value of the property is that percentage of the current fair market value of the property attributable to EDA's participation in the project after deducting actual and reasonable fix-up and marketing expenses, as more fully defined at 13 C.F.R. § 314.5. The Federal Share excludes that value of the property attributable to acquisition or improvements before or after EDA's participation in the project and not included in project costs. In extraordinary circumstances and at EDA's sole discretion, where EDA is unable to determine the current fair market value, EDA may use other methods of determining the value of Project Property, including the amount of the award of Investment Assistance or the amount paid by a transferee. (d) The mortgage or covenant must remain in effect throughout the Useful Life of the Project.

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: September 1, 2026

NEW BUSINESS

Department: County Manager

Presenter(s): Kevin Madsen, Helene Recovery Officer
John Hudson, Budget Director

Contact: Kevin Madsen, Helene Recovery Officer

Subject: Budget Amendment for the Hazard Mitigation Grant Program Subrecipient Management Funds

Brief Summary:

The Hazard Mitigation Grant Program (HMGP) is a Federal Emergency Management Agency (FEMA) fund administered by North Carolina Division of Emergency Management. Buncombe County has been awarded a total of $4,124,262.76 to serve as the point of contact with homeowners from application intake to project completion. The Program will acquire and demolish residential structures and return the land to green space.

This is the third group of properties for which the County has received Subrecipient Management Funds, which is 5% of the total of the project:
Group 3: $4,124,262

There are currently two groups of properties for which the County has already received Subrecipient Management Funds, which is 5% of the total of the projects:
Group 1: $406,010
Group 2: $550,950

Total for all three groups: $5,081,222

Recommended Motion & Requested Action:

Approve Budget Amendment

Attachments:

1. Budget Ordinance

ORDINANCE # _____

BUNCOMBE COUNTY, NORTH CAROLINA

Grant Projects Ordinance

BOARD MEETING DATE: September 1, 2026

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2026-2027 Grants Projects outlined below in Exhibit "A" to the budget,

NOW THEREFORE,

BE IT ORDAINED by the Board of Commissioners for the County of Buncombe as follows:

1. That the FY2026-2027 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 1st day of September, 2026

Granting Agency:	NC Department of Public Safety Division of Emergency
Grant Name:	HMGP SRMC Group 3

Description:

The Hazard Mitigation Grant Program (HMGP) is a Federal Emergency Management Agency (FEMA) fund administered by North Carolina Division of Emergency Management. Buncombe County has been awarded $4,124,262 to serve as the point of contact with homeowners from application intake to project completion. The Program will acquire and demolish residential structures and return the land to green space.

Funding Source:	Federal Emergency Management Agency (FEMA)
Award ID:	4827-0026

Exhibit A:	**Increase (Decrease)**	
Account Description	**Revenues**	**Expenditures**
HMGP SRMC Group 3	$ 4,124,262	$ 4,124,262
TOTAL	$ 4,124,262	$ 4,124,262

ATTEST:

Clerk to the Board

BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE:

By: _____

Chair of the Board

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: September 1, 2026

NEW BUSINESS

Department: Budget

Presenter(s): John Hudson, Budget Director

Contact: John Hudson, Budget Director

Subject: FY2026 Budget Carryforwards

Brief Summary:

The attached ordinance provides information regarding departments or functions that have requested FY2026 budget in the amounts indicated to be carried forward into FY2027 for the following reasons:

- Purchases in FY2026 not delivered prior to June 30, 2026 due to shipping or vendor delays;
- Services obligated in FY2026 however were unable to be completed prior to June 30, 2026;

Total annual budget requested to be carried forward by fund are as follows:

- General Fund: $126,981
- Mountain Mobility Special Revenue Fund: $392,147
- Health, Employment, Property & Casualty Insurance Internal Service Fund: $33,483

Total Amount of annual budget to be carried forward: $552,611

$58,335 of the budget carried forward in the General Fund will transferred to the Capital Fund to be budgeted in the FY26 Ambulances project to cover an overage identified in FY2026 that was covered by the General Fund where the purchase was not made in the fiscal year.

Recommended Motion & Requested Action:

Approve budget amendments.

Attachments:

1. Fund 341 - FY26 Budget Carryforward for FY26 Ambulances
2. Fund 100-230-484 FY26 Budget Carryforwards

ORDINANCE # _____

BUNCOMBE COUNTY, NORTH CAROLINA

Capital Projects Ordinance

BOARD MEETING DATE: September 1, 2026

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2026-2027 Capital Projects outlined below in Exhibit "A" to the budget,

NOW THEREFORE,

BE IT ORDAINED by the Board of Commissioners for the County of Buncombe as follows:

1. That the FY2026-2027 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 1st day of September, 2026

Project Name: FY26 Ambulances

Description:
This amendment is to budget $58,335 in interfund transfer revenue from the General Fund for the FY26 Ambulances project to cover an overage identified in FY2026 that was covered by the General Fund where the purchase was not made in the fiscal year. The interfund transfer revenue from the General Fund is funded by an appropriation of General Fund fund balance and is referenced in an accompanying ordinance.

Funding Source:
Interfund transfer revenue.

Exhibit A:	**Increase (Decrease)**	
Account Description	**Revenues**	**Expenditures**
FY26 Ambulances	$ 58,335	$ 58,335
TOTAL	$ 58,335	$ 58,335

ATTEST:

Clerk to the Board

BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE:

By: _____

Chair of the Board

BUNCOMBE COUNTY
BUDGET CARRYFORWARD ORDINANCE
FISCAL YEAR 2026-2027

BE IT ORDAINED by the Board of County Commissioners of Buncombe County, North Carolina this the 1st day of September, 2026:

Section 1: The departments or functions indicated below have requested FY2026 budgets in the amounts indicated to be carried forward into FY2027 for the following reasons:

Purchases in FY2026 not delivered prior to June 30, 2026 due to shipping or vendor delays; Services obligated in FY2026 however were unable to be completed prior to June 30, 2026;

The following amounts are hereby appropriated and revenues estimated to be available in the General Fund for the operation of the County government and its activities for the fiscal year beginning July 1, 2026 and ending June 30, 2027:

FUND:	**APPROPRIATION**	**REVENUE**
General Fund:		
General Government	$44,757	
Economic & Physical Development	23,889	
Other Financing Sources and Uses	58,335	
Total Appropriation	**$126,981**	
Appropriated Fund Balance		$126,981
Total Revenue		**$126,981**
Mountain Mobility Special Revenue Fund:		
Transportation	$392,147	
	$392,147	
Intergovernmental Revenue		$346,380
Appropriated Fund Balance		45,767
		$392,147
Health, Employment, Property & Casualty Insurance Internal Service Fund:		
Enterprises – Health, Employment, Property & Casualty Insurance	$33,483	
	$33,483	
Appropriated Fund Balance		$33,483
		$33,483

Section 2: All ordinances, resolutions, prior directives or parts thereof of the Board in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

Adopted this the 1st day of September, 2026.

Attest:

_____

Clerk to the Board

Buncombe County Board of Commissioners:

_____

Amanda Edwards, Chair

Approval as to form:

_____

Attorney

September 1, 2026

Mountain Area Workforce Development Board

(Advisory, 3-year term)
(4 reappointments)

NAME	ZIP CODE	EMPLOYER	REQUIREMENT	RACE/ GENDER	AGE
***Eric Watts** *(reappointment)*	28801	ABCCM	Community Based Organization Serving Veterans	Black/Male	55+
***Tara McCracken** *(reappointment)*	28804	MAHEC	Business Private Sector Nominated by the Chamber	White/Female	35-54
***Michael Horvath** *(reappointment)*	28804		Business Private Sector; Hospitality & Tourism	White/Male	55+
***John Gossett** *(reappointment)*	28801	AB Tech	Educational Institution	White/Male	

Strategic Partnership Grants Committee

(Funding Advisory, 3-year term)
(3 appointments)

NAME	ZIP CODE	EMPLOYER	RACE/ GENDER	AGE
Sala Menaya-Merritt	28748	City of Asheville	Black/Female	55+
Sandy Feutz	28806	Unemployed	White/Female	55+
Rachel Dudasik	28801	Explore Asheville	White/Female	35-54

Asheville Buncombe Technical CC Board of Trustees

(Governance/Legislative, 4-year term)
(1 appointment)

NAME	ZIP CODE	EMPLOYER	RACE/ GENDER	AGE
Edward M. Willis	28806	CEW Consulting, LLC	Black/Male	55+

Historic Resources Commission

(Quasi-Judicial, 3-year term)
(1 appointment)

NAME	ZIP CODE	EMPLOYER	REQUIREMENT	RACE/ GENDER	AGE
Melody Oxendine	28704	Brevard High School	Community Based Organization Serving Veterans	American Indian/Alaska Native/Female	18-34

County Board of Adjustment

(Quasi-Judicial, 3-year term)
(2 regular & 1 alternate appointments)

NAME	ZIP CODE	EMPLOYER	RACE/ GENDER	AGE
Scott Elliot	28803	Keller Williams	White/Male	18-34
James Diaz, Jr.	28804	Likewise Commercial Real Estate	White/Male	55+

Asheville-Buncombe Continuum of Care

(Advisory, 3-year term)
(1 appointment)

NAME	ZIP CODE	EMPLOYER	RACE/ GENDER	AGE
Drew Ball		Commissioner	White/Male	

Juvenile Crime Prevention Council

(Advisory, 2-year term)
(1 appointment)

NAME	ZIP CODE	EMPLOYER	RACE/ GENDER	AGE
Jennifer Horton		Commissioner	Black/Female	