



REQUEST FOR QUALIFICATIONS FOR EMISSIONS AND ELECTRICAL PROFESSIONAL SERVICES FOR CHARTING A CLEANER COURSE PART OF THE EPA CLEAN PORTS PROGRAM

Issuance Date September 9, 2025

Deadline for Submission of Questions/Requests for Clarification: Submit all questions and requests for clarification in writing to: marketing@portfreeport.com

no later than 4:00 p.m. CST on September 28, 2025

Si necesita una copia de este RFQ en español, envíe una solicitud por escrito a
marketing@portfreeport.com

PORT COMMISSION

ROB GIESECKE, CHAIRMAN; RUDY SANTOS, VICE CHAIRMAN; KIM KINCANNON, SECRETARY; DAN CROFT, ASST. SECRETARY;
BARBARA FRATILA, COMMISSIONER; RAVI K. SINGHANIA, COMMISSIONER; PHYLLIS SAATHOFF, EXECUTIVE DIRECTOR/CEO

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SECTION 1 - RFQ FOR EMISSIONS AND ELECTRICAL PROFESSIONAL SERVICES FOR CHARTING A CLEANER PORT PART OF EPA'S CLEAN PORTS PROGRAM

Port Freeport is seeking qualifications from firms interested in performing emissions and electrical professional services associated with a 2024 United States Environmental Protection Agency ("EPA") Clean Ports Program grant award.

Firms interested in providing professional services with electrical services may obtain a copy of this Request for Qualifications ("RFQ") and supplemental information at Port Freeport's website www.portfreeport.com.

In order to be considered, five (5) copies of a Statement of Qualifications to provide emissions and electrical professional services must be received by the Port Freeport no later than 4:00 p.m. Central Standard Time on October 13, 2025, addressed to:

Port Freeport – Engineering Dept
1100 Cherry St.
Freeport, TX 77541 USA

Port Freeport requests that the Statement of Qualifications also be submitted electronically as an attachment to marketing@portfreeport.com. Statements of Qualifications shall not be faxed to Port Freeport. Port Freeport reserves the right to reject any or all Statement of Qualifications received.

Interested Firms must not attempt to contact staff members, Port Commissioners, or agents of, or advisors to, Port Freeport associated with this RFQ to discuss or ask questions about the content of the request or their submission. Any questions should be submitted in writing to marketing@portfreeport.com. Any such contact may result in the disqualification of the Respondent.

Si necesita una copia de este RFQ en español, envíe una solicitud por escrito a marketing@portfreeport.com

BY THE AUTHORITY OF THE PORT COMMISSION OF PORT FREEPORT

By: _____
Phyllis Saathoff, CPA, PPM® Executive Director/CEO

End of Section

SECTION 2 - INTRODUCTION AND PROJECT DESCRIPTION

2.01 INTRODUCTION

This Request for Qualifications (“RFQ”) is for Professional Services (the “Services”) as it relates the emissions and electrical infrastructure as described in the Project Description below. It is intended that the Respondents to this RFQ for the Services will comprise one firm or team, which will engage subconsultants as needed, to deliver the scope of services described below.

2.02 PROJECT DESCRIPTION

Port Freeport is implementing a 2024 EPA Clean Ports Program Project titled *Charting a Cleaner Course: Port Freeport’s Continuous Improvement for a Cleaner Port*. The result of the project will be the development of a Climate and Air Quality Plan to build a foundation to transition to Zero Emissions (ZE) operations, positioning the Port to serve as a catalyst for transformational change across local freight operations and reduce mobile source pollution in near-port communities.

The project will be broken into various components to be managed by a firm that is qualified and experienced in emission inventory and electrical design for public entities. The Port has determined the appropriate approach to its transition to ZE operations consists of five planning tasks as follows:

1. Quality Assurance Project Plan
2. Inventory of Port Equipment and Emissions Monitoring (including stevedores and tenants)
3. Resiliency Planning
4. Community Benefits and Workforce Plan
5. Electrical Feasibility Scenario Analysis

The Qualified Firm selected as a result of this RFQ is expected to provide the following in compliance with the EPA grant requirements:

1. Provide a Quality Assurance Project Plan aligned with EPA requirements.
2. Inventory Port Equipment and Emissions Monitoring (including stevedores and tenants).
3. Complete Resiliency Planning.
4. Develop Community Benefits and Workforce Plan.
5. Analyze Electrical Feasibility Scenarios.
6. Design 60% REEFER rack installation from the location selected in the Electrical Feasibility Scenario Analysis.
7. Lead and coordinate with all other consultant planning teams to provide insight and management to execute all project plans on time.
8. Manage project subcontractors.

Each of the four planning tasks, associated subtasks, and estimated timelines are outlined below.

Task 1 – Quality Assurance Project Plan

To comply with EPA requirements, a Quality Assurance Project Plan (QAPP) must be prepared in accordance with the current version of the EPA’s Quality Assurance Project Plan Standard. This must be completed before initiating environmental information operations.

Additional information about what is included in the QAPP can be located at <https://www.epa.gov/quality/epa-quality-management-tools-projects>.

Timeline:

Plan Start Date: 01/01/2026	
Plan End Date: 02/20/2026	
Task 1	
8 weeks	

Task 2 – Inventory of Port Equipment and Emissions Monitoring

To build the foundation, the Firm must complete an inventory of all equipment used for emissions monitoring within the organization. This inventory will facilitate the assessment of the condition, functionality, age, fuel type, engine tier, and calibration status of each piece of equipment. This will result in a centralized database or inventory system to track and manage impacts from emission reduction efforts. The inventory consists of 10 tasks with ongoing monitoring updates.

Plan Subtasks:

- 2.1. Conduct an initial assessment of current equipment.
- 2.2. Develop a standardized template for capturing equipment information.
- 2.3. Physically inspect each piece of equipment to gather required data.
- 2.4. Evaluate the condition, functionality, age, field type, engine tier, and calibration status of each piece of equipment.
- 2.5. Create a database or inventory system to store information about equipment.
- 2.6. Coordinate with stevedores and tenants to complete evaluation for inclusion in the database.
- 2.7. Generate a comprehensive report with findings and recommendations.
- 2.8. Present findings and recommendations to stakeholders for review and approval.
- 2.9. Implement approved recommendations for maintenance, repower, or replacement at the direction of Port Freeport.
- 2.10. Establish a process for ongoing monitoring and updates to the equipment inventory

Timeline:

Plan Start Date: 01/01/2026					
Plan End Date: 10/08/2026 (Ongoing for tracking)					
Subtasks 1-4	Subtask 5	Subtask 6	Subtasks 7-8	Subtask 9	Subtask 10
12 weeks	6 Weeks	6 weeks	6 weeks	4 weeks	4 weeks

Task 3 – Resiliency Planning

Port resiliency planning is a crucial area of focus for ensuring long-term sustainability and functionality of the Port in the face of environmental challenges. The Port requests planning funding to develop a plan to continue resiliency through natural and manmade disasters. This consists of four tasks with ongoing community and stakeholder engagement.

Plan Subtasks:

3.1. Background

- a. Identify current and projected environmental impacts.
- b. Connect previous resiliency planning efforts and outcomes.
- c. Identify relevant regulations and standards.

3.2. Scope and Objectives

- a. Conduct a detailed risk assessment to identify potential threats, including sea level rise, extreme weather events, and other manmade or natural factors.
- b. Evaluate vulnerabilities and potential impacts of threats.
- c. Prioritize risks based on likelihood and severity of impact.
- d. Develop a range of resiliency strategies to address risks.
- e. Evaluate the cost effectiveness and feasibility of each strategy, including potential funding sources.

3.3. Monitoring and Evaluation

- a. Establish metrics and indicators for monitoring the effectiveness of the resiliency measures.
- b. Develop a plan for ongoing evaluation and adjustment.
- c. Ensure transparency and accountability in the monitoring process.

3.4. Communication and Stakeholder Engagement

- a. Develop a communication plan to engage community and stakeholders and raise awareness about port resiliency.
- b. Foster collaboration with government agencies, industry partners, and local communities.
- c. Ensure stakeholders are involved in the planning and decision-making processes.

Timeline:

Plan Start Date: 01/01/2026			
Plan End Date: 07/29/2027			
Subtask 1	Subtask 2	Subtask 3	Subtask 4
18 weeks	52 weeks	12 weeks	Ongoing

Task 4 – Community Benefits and Workforce Plan: The Port aims to develop a comprehensive near-port community benefits and workforce plan to expand on current efforts by the Community Advisory Panel (C.A.P.). These efforts will enhance the socioeconomic well-being of the community while supporting the future workforce development needs of industry. This plan will focus on creating valuable engagement to drive economic growth through strategic partnerships and initiatives. The approach to creating a Community Benefits and Workforce Plan will align with EPA’s Community-Port Collaboration initiatives. This effort consists of five tasks with ongoing communication and monitoring.

Plan Subtasks:

4.1. Stakeholder Engagement

- a. Work with C.A.P. to identify and engage key stakeholders both in industry and the community.
- b. Conduct surveys, interviews, and focus groups to understand the needs, priorities, and challenges of the community.

4.2. Research and Analysis

- a. Use EPA’s Community Action Roadmap as a guide for planning documentation.
- b. Conduct detailed job- and skills-based needs assessments to identify potential workforce gaps for future port activities to reduce emissions.
- c. Research barriers to and access to benefits and the workforce.
- d. Identify additional sources of funding for workforce development programs.

4.3. Implementation Planning

- a. Create an implementation roadmap with detailed action plans, timelines, responsibilities, and resources required for the initiatives.
- b. Establish metrics to measure the effectiveness and impact of the plan.

4.4. Communication and Transparency

- a. Develop a public participation and communication strategy to engage and update the stakeholders on progress, identify areas of improvement, and make data-driven decisions.
- b. Ensure public participation through continued engagement with the C.A.P. and by other means available to further transparency by updating stakeholders on progress, challenges, and outcomes following the Port’s Public Participation Plan and Procedures.

4.5. Monitoring and Evaluation

- a. Establish a monitoring and evaluation framework.
- b. Conduct biannual reviews and assessments to align the evolving needs of the community and workforce.

Timeline:

Plan Start Date: 01/01/2026			
Plan End Date: 02/01/2028			
Subtasks 1-2	Subtask 3	Subtask 4	Subtask 5
12 weeks	26 weeks	4 weeks/Ongoing	4 weeks/Ongoing

Task 5 – Electrical Feasibility Scenario Analysis: To implement ZE equipment the Port must analyze the electrical feasibility to be able to charge the proposed equipment. Conducting an Electrical Feasibility Scenario Analysis is essential to ensure the safety, reliability, and efficiency of electrical systems when implementing new electrical equipment. This analysis will reduce the risks and costs associated with equipment and electrical failures. This analysis consists of six tasks with ongoing stakeholder engagement.

Plan Subtasks:

- 5.1. Review the equipment analysis completed as part of this research.
- 5.2. Analyze current capacity and growth capacity out to 2055.
- 5.3. Develop a standardized template for capturing electrical needs at various intervals of implementation.
- 5.4. Engage stakeholders to identify electrical needs, both current and future, for the use of ZE equipment.
- 5.5. Develop a potential rollout plan and engage capacity needs with CenterPoint.
- 5.6. Provide 60% Plans, Specifications and Estimates (PS&E) for the installation of REEFER Rack system at the selected location during 5.5.
 - 5.6.1 The firm will provide detailed drawings and diagrams outlining the REEFER Rack system design. These include circuit layouts, equipment placement, wiring diagrams, and other graphical representations.
 - 5.6.2 The firm will provide written documents describing the materials, standards, and procedures required for

the electrical work, including installation methods, testing procedures, and compliance with relevant electrical codes and regulations.

5.6.3 The firm will provide a comprehensive calculation of costs associated with the work listed above.

Timeline:

Plan Start Date: 09/01/2026				
Plan End Date: 02/01/2028				
Subtasks 1-2	Subtask 3	Subtask 4	Subtask 5	Subtask 6
12 weeks	26 weeks	4 weeks/Ongoing	4 weeks/Ongoing	52 weeks

A copy of Port Freeport’s grant agreement with the U.S. Environmental Protection Agency is attached as Exhibit C to this RFQ.

End of Section

SECTION 3 - TIMELINE FOR AWARD

It is the intent of the Port Freeport to start the grant Project in the first quarter of Calendar Year (CY) 2026. The timeline for award of the contract for the services outlined in this RFQ is as follows:

1. Publication of the RFQ	September 9, 2025
2. Pre-Statement of Qualifications Meeting	September 18, 2025
3. Deadline for submitting questions and clarifications	September 28, 2025
4. Deadline for response to questions	October 8, 2025
5. Deadline for submitting Statement of Qualification	October 13, 2025
6. Review period for submissions	October 13-17, 2025
7. Potential Interview Period, if desired	October 20-24, 2025
8. Recommendation to Port Commission	November 20, 2025
9. Negotiate and Execute Consultant Agreement	November 21- December 30, 2025

(The above calendar of events is tentative and is subject to change)

End of Section

SECTION 4 - INSTRUCTIONS TO RESPONDENTS

4.01 RFQ Documents

By submitting a response, the Respondent represents that the Respondent has examined the RFQ and any applicable Addenda, and that the Respondent has become familiar with the work required, and that the responding Respondent is capable of performing quality work to successfully achieve the objectives of the Port Freeport. Respondents are requested to register by completing the Letter of Intent to Propose (Exhibit A) and submit to marketing@portfreeport.com prior to October 1, 2025. Failing to submit a Letter of Intent to Propose will not result in disqualification.

4.02 Questions and Inquiries and Port Freeport Contact Restrictions

All questions and inquiries regarding this RFQ shall be submitted to marketing@portfreeport.com and will be responded to from the same email account. Port Freeport's responses to all questions/inquiries shall be available to all registered Respondents who have submitted a Letter of Intent to Propose and shall be distributed to all registered Respondents as questions/inquiries are responded to. Respondents may only rely upon written information provided by Port Freeport to questions or inquiries. Respondents may not rely upon, nor is the Port Freeport responsible for, any oral information or instructions provided in reference to the RFQ.

Respondents must not attempt to contact Port Freeport Commissioners, staff members, agents of, or advisors to Port Freeport associated with this RFQ to discuss or ask questions about the contents of the request or their submission. Any questions should be submitted in writing to marketing@portfreeport.com only. Any such contact may result in the disqualification of the Respondent. To the extent that a Respondent relies upon information obtained from third parties and/or outside of the formal process described above, they do so at their own risk.

4.03 Addenda

If any inquiries or questions, in the opinion of the Port Freeport, warrant a modification to this RFQ, a written addendum will be prepared and posted as described below and may not result in a direct response to an inquiry or question. Any written addendum issued pertaining to this RFQ shall be incorporated into the terms and conditions of any resulting Contract.

In addition, Port Freeport may make changes, additions, or deletions to the requirements in this RFQ prior to the submittal date. Any such modification shall be made by a written addendum. Each addendum to this RFQ will be shared with any registered Respondents at the email address requested by the Respondent in the Respondent's submitted Letter of Intent to Propose.

Port Freeport will not be bound to any modification or deviation from the requirements set forth in this RFQ as a result of oral instructions. Respondents submitting a Statement of Qualifications shall acknowledge receipt of addenda in their submittal. Failure to acknowledge receipt of all addenda may cause a Statement of Qualifications to be deemed non-responsive. Respondents will be solely responsible for ensuring that all addenda have been received, acknowledged, and incorporated into the submitted Statement of Qualifications.

4.04 Submission of Statement of Qualifications Statement of Qualifications

A. Date and Time. Statement of Qualifications shall be submitted on or before 4:00 p.m. CST on October 13, 2025. The Statement of Qualifications received after the above-specified date and time will not be considered.

B. Submittal Quantity and Identification of Statement of Qualifications. Statement of Qualifications shall be

delivered in person or by courier service. Respondents shall submit five (5) printed copies of the Statement of Qualifications in a sealed package, bearing the Respondent's name and address and clearly marked as follows:

“STATEMENT OF QUALIFICATIONS FOR EMISSIONS AND ELECTRICAL PROFESSIONAL SERVICES”

addressed to Port Freeport's Executive Director and CEO at the following address:

Port Freeport
Attn: Port Freeport – Engineering Dept,
1100 Cherry St.,
Freeport, TX 77541

Failure to submit printed copies will result in disqualification.

C. Instructions to Submit Statement of Qualifications Electronically. Port Freeport requests Respondents to upload a single electronic file of the complete Statement of Qualifications package to: marketing@portfreeport.com no earlier than 4:01 pm CST October 13, 2025 and no later than 5:00 pm CST on October 14, 2025. Electronic Statement of Qualifications submission shall be a single file in “pdf” format. The electronic file should not be password protected unless information is included providing information to access the file. The electronic copy should clearly identify the Respondent in the file name as follows:

“COMPANY NAME – PROFESSIONAL SERVICES.pdf”

It is the Respondent's sole responsibility to ensure that the Statement of Qualifications is delivered in the manner addressed in this RFQ by the due date and time. Port Freeport will not be responsible for any electronic files submitted that do not transmit or experience issues when accessed or downloaded.

Failure to submit an electronic copy will not result in disqualification.

D. Acceptance of Statement of Qualifications

1. Port Freeport reserves the right to accept or reject any or all Statement of Qualifications, waive any informalities or irregularities in the Statement of Qualifications, request additional information or revisions to the Statement of Qualifications, and to negotiate with any or all Respondents.
2. Port Freeport reserves the right to withdraw this RFQ at any time without prior notice, and Port Freeport makes no representations that any contract will be awarded to any Respondent responding to this RFQ.
3. Port Freeport reserves the right to alter the process schedule at any time.
4. Port Freeport reserves the right to issue a new RFQ for any or all services listed herein.
5. Statement of Qualifications submitted are not to be copyrighted.
6. Port Freeport reserves the right to require confirmation of information furnished by any Respondent and/or request any Respondent to provide additional evidence of qualifications to successfully perform the work.

4.05 Confidential Status and Disclosure of Statement of Qualifications Contents

As a political subdivision of the State of Texas, Port Freeport is subject to the Texas Public Information Act (“the Act”), Chapter 552 of the Texas Government Code, and has no authority to enter into a confidentiality agreement in contravention of the Act in response to any public information requests under the Act that are submitted during the RFQ process. Port Freeport shall deem and argue to the State Attorney General that all Statements of Qualifications submitted in response to the RFQ are confidential under the Act; however, once the RFQ process has concluded, this exception will no longer apply.

Respondents should be aware that the Texas Attorney General may determine that full or partial disclosure is required for information deemed to be confidential or proprietary by a Respondent. It is the sole obligation of the Respondent to advocate for the confidential or proprietary nature of any information provided in or along with its Statement of Qualifications. Port Freeport shall not advocate for the confidentiality of the Respondents’ information to the Texas Attorney General or to any other person or entity. Port Freeport shall, pursuant to the Act, make a good faith effort to notify the Respondent, upon receipt of any public information request involving a submitted Statement of Qualifications after the conclusion of the RFQ process.

For any such request, the Respondent will be responsible for submitting written justification to the State Attorney General detailing why particular information should be withheld, such as the exception applicable to certain commercial information. In order to ensure its ability to claim exemption from the release of information contained in a submitted Statement of Qualifications, the Respondent should clearly designate within its Statement of Qualifications and accompanying materials any information that it believes to be exempt from disclosure and provide legal justification for each instance.

Information that is considered should be easily separable from the remainder of the RFQ. Marking the whole Statement of Qualifications “Confidential” is not acceptable.

By submitting a Statement of Qualifications, the Respondent acknowledges its understanding and agreement that Port Freeport shall have no liability to the Respondent or any other person or entity for any disclosure of information made in accordance with the Act.

Further, publicity or news releases pertaining to the RFQ, responses to this RFQ, or discussions of any kind related to the RFQ, or response documents may not be released without prior written approval of Port Freeport. This section applies regardless of whether or not a contract is awarded as a result of this RFQ.

4.06 Pre-Contractual Expenses

Port Freeport shall not, in any event, be liable for any pre-contractual expense incurred by Respondent in the preparation of the Statement of Qualifications. Pre-contractual expenses are defined as expenses incurred by Respondent in:

- A.** Preparing its Statement of Qualifications in response to this RFQ.
- B.** Submitting its Statement of Qualifications to Port Freeport
- C.** Negotiating with Port Freeport on any matter related to its Statement of Qualifications.
- D.** Travel expenses resulting from potential interviews for shortlisted candidates.

E. Any other expenses incurred by Respondent prior to the date of award of an agreement resulting from this RFQ.

4.07 Conflict of Interest

The Respondent is required to complete the Conflict-of-Interest Form attached as Exhibit B and submit it within the Statement of Qualifications (on Respondent's Letterhead).

4.08 Texas Ethics Commission Rules

The successful Respondent will be required to comply with the provisions of Section 2252.908 of the Texas Government Code and Chapter 46 of the Texas Ethics Commission Rules by preparing and submitting.

Texas Form 1295, "Certificate of Interested Parties" and submitting the signed form to Port Freeport at the time the contract is executed for any agreement that requires Approval of the Port Commission. The successful Respondent will be required to submit the Texas Form 1295 using Port Freeport provided project number and description in Box 3 on the form.

Information on Form 1295 and associated code and rules can be found at: <https://www.ethics.state.tx.us>

4.09 Agreement

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be a Professional Services Agreement for Analysis and PS&E Services between Port Freeport and the selected Respondent. Port Freeport's standard Professional Services Agreement form is attached as Exhibit G.

End of Section

SECTION 5 - STATEMENT OF QUALIFICATIONS CONTENT

5.01 Statement of Qualifications Content Submittals

Respondents are asked to furnish the Port Freeport with five (5) bound copies of its Statement of Qualifications along with an uploaded electronic version of said Statement of Qualifications and all addenda.

Statement of Qualifications shall be typed and submitted on 8 ½ inch by 11-inch size paper, using a single method of fastening. Elaborate promotional material is not requested and should not be included.

Lengthy narrative is discouraged, and Statement of Qualifications should be brief, clear and concise.

Submittals shall be limited to 35 total pages, excluding resumes, exhibits, appendices and copies of existing documents or forms.

To expedite Statement of Qualifications evaluation and to ensure that each Statement of Qualifications receives the same orderly review, all Statements of Qualifications must follow the format described in this section. Each Statement of Qualifications shall include a Table of Contents and all sections and pages appropriately numbered. Each Statement of Qualifications shall contain all elements of information requested without exception. Instructions regarding the required scope and content of the Statement of Qualifications are given in this section. Port Freeport reserves the right to include any part of the selected Statement of Qualifications response in the final contract.

Within the Statement of Qualifications, please include the following information that is preceded by a Table of Contents which specifies page numbers:

A. Letter of Transmittal. A Letter of Transmittal shall be addressed to Phyllis Saathoff, Executive Director and CEO, and must, at a minimum, contain the following information:

1. Identification of Respondent who will have contractual responsibility with the Port Freeport. Identification shall include the legal name of company, its corporate address, its telephone number and the email address of the Respondent's contact person;
2. Proposed working relationship between Respondent and any subcontractor(s), if applicable;
3. Acknowledgment of receipt of all addenda, if any;
4. A statement to the effect that the Statement of Qualifications shall remain valid for a period of not less than 90 days from the date of submittal;
5. Statement attesting that all information submitted with the Statement of Qualifications is true and correct.
6. Signature of the official authorized to bind Respondent to the terms of the Statement of Qualifications;
7. Letter of Transmittal shall not exceed two (2) pages in length.

B. Introduction and Executive Summary. An Executive Summary should be prepared describing the major facts or features of the Statement of Qualifications, the attributes of the Statement of Qualifications that set it apart from all others and any conclusions, assumptions, and general recommendations the Respondent desires to make. Respondents are requested to make every effort to limit the length of the Executive Summary to a maximum of two (2) pages.

C. Company Profile. Provide the information listed below relative to the Respondent's firm. If the Respondent chooses to subcontract some of the proposed work to another firm(s), similar information must be provided for each subcontractor. Respondents are requested to limit the length of each Company Profile to one (1) page per firm.

1. Legal name of firm and business address, including telephone number(s).
2. Year established (include former firm names and year established, if applicable).
3. Type of ownership and parent company, if any.
4. Statement of Qualifications Manager's name, address, telephone, e-mail, if different from firm listed in (Company Profile 1).

D. Qualifications and Organizational Capacity.

1. Identification of the firm/team responding to the RFQ. If a team of firms is proposed, the following will be identified:
2. Organization chart.
3. A brief description of each firm/team member should be provided along with a list of major services offered by each firm/team member.
4. A summary demonstrating the firm's/team's qualifications to satisfy all the technical areas identified in the section "Qualifications and organization capacity." If the Respondent anticipates the need for additional disciplines, please include and document same.
5. List of key firm/team members proposed to work on the project with a brief summary/resume of their experience.

E. Project Understanding. (Limited to four pages)

1. Project Understanding: Provide a demonstration of the understanding of the Project needs through the design and project implementation process. Outline a general approach for implementation.
2. A proposed schedule of activities for the delivery of the Project as described in Section 2: Introduction and Project Description.

F. Resources and Staff. (Limited to five pages)

1. Overview of the ability of the firm to staff the Project with qualified personnel and their relationship to the Project. Utilize reduced resumes to meet the page limit.

G. Examples of Experience and References (Limited to five pages).

1. Five (5) relevant projects completed in the last five (5) years, similar in scope to this Project that best illustrates the firm's capabilities, including demonstrated experience and timeliness of completing work. Provide reference contacts, including names and email addresses.

- H. Conflicts.** Port Freeport is interested in understanding any potential conflicts of interest if the Respondent is awarded the opportunity to perform the Services. Respondents should describe how work performed by the entity could be perceived as a conflict in any way and describe how a conflict or the appearance of a conflict will be handled if either were to arise.
- I. Appendices.** Information considered by the Respondent to be pertinent to this RFQ and which has not been specifically solicited in any of the foregoing sections may be placed in a separate appendix section. This should include all of the EPA Certifications as listed in Exhibit E. Respondents are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials. Appendices must be relevant and brief.
- J. Exceptions and Deviations.** State any exceptions or deviations from the requirements of this RFQ. Where the Respondent wishes to propose alternative approaches to meeting the Port Freeport's requirements, these shall be thoroughly explained.

End of Section

SECTION 6 - EVALUATION AND AWARD

6.01 Evaluation Criteria

Each Statement of Qualifications shall be evaluated by the Port Freeport's evaluation team and shall be based upon the responses in Section 5 and weighted as listed in this section. Although some of the criteria may be given more weight than others, each Respondent is expected to provide Port Freeport with a comprehensive Statement of Qualifications that allows Port Freeport to do a complete evaluation against the criteria.

A. Pass/Fail Criteria

1. Compliance with the provision of the requested information as stipulated in the instruction to Respondents, including the required federal forms and suspension and debarment by federal and state agencies.

B. Scoring Criteria

1. The Statement of Qualifications, which complies with the above criteria, will be evaluated based upon consideration of the criteria below.

Criteria	Points
Qualifications and Organization Capacity	35
Experience on Similar Past Projects	30
Approach and response to the Scope of Work	20
References	15
Total	100

2. Scores may be adjusted by the Selection Committee following interviews for those firms invited to interview.

33 U.S.C. 1382(B)(14)

A contract to be carried out using funds directly made available by a capitalization grant under this subchapter for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services shall be negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40 or an equivalent State qualifications-based requirement (as determined by the Governor of the State).

Brooks Act Regulations

On November 30, 2005, the President signed into law the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (119 Stat. 2396; Public Law 109- 115, HR 3058 ("the FY 2006 Appropriations Act"). Section 174 of this Act, amends 23 U.S.C. §112(b)(2) relating to the award of engineering and design services (A&E) contracts that are directly related to a construction project and use Federal-aid funding. This amendment strikes existing provisions of law and requires that these contracts shall be awarded in the same manner as a contract for architectural and engineering services is negotiated under the "Brooks Act" provisions contained in chapter 11 of 40 U.S.C.

The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications for the type of engineering and design services being procured, and at a fair and reasonable price. Engineering and design related services are defined in 23 U.S.C. §112 (b)(2)(A) and 23 C.F.R. §172.3 to include program management, construction management, feasibility studies, preliminary engineering, design engineering, surveying, mapping, or other related services. These other services may include professional engineering-related services, or incidental services that may be performed by a professional engineer, or individuals working under their direction, who may logically or justifiably perform these services.

6.02 Evaluation Procedure

An Evaluation Committee will be appointed by the Port Commission to review all Statements of Qualifications. The Evaluation Committee will be comprised of Port Freeport Staff. The Evaluation Committee members will review and evaluate the Statement of Qualifications based on the evaluation criteria outlined herein. The Evaluation Committee will recommend to the Port Commission the Respondent whose Statement of Qualifications is most qualified and whose Statement of Qualifications is deemed to be most advantageous to Port Freeport. The Port will negotiate with the most qualified Respondent in order to reach a fair and reasonable price.

6.03 Interviews and Sort Listing

Port Freeport reserves the right to conduct interviews with Respondents (either all or a short list) or to proceed with the evaluation process without conducting interviews. The purpose of interviews, if conducted, would be to allow Respondents the opportunity to clarify and expand upon aspects of their Statement of Qualifications. Interviews also present an opportunity to evaluate key personnel and discuss and clarify written Statement of Qualifications. Respondent(s) (either all or a short list) may be subsequently re- interviewed for final evaluation.

Respondents who submit a Statement of Qualifications in response to this RFQ shall be notified (by email) of the selection for shortlist and invitation (if any) to interview with Port Freeport Evaluation Committee.

6.04 Selection and Negotiation

Negotiations will be initiated with the top-ranked firm. The firm will be contacted and requested to meet with the Port to develop a detailed proposed scope of work and a schedule of fees for that work. The price Statement of Qualifications generated should substantially reflect the same composition and level of involvement as presented in the Statement of Qualifications.

If a mutually agreeable cost or price cannot be negotiated, the Port will formally end the negotiation and proceed to select and negotiate with the next most highly qualified firm(s) on the basis of demonstrated competence, experience, and qualifications. The Port reserves the right to make no award from this solicitation if deemed in its best interest to do so, and may, at its election, re-advertise and reissue the original, or an amended RFQ.

6.05 Notification of Award

Respondents who submit a Statement of Qualifications in response to this RFQ may be notified by email or by telephone regarding the Firm who was awarded the contract. Port Freeport shall endeavor to make such notification within seven (7) days of the date of the contract award.

End of Section

SECTION 7 - SPECIAL CONDITIONS

This project has been funded through the FY2024 Environmental Protection Agency's (EPA) Clean Ports Program. All procurements and contracts shall be compliant with EPA guidelines (Exhibit D) and the Uniform Guidance, 2 CFR 200 (Exhibit F). For more information regarding the grant, please find the full grant award in Exhibit C. The Statement of Qualifications should include the EPA Certifications in Exhibit E.

7.01 Cancellation

The Port has sole discretion and reserves the right to cancel this RFQ or to reject any or all submissions received prior to the contract award.

7.02 Preservation of Contracting Information

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this solicitation, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with the requirement of that subchapter.

7.03 Compliance with Certain State Law Requirements

Anti-Boycott of Israel. Contractor certifies that vendor is not currently engaged in and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

Anti-Boycott of Energy Companies. Contractor certifies that Vendor is not currently engaged in and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.

Anti-Boycott of Firearm Entities or Firearm Trade Associations. Contractor certifies that vendor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.

Certification of No Business with Foreign Terrorist Organizations. For purposes of Section 2252.152 of the Code, Contractor certifies that, at the time of this Agreement neither vendor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of vendor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Code as a company known to have contracts with or provide supplies or to a foreign terrorist organization.

End of Section

EXHIBIT A - LETTER OF INTENT TO PROPOSE

Port Freeport
Phyllis Saathoff
Executive Director & CEO
1100 Cherry St.
Freeport, TX 77541 USA

Reference: RFQ for Professional Services

This is to notify you that it is our present intent to {submit /*not submit} information in response to the above-referenced RFQ. The Individual to whom all information regarding this RFQ should be transmitted is:

Name: _____

Address: _____

City, State, & Zip: _____

Phone Number: _____ Fax Number: _____

Email address _____

*If declining to propose, please state reason(s) why:

Sincerely,

_____ Name (Signature)	_____ Typed Name
_____ Company Name	_____ Email

EXHIBIT B - CONFLICT OF INTEREST STATEMENT

(Proposing Entity) acknowledges that the Port is a governmental authority and, as such, the Port is firmly committed to making any business decisions based solely on evaluation of offers that the Port believes will provide the Port the best value and greatest return. Basic business integrity dictates that the Port's business decisions be objective, be in the best interest of the Port, and be in no way connected to or influenced by any other relationship. The undersigned, as a duly authorized representative of the Proposing Entity represents, warrants and certifies on behalf of the Proposing Entity that (a) Proposing Entity has not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or any other thing of value or benefit (including employment, contracts or subcontracts relating to Proposing Entity's business) to any Commissioner, official or employee of the Port, (b) no Commissioner, official or employee of the Port has (directly or indirectly) solicited any such payment or contribution, and (c) Proposing Entity does not have any Relationship (as that term is hereinafter defined) with any Commissioner, official or employee of the Port. For the purposes of this Contract, a Relationship is defined as (1) a Commissioner, official or employee of the Port or an affiliate of a Commissioner, official or employee of the Port owns ten percent (10%) of the ownership of the Proposing Entity or ownership in the Proposing Entity with a fair market value of \$15,000 or more; or (2) a Commissioner, official or employee of the Port or an affiliate of a Commissioner, official or employee of the Port has an employment or other business relationship with the Proposing Entity that results in taxable income or receipt of something of value by a Commissioner, official or employee of the Port or an affiliate of a Commissioner, official or employee of the Port; or (3) a Commissioner, official or employee of the Port or an affiliate of a Commissioner, official or employee of the Port receives one or more gifts from the Proposing Entity that have a total value of more than \$250 in one 12-month period. An "affiliate" of a person is (1) a family member of the person, related within the first degree by consanguinity or affinity, as defined by Subchapter B, Chapter 573 of the Texas Government Code, or (2) an entity owned in whole or in part by the person or by a family member of the person related within the first degree by consanguinity or affinity. The representations, warranties and certifications made in this statement are ongoing and will remain in effect for the term of this Contract. If any of the representations, warranties or certifications made by Proposing Entity herein cease to be correct during the term of this Contract, and in any event prior to making any payment or contribution to or forming a Relationship with a Commissioner, official or employee of the Port, Proposing Entity will notify the Port by filing a written statement with the Secretary of the Port Commission through the office of the Executive Port Director.

Proposing Entity will be in default under the terms of this Contract if (i) any of the representations, warranties or certifications made herein are false or misleading in any material respect as of the effective date, (ii) Proposing Entity fails to disclose any matter required to be disclosed hereunder, or (iii) Proposing Entity makes a payment or contribution to a Commissioner, official or employee of the Port without first disclosing the nature of the payment to be made as provided herein.


Authorized Representative Signature

Printed Name

Date

EXHIBIT C - GRANT AGREEMENT WITH U.S. ENVIRONMENTAL PROTECTION AGENCY

The grant agreement with U.S. EPA starts on the subsequent page.

	U.S. ENVIRONMENTAL PROTECTION AGENCY Grant Agreement	GRANT NUMBER (FAIN): 02F79001	DATE OF AWARD
		MODIFICATION NUMBER: 0	01/13/2025
		PROGRAM CODE: 5Y	MAILING DATE
		TYPE OF ACTION	01/16/2025
		New	
		PAYMENT METHOD: ASAP	ACH#
RECIPIENT TYPE: Municipal		Send Payment Request to: Contact EPA RTPFC at: rtpfc-grants@epa.gov	
RECIPIENT: PORT FREEPORT 1100 Cherry Street FREEPORT, TX 77541-5520 EIN: 74-6000884		PAYEE: PORT FREEPORT 1100 Cherry Street FREEPORT, TX 77541-5520	
PROJECT MANAGER John Lowe 1100 Cherry Street FREEPORT, TX 77541-5520 Email: lowe@portfreeport.com Phone: 979-233-2667	EPA PROJECT OFFICER Kiara Bent 1201 Elm Street, Suite 500, ARDPG Dallas, TX 75270-2102 Email: Bent.Kiara@epa.gov Phone: 214-665-2237	EPA GRANT SPECIALIST Jamell Ford Mission Support Division, MSDGG 1201 Elm Street, Suite 500 Dallas, TX 75270-2102 Email: ford.jamell@epa.gov Phone: 214-665-3182	
PROJECT TITLE AND DESCRIPTION Charting a Cleaner Course: Port Freeport's Continuous Improvement for a Cleaner Port See Attachment 1 for project description.			
BUDGET PERIOD 02/01/2025 - 03/31/2028	PROJECT PERIOD 02/01/2025 - 03/31/2028	TOTAL BUDGET PERIOD COST \$ 1,487,000.00	TOTAL PROJECT PERIOD COST \$ 1,487,000.00
<p align="center">NOTICE OF AWARD</p> <p>Based on your Application dated 05/24/2024 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$ 1,487,000.00. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$ 1,487,000.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.</p>			
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS U.S. EPA, Region 6, Grants Management Section 1201 Elm Street, Suite 500 Dallas, TX 75270-2102		ORGANIZATION / ADDRESS U.S. EPA, Region 6, Air and Radiation Division R6 - Region 6 1201 Elm Street, Suite 500 Dallas, TX 75270-2102	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official Marya Stanton - Director, Mission Support Division			DATE 01/13/2025

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$ 0	\$ 1,487,000	\$ 1,487,000
EPA In-Kind Amount	\$ 0	\$ 0	\$ 0
Unexpended Prior Year Balance	\$ 0	\$ 0	\$ 0
Other Federal Funds	\$ 0	\$ 0	\$ 0
Recipient Contribution	\$ 0	\$ 0	\$ 0
State Contribution	\$ 0	\$ 0	\$ 0
Local Contribution	\$ 0	\$ 0	\$ 0
Other Contribution	\$ 0	\$ 0	\$ 0
Allowable Project Cost	\$ 0	\$ 1,487,000	\$ 1,487,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.051 - Clean Ports Program	Inflation Reduction Act: Sec. 60102 Clean Air Act: Sec. 133	2 CFR 200, 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	2506JSR019	2227	E4SF6	06J5	000AVFX Y3	4166	-	-	\$ 1,487,000
									\$ 1,487,000

Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$ 0
2. Fringe Benefits	\$ 0
3. Travel	\$ 0
4. Equipment	\$ 0
5. Supplies	\$ 0
6. Contractual	\$ 1,463,000
7. Construction	\$ 0
8. Other	\$ 24,000
9. Total Direct Charges	\$ 1,487,000
10. Indirect Costs: 0.00 % Base	\$ 0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %)	\$ 1,487,000
12. Total Approved Assistance Amount	\$ 1,487,000
13. Program Income	\$ 0
14. Total EPA Amount Awarded This Action	\$ 1,487,000
15. Total EPA Amount Awarded To Date	\$ 1,487,000

ATTACHMENT 1 - PROJECT DESCRIPTION

The purpose of this award is to provide funding under the Inflation Reduction Act (IRA) to Port Freeport. Specifically, the recipient will conduct the following activities to improve air quality and reduce pollution in Brazoria County, Freeport, Texas:

- Assess inventory of all equipment used for emissions monitoring within the organization.
- Assess climate change vulnerabilities and identify priority measures to protect port equipment from climate impacts.
- Expand on a formal process to solicit input from communities and other stakeholders on climate and air quality planning activities
- Engage port workers on climate and air quality planning activities
- Prepare and publish documents summarizing results of climate and air quality planning activities
- Show current and needed capacity for installation of electric equipment
- Port Freeport (“the Port”) plans to build a foundation to transition to Zero Emissions (ZE) operations, positioning the Port to serve as a catalyst for transformational change across local freight operations and reduce mobile source pollution in near-port communities.
- The activities include:
 - Assess inventory of all equipment used for emissions monitoring within the organization.
 - Assess climate change vulnerabilities and identify priority measures to protect port equipment from climate impacts.
 - Expand on a formal process to solicit input from communities and other stakeholders on climate and air quality planning activities
 - Engage port workers on climate and air quality planning activities
 - Prepare and publish documents summarizing results of climate and air quality planning activities
 - Show current and needed capacity for installation of electric equipment. The anticipated deliverables include:
 - Completed equipment inventory of Port Freeport and stakeholders.
 - Plan to increase resiliency of port
 - Number of residents and community-based organizations participating
 - Number of events and tools supporting engagement with community to ensure their meaningful participation with respect to the design, planning, and performance of the project
 - Plan to prepare the current workforce for impacts of future technologies/projects.
 - Plan a course of action for workforce development initiatives to train current and incoming workers
 - Sliding scale plan to show when additional capacity will be required.
 - Publicly available document summarizing in detail the results of planning activities. The expected outcomes include:

- Increased understanding of current port emissions and areas of potential improvement through equipment. Baseline to encourage implementation of emission reducing technologies and track impacts.
- Increased capacity to improve resiliency to current and future climate change impacts.
- Increased stakeholder participation in port planning and decision-making impacting environmental justice
- Improved ability to incorporate community perspectives into decision-making
- Workers have better understanding of how their roles may evolve
- Worker voice is incorporated into decision-making
- Worker safety and job quality is prioritized
- Increased confidence in ability to execute larger scale equipment transitions.
- Increased transparency in planning activities, including public-facing list of contacts by name and title for public questions and comments.

The intended beneficiaries include:

- The communities within Brazoria County, Freeport, Texas No subawards are included in this assistance agreement.

ADMINISTRATIVE CONDITIONS

NATIONAL ADMINISTRATIVE TERMS AND CONDITIONS

General Terms and Conditions

The recipient agrees to comply with the current Environmental Protection Agency (EPA) general terms and conditions available at: https://www.epa.gov/system/files/documents/2024-10/fy_2025_epa_general_terms_and_conditions_effective_october_1_2024_or_later.pdf

These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at: <https://www.epa.gov/grants/grant-terms-and-conditions#general>.

A. CORRESPONDENCE CONDITION

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

- Federal Financial Reports (SF-425): rtpfc-grants@epa.gov, [Jamell Ford, Grant Specialist, ford.jamell@epa.gov, or local email box, r6_epa_grants_programs@epa.gov]
- DBE (MBE/WBE) reports (EPA Form 5700-52A): [Debora Bradford, DBE Coordinator, bradford.debora@epa.gov, Jamell Ford, Grant Specialist, ford.jamell@epa.gov, or local email box, r6_epa_grants_programs@epa.gov]
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, Requests for Extensions of the Budget and Project Period, Amendment Requests, Requests for other Prior Approvals, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: [Jamell Ford, Grant Specialist, ford.jamell@epa.gov, Kimari Hodges, Project Officer, hodges.kimari@epa.gov, or local email box, r6_epa_grants_programs@epa.gov]
- Payment requests (if applicable): [Jamell Ford, Grant Specialist, ford.jamell@epa.gov, Kimari Hodges, Project Officer, hodges.kimari@epa.gov, or local email box, r6_epa_grants_programs@epa.gov]
- Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables: [Kimari Hodges, Project Officer, hodges.kimari@epa.gov]

B. INTERGOVERNMENTAL REVIEW PERIOD

In accordance with 40 CFR Part 29, EPA must allow for an intergovernmental review comment period on this grant program for grants that include construction or land use planning. Accordingly, the recipient may incur costs at its own risk but shall not draw down any funds for construction or land use planning until the intergovernmental review process is completed. This process includes successful resolution of any issues identified during the comment period. The term “land use planning” is defined in the [EPA Financial Assistance Programs Subject to Executive Order 12372 and Section 204 of the Demonstration Cities and Metropolitan Development Act and Section 401 of the](#)

[Intergovernmental Cooperation Act](#) in [RAIN-2021-G02](#) and construction is defined [at 40 CFR 33.103](#).

The recipient must provide evidence of submission of the project for intergovernmental review; the evidence should clearly indicate the date of submission. This evidence of submission must be sent by email to the EPA Grants Specialist with a courtesy copy to the Project Officer. The comment period will end 60 days from the aforementioned submission.

C. NEW RECIPIENT TRAINING REQUIREMENT

The recipient agrees to complete the [EPA Grants Management Training for Applicants and Recipients](#) and the [How to Develop a Budget](#) training within 90 calendar days of the date of award of this agreement. The recipient must notify the Grant Specialist via email when the required training is complete. For additional information on this training requirement, the recipient should refer to [RAIN- 2024-G01](#).

PROGRAMMATIC CONDITIONS

CLEAN PORTS CLIMATE AND AIR QUALITY PLANNING (CAQP) GRANTS PROGRAMMATIC TERMS AND CONDITIONS (Updated 11/27/24)

A. Final Approved Workplan and Modifications

1. Recipient agrees to carry out the project in accordance with the final approved workplan.
2. Recipients are required to report deviations from budget or project scope or objective, and must request prior written approval from EPA:
 - a. for any change in the scope or objective of the project or program (even if there is no associated budget revision requiring prior written approval);
 - b. any change in key personnel (including employees and contractors) that are identified by name or position in the Federal award specified in the application or workplan;
 - c. the disengagement from the project for more than three months, or a 25% reduction in time and effort devoted to the Federal award over the course of the period of performance, by the approved project director or project manager;
 - d. the inclusion of costs that require prior approval in accordance with 2 CFR Part 200 Subpart E—Cost Principles or 48 CFR part 31, “Contract Cost Principles and Procedures,” as applicable;
 - e. the transfer of funds budgeted for participant support costs to other budget categories as defined in 2 CFR Section 200.1 Definitions to other categories of expense;
 - f. unless described in the final approved workplan and budget, the subawarding, transferring or contracting out of any work under the award;
 - g. for changes in the total approved cost-sharing by the recipient; or
 - h. the need arises for additional Federal funds to complete the project.

Requests for modifications to the approved workplan or budget, including additions, deletions, or changes in the schedule, must be submitted in a timely manner to the EPA Project Officer for approval, to minimize project delays. Depending on the type or scope of changes, a formal amendment to the award may be necessary. Major project modifications which include changes to the approved types and number of partners and equipment, or to the approved project partners and location(s) may not be allowed.

B. Performance Reporting and Final Performance Report B1. Performance Reports— Content

In accordance with 2 CFR 200.329, the recipient agrees to complete and submit electronic performance reports using reporting template(s), including the approved Clean Ports Project Reporting Template ([EPA Form Number: 5900-690](#) or future revisions, as applicable), which will be provided by the project officer.

The purpose of semi-annual performance reports is to provide updates on implementation of each project, including brief information on each of the following areas:

1. A comparison of accomplishments to the outputs/outcomes established in the assistance agreement work plan for the reporting period;
2. The reasons why any established outputs/outcomes were not met;
3. Additional information, analysis and explanation of cost overruns or higher-than-expected unit costs.

Additionally, the recipient agrees to notify the EPA when a significant development occurs that could impact the award. Significant developments include events that enable meeting milestones and objectives sooner or at less cost than anticipated or that produce different beneficial results than originally planned. Significant developments also include problems, delays, or adverse conditions which will impact the ability to meet the milestones or objectives of the award, including outputs/outcomes specified in the assistance agreement work plan. If the significant developments negatively impact the award, the recipient must include information on their plan for corrective action and any assistance needed to resolve the situation.

The final project report will include all categories of information required for semi-annual reporting, including a final description of all climate and air quality planning activities completed for each port, and how the documents were shared publicly. The final project report will also include a narrative summary of the project, the successes and lessons learned for the entire project.

B2. Performance Reports – Frequency

Throughout the 3-year performance period of the grant, the recipient agrees to submit **semi-annual** performance reports electronically to the EPA Project Officer by the due date following the conclusion of each semi-annual reporting period. The reporting periods are:

- January 1 – June 30: Report due date July 30.
- July 1 – December 31: Report due date January 30.

The recipient must submit the final performance report no later than 120 calendar days after the end date of the period of performance. Per the reporting form guidance, additional reporting may be required if the grant is extended or at the discretion of the EPA Project Officer.

C. Cybersecurity Condition State Grant Cybersecurity

1. The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State law cybersecurity requirements.
 - a. The EPA must ensure that any connections between the recipient's network or information system and the EPA networks used by the recipient to transfer data under this agreement, are secure.

For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or the EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by the EPA's regulatory programs for the submission of reporting and/or compliance data.

- b. The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in 2.a if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or the EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.332(e), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and the EPA.

C. Procurement Procedures

As provided in 2 CFR 200.317, with limited exceptions, states and Indian Tribes must follow the same policies and procedures they follow for procurements financed with non-Federal funds. If such policies and procedures do not exist, States and Indian Tribes must follow the procurement standards in [§§200.318](#) through [200.327](#). In addition to its own policies and procedures, a State or Indian Tribe must also comply with the following procurement standards: [§§ 200.321](#), [200.322](#), [200.323](#), and [200.327](#). All other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow the procurement standards in [§§ 200.318](#) through [200.327](#).

The recipient must follow applicable procurement procedures. The EPA will not be a party to these transactions. If EPA funds will be used to purchase goods or services, recipient agrees to compete the contracts for those goods and services and conduct cost and price analyses to the extent required by the fair and open competition for procurement provisions of 2 CFR 200.318 through 2 CFR 200.327.

Approval of a funding application does not relieve recipients of their obligations to compete service contracts and conduct cost and price analyses.

D. Project Transparency

The recipient agrees to engage with near-port communities about the project during the performance period and provide documentation that a detailed written summary of the results of the project (e.g., emissions inventory, emissions reduction targets or other planning activities) have been made available to the public, such as via a webpage, for all activities included in the final workplan. Examples of appropriate community engagement during the project period are outlined on pg. 34 of the Notice of Funding Opportunity. Community engagement activities

conducted as part of the final approved workplan should be reported in performance reporting described in Programmatic Term and Condition B (Performance Reporting and Final Performance Report)

E. Program Audit

In addition to audit requirements listed in the [EPA General Terms and Conditions](#) which relate to audits and access to records, the recipient agrees to comply with random EPA reviews of the recipient to protect against waste, fraud, and abuse. As part of this process, the EPA, or its authorized representatives, may request copies of grant documents from prior recipients who have received grants, or may request documentation from current recipients and subrecipients, to verify statements made on the application and reporting documents. Recipients may be selected for advanced monitoring, including a potential site visit to confirm project details. Recipients are expected to comply with site visit requests and recordkeeping requirements and must supply the EPA with any requested documents for as long as the records are retained, or risk cancellation of an active grant application or other enforcement action.

F. Record Retention

As required by 2 CFR 200.334-338, the recipient must keep all financial records, supporting documents, accounting books and other evidence of Grant Program activities for three years from the date of submission of the final financial report. If any litigation, claim, or audit is started before the expiration of the three-year period, the recipient must maintain all appropriate records until these actions are completed and all issues resolved.

G. Public or Media Events

The recipient agrees to notify the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to construction projects as a result of this agreement and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

H. Emissions Inventories

Emissions inventories must follow the EPA's Port Emissions Inventory Guidance. This guidance may be found at: <https://www.epa.gov/ports-initiative/port-and-goods-movement-emission-inventories>.

I. Quality Assurance

Authority: Quality Assurance applies to all assistance agreements involving environmentally related data operations, including environmental data collection, production, or use as defined in [2 CFR. 1500.12](#) Quality Assurance.

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

1. Quality Management Plan (QMP)

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

i. Develop a QAPP,

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

iii. Submit the document for EPA review, and

iv. Obtain the EPA Quality Assurance Manager or designee (hereafter referred to as QAM) approval.
The recipient must submit the QMP 30 days before beginning environmental information operations.

b. The recipient must review their approved QMP at least annually. These documented reviews shall be made available to the sponsoring EPA organization if requested. When necessary, the recipient shall revise its QMP to incorporate minor changes and notify the EPA PO and QAM of the changes. If significant changes have been made to the Quality Program that affect the performance of environmental information operations, it may be necessary to re-submit the entire QMP for re-approval. In general, a copy of any QMP revision(s) made during the year should be submitted to the EPA PO and QAM in writing when such changes occur. Conditions requiring the revision and resubmittal of an approved QMP can be found in section 6 of the EPA's [Quality Management Plan \(QMP\) Standard](#).

c. The recipient must submit a QMP crosswalk with the QMP.

2. Quality Assurance Project Plan (QAPP)

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

i. Develop a QAPP,

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

iii. Submit the document for EPA review, and

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

For Reference:

- [Quality Management Plan \(QMP\) Standard and EPA's Quality Assurance Project Plan \(QAPP\) Standard](#); contain quality specifications for the EPA and non-EPA organizations and definitions applicable to these terms and conditions.
- [EPA QA/G-5: Guidance for Quality Assurance Project Plans](#): <https://www.epa.gov/sites/default/files/2015-06/documents/g5-final.pdf>

- The [EPA's Quality Program](#) website has a [list of QA managers](#), and [specifications for EPA and Non- EPA Organizations](#).
- The Office of Grants and Debarment [Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance](#).

J. Use of Logos

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

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

The recipient is subject to the Automated Standard Application Payments (ASAP) and Proper Payment Draw Down General Term and Condition. See the “Financial Information” section of the [General Terms and Conditions](#).

The recipient is required to notify the EPA Project Officer of draws from ASAP in excess of 50% of the award within a 24-hour period. The recipient is required to provide such notification within 3 business days of the draw amount being surpassed.

The recipient is subject to the Management Fees General Term and Condition, which includes the following requirements that prohibit profit on the part of the grantee:

1. Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable.
2. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work. See the [“Selected Items of Cost” section of the General Terms and Conditions](#).

L. Ineligible Project Costs

The recipient must not include the following activities or costs in the project:

1. Activities that are not focused on one or more ports. For purposes of this assistance program, a port is either a water port or a dry port, as defined below:
 - a. Water port: places on land alongside navigable water (e.g., oceans, rivers, or lakes) with one or more facilities in close proximity for the loading and unloading of passengers or cargo from ships, ferries, and other commercial vessels. This includes facilities that support non-commercial Tribal fishing operations.
 - b. Dry port: an intermodal truck-rail facility that is included in the 2024 Federal Highway Administration's (FHWA) Intermodal Connector Database based on meeting the criteria set in 23 CFR 470. These criteria include having more than 50,000 TEUs (20-foot equivalent units) per year or other units measured that would convert to more than 100 trucks per day, or comprising more than 20 percent of freight volumes handled by any mode within a State.

2. Planning exercises related to emissions or emissions reductions where vehicles, vessels, and other mobile source port equipment are not included.
3. Development of an EJ mapping tool (applicants should instead rely on existing tools) Revised April 10, 2024.
4. Vulnerability assessments not related to impacts from extreme weather and other climate-related events and conditions
5. Resiliency measure implementation (construction, equipment, purchase, information systems, etc.)
6. Emissions reduction strategy implementation (e.g., the purchase of ZE mobile source equipment, which is eligible for funding under Funding Opportunity Number EPA-R-OAR-CPP-24-04).
7. As proscribed in Section 825 of the National Defense Authorization Act, the EPA may not award funds to an entity that uses in part or in whole: the national transportation logistics public information platform (commonly referred to as 'LOGINK'); any national transportation logistics information platform provided by or sponsored by the People's Republic of China, or a controlled commercial entity; or a similar system provided by Chinese state-affiliated entities.

M. Program Income

In accordance with 2 CFR Part 200.307 and 2 CFR 1500.8(b), the recipient is hereby authorized to retain program income earned during the project period. The program income shall be used in one of the following ways:

Added to funds committed to the project by the EPA and used for the purposes and under the conditions of the assistance agreement.

The recipient must provide as part of its semi-*annual* performance report, a description of how program income is being used. Further, a report on the amount of program income earned during the award period must be submitted with the annual Federal Financial Report, Standard Form 425.

In accordance with 2 CFR 200.307(d), costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the EPA award. The recipient must retain adequate accounting records to document that any costs deducted from program income comply with regulatory requirements.

N. Competency Policy

Competency of Organizations Generating Environmental Measurement Data

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

Recipient agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively,

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

O. Geospatial Data Standards

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

P. Participant Support Costs/Rebates

Participant support costs include rebates, subsidies, stipends, or other payments to program beneficiaries. Program beneficiaries cannot be a contractor, subrecipient, or employee of recipient. Participant support costs are not subawards as defined by 2 CFR §200.1 and should not be treated as such. Participant support costs must be reasonable, incurred within the project period and otherwise allocable to the EPA assistance agreement.

- Recipient must abide by EPA Participant Support Cost regulation(s) and guidelines including but not limited to *Interim EPA Guidance on Participant Support Costs*: <https://www.epa.gov/grants/rain-2018-g05-r1>
- Recipient must maintain source documentation regarding program support funds to ensure proper accounting of EPA funds.
- Recipient must enter into a written agreement with the program beneficiary that receives participant support costs. Such agreement should not be structured as a subaward agreement, and the administrative grant regulations under 2 CFR Part 200 and 2 CFR Part 1500, as well as EPA's general terms and conditions do not flow down to program beneficiaries receiving participant support costs. Such written agreement is also required if a subrecipient or contractor intends to issue participant support costs to a program beneficiary. The written agreement must: Describe the activities that will be supported by rebates, stipends, subsidies or other payments; specify the amount of the rebate, subsidy, stipend, or other payment; identify which party will have title to equipment (if any) purchased with a rebate or subsidy or other payment; and specify any reporting required by the program beneficiary and the length of time for such reporting.
- Recipient must obtain the prior written approval from EPA's Award Official if it wants to provide participant support costs that were not described in the approved workplan and budget. If the recipient's request would result in undermining the integrity of the competition this grant or cooperative agreement was awarded under, EPA will not approve the request.
- Recipient must obtain prior written approval from EPA's Award Official if recipient wants to modify the amount approved (upwards or downwards) for participant support costs. If the recipient's request would result in undermining the integrity of the competition this grant or cooperative agreement was awarded under, EPA will not approve the request.

EXHIBIT D - EPA GENERAL TERMS AND CONDITIONS

This project is funded by the Environmental Protection Agency's (EPA) Clean Ports grant program. As such, the Respondent shall comply with the following EPA General Terms and Conditions, dated April 26, 2025. The following are the EPA's public policy requirements.

Environmental Protection Agency

General Terms and Conditions

Effective October 1, 2024

Revision History:

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

T&C Number	Effective Date	Description of Changes
#54	4/03/2025	Added new T&C on Federal anti-discrimination laws.
#3	4/03/2025	Added a new termination provision if the award no longer effectuates the program goals or agency priorities.
#27	4/03/2025	Updated pursuant to a class exception to subparts of 40 CFR Part 33 issued on March 17, 2025.
#8, 42, 47	4/03/2025	Revised in accordance with administration priorities.
#41	4/26/2025	Added a new T&C on the procurement of synthetic nucleic acids and benchtop nucleic acid synthesis equipment.
#15	3/12/2025	The Federal Subaward Reporting System (FSRS) was decommissioned and replaced fully by the System for Award Management (SAM.gov), all references to FSRS have been replaced with SAM.gov to reflect this change.
#18	11/26/2024	Added language on the de minimis rate for grants amended to incorporate the October 2024 Revisions to 2 CFR Part 200.

Environmental Protection Agency

General Terms and Conditions

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Preface

1. Introduction

- (a) These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions, and restrictions reflected on the official assistance award document. Recipients **must** review their official award document for additional administrative and programmatic requirements. Failure to comply with the general terms and conditions outlined below and those directly reflected on the official assistance award document may result in enforcement actions as outlined in [2 CFR 200.339](#) and [2 CFR 200.340](#).
- (b) If the EPA General Terms and Conditions have been revised, EPA will update the terms and conditions when it provides additional funding (incremental or supplemental) prior to the end of the period of performance of this agreement. The recipient must comply with the revised terms and conditions after the effective date of the EPA action that leads to the revision. Revised terms and conditions do not apply to the recipient's expenditures of EPA funds or activities the recipient carries out prior to the effective date of the EPA action. EPA will inform the recipient of revised terms and conditions in the action adding additional funds.

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

This award is subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards; Title [2 CFR Part 200](#) and [2 CFR Part 1500](#). 2 CFR 1500.2, Adoption of 2 CFR Part 200, states the EPA adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR Part 200), as supplemented by 2 CFR Part 1500, as the EPA policies and procedures for financial assistance administration. 2 CFR Part 1500 satisfies the requirements of [2 CFR 200.110\(a\)](#) and gives regulatory effect to the OMB guidance as supplemented by 2 CFR Part 1500. This award is also subject to applicable requirements contained in EPA programmatic regulations located in 40 CFR Chapter 1 Subchapter B.

3. Termination (Updated 4/03/2025)

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

- (a) If a recipient or subrecipient fails to comply with the terms and conditions of the award, including statutory or regulatory requirements;
- (b) With the consent of the recipient when both the recipient and the EPA agree upon the termination conditions, which include the effective date and, in the case of partial termination, the portion to be terminated;
- (c) If a recipient sends the EPA a written notification of the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated; however, if the EPA determines that the remaining portion of the Federal award will not accomplish the

purposes for which the Federal award was made, the EPA may terminate the award in its entirety;
or

- (d) Pursuant to the programmatic terms and conditions specified in the Federal award.
- (e) By the EPA or pass-through entity to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities. **This provision applies to all new awards and funding amendments (incremental and supplemental) made on or after April 3, 2025.**

Financial Information

4. Reimbursement Limitation

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as reflected on the award document. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk. See [2 CFR 1500.9](#).

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

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

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

EPA will not make payments to recipients until the ASAP enrollment is completed or if recipients fall under one of the above categories. EPA's Research Triangle Park Finance Center (RTPFC) will initiate the ASAP enrollment based on the key contact information on the grant application. The "payee" on the key contacts form will receive an email from ASAP indicating the steps required for completing the enrollment. Recipients may request exceptions using the procedures below.

Under this payment mechanism, the recipient initiates an electronic payment request online via ASAP, which is approved or rejected based on the amount of available funds authorized by EPA in the recipient's ASAP account. Approved payments are credited to the account at the financial institution of the recipient organization set up by the recipient during the ASAP enrollment process.

Additional information concerning ASAP and enrollment can be obtained by contacting the EPA RTPFC, at rtpec-grants@epa.gov, or by visiting: <https://www.fiscal.treasury.gov/asap/>.

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

Proper Payment Drawdown (for recipients other than states)

- (a) As required by [2 CFR 200.305\(b\)](#), the recipient must draw funds from ASAP only for the minimum amounts needed for actual and immediate cash requirements to pay employees, contractors, subrecipients or to satisfy other obligations for allowable costs under this assistance agreement. The timing and amounts of the drawdowns must be as close as administratively feasible to actual disbursements of EPA funds. Disbursement within 5 business days of drawdown will comply with this requirement and the recipient agrees to meet this standard when performing this award.
- (b) Recipients may not retain more than 5% of the amount drawn down, or \$1,000 whichever is less, 5 business days after drawdown to materially comply with the standard. Any EPA funds subject to this paragraph that remain undisbursed after 5 business days must be fully disbursed within 15 business days of draw down or be returned to EPA.
- (c) If the recipient draws down EPA funds in excess of that allowed by paragraph b., the recipient must contact rtpfc-grants@epa.gov for instructions on whether to return the funds to EPA. The recipient must comply with the requirements at [2 CFR 200.305\(b\)\(11\)](#) regarding depositing advances of Federal funds in interest bearing accounts.
- (d) Returning Funds: [Pay.gov](#) is the preferred mechanism to return funds. It is free, secure, paperless, expedient, and does not require the recipient/vendor to create an account. Contact RTPFC-Grants at rtpfc-grants@epa.gov to obtain complete instructions. Additional information is available at the [Pay.gov website](#). Information on how to repay EPA via check is available at <https://www.epa.gov/financial/makepayment>. Instructions on how to return funds to EPA electronically via ASAP are available at <https://www.fiscal.treasury.gov/asap/>.
- (e) Failure on the part of the recipient to materially comply with this condition may, in addition to EPA recovery of the un-disbursed portions of the drawn down funds, lead to changing the payment method from advance payment to a reimbursable basis. EPA may also take other remedies for noncompliance under [2 CFR 200.208](#) and/or [2 CFR 200.339](#).
- (f) If the recipient believes that there are extraordinary circumstances that prevent it from complying with the 5-business day disbursement requirement throughout the performance period of this agreement, recipients may request an exception to the requirement by following the procedures specified in [RAIN-2018-G06-R](#). EPA will grant exceptions to the 5-business day disbursement requirement only if the recipient demonstrates that compliance places an undue administrative or financial management burden or EPA determines that granting the exception is in the public interest. EPA will grant exceptions to the 5-business day disbursement requirement only if the recipient demonstrates that compliance places an undue administrative or financial management burden or EPA determines that granting the exception is in the public interest.

Proper Payment Drawdown for State Recipients

In accordance with [2 CFR 200.305\(a\)](#), payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at [31 CFR Part 205, Subparts A and B](#) and [Treasury Financial Manual \(TFM\) 4A-2000, “Overall Disbursing Rules for All Federal Agencies”](#) unless a program specific regulation (e.g. 40 CFR 35.3160 or 40 CFR 35.3560) provides

otherwise. Pursuant to 31 CFR Part 205, [Subpart A—Rules Applicable to Federal Assistance Programs Included in a Treasury-State Agreement](#), States follow their Treasury-State CMIA Agreement for major Federal programs listed in the agreement. For those programs not listed as major in the Treasury-State agreement, the State follows the default procedures in 31 CFR Part 205, [Subpart B— Rules Applicable to Federal Assistance Programs Not Included in a Treasury-State Agreement](#), which directs State recipients to draw-down and disburse Federal financial assistance funds in anticipation of immediate cash needs of the State for work under the award. States must comply with [2 CFR 200.302\(a\)](#) in reconciling costs incurred and charged to EPA financial assistance agreements at time of close out unless a program specific regulation provides otherwise.

Selected Items of Cost

- 6. Prohibition on Certain Telecommunications and Video Surveillance Service Equipment or Services** Prohibition on covered telecommunications and video surveillance services or equipment is effective on all obligations and expenditures of EPA financial assistance funding as of August 13, 2020, including awards made before that date.

As required by [2 CFR 200.216](#), EPA recipients and subrecipients, including borrowers under EPA-funded revolving loan fund programs, are prohibited from obligating or expending Federal loan or grant funds to procure or obtain covered telecommunications equipment or services; extend or renew a contract to procure or obtain covered telecommunications equipment or services; or enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services. As described in section 889 of [Public Law 115-232](#), “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.

Pursuant to [2 CFR 200.216\(c\)](#), “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. Consistent with [2 CFR](#)

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

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

Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889 of [Public Law 115-232](#), are recorded in the [System for Award Management](#) exclusion list.

7. Consultant Cap

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

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

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

Contracts and subcontracts with firms for services that are awarded using the procurement requirements in Subpart D of 2 CFR Part 200 are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See [2 CFR 1500.10](#).

8. Establishing and Managing Subawards (Updated 4/03/2025)

If the recipient chooses to pass funds from this assistance agreement to other entities, the recipient must comply with applicable subaward provisions of 2 CFR Part 200 and the [EPA Subaward Policy](#).

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

1. Select subrecipients and conduct subaward competitions, as appropriate, using a system that properly differentiates between subrecipients and procurement contractors consistent with the differentiating characteristics explained in 2 CFR [200.331](#) and EPA’s supplemental guidance in [Appendix A of the EPA Subaward Policy](#).
2. Verify that the potential subrecipient is not excluded or disqualified in accordance with the verification methods provided in [2 CFR 180.300](#), such as confirming in SAM.gov that a potential subrecipient is not suspended, debarred, or otherwise excluded from receiving Federal funds.
3. Establish and follow a system that ensures all subaward agreements are in writing and contain all of the elements required by [2 CFR 200.332\(b\)](#). EPA has developed a template for subaward agreements that is available in [Appendix D of the EPA Subaward Policy](#).
4. Prior to making subawards, ensure that each subrecipient has a “Unique Entity Identifier” (UEI). The UEI is required by [2 CFR Part 25](#) and [2 CFR 200.332\(b\)](#). Subrecipients are not required to complete full [System for Award Management \(SAM.gov\)](#) registration to obtain a UEI. Information regarding obtaining a UEI is available at the System for Award Management (SAM.gov) Internet site: <http://www.sam.gov/SAM/> and in the General Condition of the pass-through entity’s agreement with EPA entitled “**System for Award Management and Universal Identifier Requirements**” T&C of the pass-through entity’s agreement with the EPA.
5. Ensure that subrecipients are aware of the requirements that apply to the subaward, including those that flow down from the recipient, as required by [2 CFR 200.332\(b\)](#) and monitor the activities of the subrecipient to ensure compliance with these requirements per [2 CFR 200.332\(e\)](#). These requirements include, among others:
 - a. Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable, including provisions protecting free speech, religious liberty, public welfare, and the environment per [2 CFR 200.300\(a\)](#), as well as regulations, including [2 CFR 200.300\(b\)](#) prohibiting discrimination based on sex.
 - b. Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition pass-through entity’s agreement with EPA entitled “**Reporting Subawards and Executive Compensation.**”
 - c. Limitations on individual consultant fees as set forth in [2 CFR 1500.10](#) and the General Condition of the pass-through entity’s agreement with EPA entitled “**Consultant Fee Cap.**”
 - d. EPA’s prohibition on paying management fees as set forth in General Condition of the pass-through entity’s agreement with EPA entitled “**Management Fees.**”
 - e. The Procurement Standards in [2 CFR Part 200](#) including those requiring competition when the subrecipient acquires goods and services from

- contractors (including consultants) and Domestic preferences for procurements at [2 CFR 200.322](#).
- f. Other statutes, regulations and Executive Orders that may apply to subawards are described at [Information on Requirements that Pass-Through Entities must “Flow Down” to Subrecipients](#). Many Federal requirements are agreement- or program-specific, and EPA encourages pass-through entities to review the terms of their assistance agreement carefully and consult with their EPA Project Officer for advice if necessary.
6. Establish and follow a system for evaluating subrecipient fraud risk and risk of noncompliance with a subaward to determine the appropriate monitoring described at [2 CFR 200.332\(c\)](#) and consider whether, based on the evaluation of risk, additional monitoring tools may be useful as described in [2 CFR 200.332\(f\)](#). When evaluating a subrecipient’s risk, a pass-through entity should consider:
- a. The subrecipient’s prior experience with same or similar subawards;
 - b. Results of previous audits, including considering whether the subrecipient receives a Single Audit, in accordance with [2 CFR Part 200, Subpart F](#) and the extent to which the same or similar subawards have been audited as a major program;
 - c. Whether the subrecipient has new personnel or new or substantially change systems, and
 - d. The extent and results of any Federal agency monitoring (for example, if the subrecipient also receives Federal awards directly from the Federal agency).
7. Establish and follow a process for deciding whether to implement specific conditions in subawards based on risk factors, as described in [2 CFR 200.208](#), and notify EPA of the specific conditions as required by [2 CFR 200.332\(d\)](#). Examples of specific conditions, per [2 CFR 200.208](#), may include:
- a. Requiring payments as reimbursements rather than advance payments;
 - b. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance;
 - c. Requiring additional or more detailed financial reports;
 - d. Requiring additional or project monitoring;
 - e. Requiring the recipient or subrecipient to obtain technical or management assistance; or
 - f. Establishing additional prior approvals.
8. Establish and follow a system for monitoring subrecipient performance that includes the elements required at [2 CFR 200.332\(e\)](#), such as reviewing financial and performance reports, and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.
9. Ensure that a subrecipient provides a plan for and takes corrective action on all significant developments that negatively affect the subaward. Per [2 CFR 200.332\(e\)\(2\)](#), significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions that will impact their ability to meet the

milestones or objectives of the subaward.

10. Establish and maintain an accounting system which ensures compliance with the \$50,000 limitation at [2 CFR 200.1](#), *Modified Total Direct Costs*, if applicable, on including subaward costs in *Modified Total Direct Costs* for the purposes of distributing indirect costs. Recipients with Federally approved indirect cost rates that use a different basis for distributing indirect costs to subawards must comply with their Indirect Cost Rate Agreement.
11. Work with EPA's Project Officer to obtain the written consent of EPA's Office of International and Tribal Affairs (OITA) prior to awarding a subaward to a foreign or international organization or a subaward to be performed in a foreign country, even if that subaward is described in a proposed scope of work.
12. Obtain prior written approval from the EPA's Award Official for any subawards or subaward activities that are not described in the approved work plan in accordance with [2 CFR 200.308](#). As provided in [2 CFR 200.308\(f\)\(6\)](#), recipients must obtain prior approval to change a named subrecipient from the EPA Award Official if the pass-through entity described the original subrecipient's qualifications and/or performance history in the competitive application. Recipients must contact their Project Officer to begin the prior approval process.
13. Obtain prior written approval from the EPA's Award Official before awarding a subaward to an individual if the EPA-approved scope of work does not include a description of subawards to individuals.
14. Establish and follow written procedures under [2 CFR 200.302\(b\)\(7\)](#) for determining that subaward costs are allowable in accordance with [2 CFR Part 200, Subpart E](#) and the terms and conditions of this award. These procedures may provide for allowability determinations on a pre-award basis, through ongoing monitoring of costs that subrecipients incur, or a combination of both approaches provided the pass-through entity documents its determinations.
15. Verify that the subrecipient is audited, as applicable, per [2 CFR part 200, Subpart F](#), and establish and maintain a system under [2 CFR 200.332\(g\)](#) and [2 CFR 200.521](#) for issuing management decisions for audits of subrecipients that relate to the Federal award from the recipient. The recipient remains accountable to EPA for ensuring that unallowable subaward costs initially paid by EPA are either reimbursed or offset with allowable costs, regardless of whether the recipient recovers those costs from the subrecipient.
16. As provided in [2 CFR 200.333](#), pass-through entities must obtain EPA approval to make fixed amount subawards. Recipients should consult with their EPA Project Officer regarding how to obtain EPA approval.

By accepting this award, the recipient is certifying that it either has systems in place to comply

with the requirements described in Items 1 through 16 above or will refrain from making subawards until the systems are designed and implemented.

Subawards to Federal Agencies – Clarity on Applicable EPA Terms and Conditions: If the subrecipient is a Federal agency, the only provisions of the EPA General Terms and Conditions implementing 2 CFR Part 200 on subawards that apply are: (1) the requirement for the Federal agency to obtain a Unique Entity Identifier (UEI) in accordance with 2 CFR Part 25 as described in Item 4 above and (2) the requirement for the recipient to report on first-tier subawards as described in EPA General Term and Condition 15.1, “Reporting of first tier subawards.”

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

9. Management Fees

Management Fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses; unforeseen liabilities; or for other similar costs which are not allowable under this assistance agreement.

Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

10. Federal Employee Costs

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

11. Foreign Travel

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

12. The Fly America Act and Foreign Travel

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

13. Union Organizing

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

Reporting and Additional Post-Award Requirements

14. System for Award Management and Universal Identifier Requirements

14.1 Requirement for System for Award Management (SAM) Unless exempted from this requirement under [2 CFR 25.110](#), the recipient must maintain current and active registration SAM.gov. The recipient's registration must always be current and active until it submits all final reports required under this Federal award or receive the 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.

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

- a.** Must notify potential subrecipients that no entity may receive a subaward unless the entity has provided its UEI to the recipient.
- b.** Must not make a subaward to an entity unless the entity has provided its UEI. Subrecipients are not required to complete full registration in SAM.gov to obtain a UEI.

14.3 Definitions. For the Purpose of this award term:

- a. System for Award Management (SAM.gov)** means the Federal repository into which an entity 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>).
- b. Unique Entity Identifier** means the universal identifier assigned by SAM.gov to uniquely identify an entity.
- c. 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.
- d. **Subaward** has the meaning given in [2 CFR 200.1](#)
- e. **Subrecipient** has the meaning given in [2 CFR 200.1](#)

15. Reporting Subawards and Executive Compensation (Updated 3/12/2025)

15.1 Reporting of first tier subawards.

- a. **Applicability.** Unless the recipient is exempt as provided in paragraph 15.4. of this award term, the recipient must report each action that obligates \$30,000 or more in Federal funds for a subaward to 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.
- b. **Reporting Requirements.** (1) The entity or Federal agency must report each subaward described in paragraph 15.1.a of this award term at the [System for Award Management \(SAM.gov\)](#). (2) For subaward information, report no later than the end of the month following the month in which the subaward was made. (For example, if the subaward was made on any date during the month of November of a given year, the obligation must be reported by no later than December 31 of that year.)

15.2 Reporting Total Compensation of Recipient Executives.

- a. **Applicability.** The recipient must report the total compensation for each of its five most highly compensated executives for the preceding completed fiscal year, if:
 - 15.2.a.1.** The total Federal funding authorized to date under this award is \$30,000 or more;
 - 15.2.a.2.** In the preceding fiscal year, the recipient received: (i.) 80 percent or more of their annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act); (ii.) and \$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
 - 15.2.a.3.** The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 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](http://www.sec.gov/answers/execomp.htm).)
- b. **Reporting Requirements.** The recipient must report executive total compensation described in paragraph 15.2.a of this award term: (i.) As part of the recipient's registration profile at <https://www.sam.gov/SAM/> (ii.) No later than the end of the month following the month in which this award is made, and annually thereafter

(For example if this award was made on any date of November in a given year, the executive total compensation must be reported by no later than December 31 of that year.)

15.3 Reporting Total Compensation of Subrecipient Executives.

- a. Applicability.** Unless a first-tier subrecipient is exempt as provided in paragraph 15.4. 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:
- 15.3.a.1.** The total federal funding authorized to date under the subaward equals or exceeds \$30,000; and
- 15.3.a.2.** In the subrecipient's preceding fiscal year, the subrecipient received: (i.) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards subject to the Transparency Act; and (ii.) \$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
- 15.3.a.3.** The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 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](http://www.sec.gov/answers/execomp.htm).)
- b. Reporting Requirements.** Subrecipients must report their executive total compensation described in paragraph 15.3.a. of this award term to the recipient. The recipient is required to submit this information to SAM.gov no later than the end of the month following the month in which the subaward was made. (For example, if a subaward was made on any date during the month of October of a given year, the subaward must be reported no later than November 30 of that year).

15.4 Exemptions

- a.** If, in the previous tax year, the recipient had gross income, from all sources, under \$300,000, the recipient is exempt from the requirements to report:
- 15.4.a.1.** (i) subawards, and (ii) the total compensation of the five most highly compensated executives of any subrecipient.

15.5 Definitions. For purposes of this award term:

- a. 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) It does not include: (i) An individual recipient of Federal financial assistance; or (ii) A Federal employee.
- b. Executive** means an officer, managing partner, or any other employee holding a management position.
- c. Subaward:** has the meaning given in [2 CFR 200.1](#)
- d. Subrecipient** has the meaning given in [2 CFR 200.1](#).
- e. Total compensation** means the cash and noncash dollar value an executive earns during the recipient's or subrecipient's preceding fiscal year. This includes all items of compensation as prescribed in [17 CFR 229.402\(c\)\(2\)](#).

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

16.1 General Reporting Requirement

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

16.2 Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a.** Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b.** Reached its final disposition during the most recent five-year period; and
- c.** Is one of the following:
 - 16.2.c.1.** A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - 16.2.c.2.** A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - 16.2.c.3.** An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - 16.2.c.4.** Any other criminal, civil, or administrative proceeding if:

16.2.c.4.1. It could have led to an outcome described in paragraph 16.2.c.1, 16.2.c.2, or 16.2.c.3 of this award term and condition;

16.2.c.4.2. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

16.2.c.4.3. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

16.3 Reporting Procedures

Enter in SAM.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.

16.4 Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 16.1 of this award term and condition, you must report proceedings information through SAM.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.

16.5 Definitions

For purposes of this award term and condition:

- a.** Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b.** Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.
- c.** Total value of currently active grants, cooperative agreements, and procurement contracts includes –
 - 16.5.c.1.** Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - 16.5.c.2.** The value of all expected funding increments under a Federal award and options, even if not yet exercised.

17. Federal Financial Reporting (FFR)

Pursuant to [2 CFR 200.328](#) and [2 CFR 200.344](#), EPA recipients must submit the Federal Financial Report (SF-425) at least annually and no more frequently than quarterly. EPA's standard reporting frequency is annual unless an EPA Region has included an additional term and condition specifying greater reporting frequency within this award document in accordance with [2 CFR 200.208](#). EPA recipients must submit the SF-425 no later than 30 calendar days after the conclusion of each specified reporting period for quarterly and semi-annual reports and 90 calendar days for annual reports. Final reports are due no later than 120 calendar days after the conclusion of the period of performance of the award. Extension of reporting due dates may be approved by EPA when requested and justified by the recipient. The FFR form is available on the internet at: <https://www.epa.gov/grants/sf-425-federal-financial-report>. All FFRs must be submitted to the Research Triangle Park Finance Center (RTPFC) via email at rtpfc-grants@epa.gov or mail it to:

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

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

18. Indirect Cost Rate Agreements

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

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

- With the exception of "exempt" agencies and Institutions of Higher Education as noted below, all recipients must have one of the following current (not expired) IDC rates, including IDC rates that have been extended by the cognizant agency:
 - Provisional
 - Final
 - Fixed rate with carry-forward
 - Predetermined
 - Grants awarded before October 1, 2024 - 10% de minimis rate of modified total direct costs authorized by [2 CFR 200.414\(f\)](#)
 - Grants awarded on or after October 1, 2024 – up to a 15% de minimis rate of modified total direct costs authorized by [2 CFR 200.414\(f\)](#)
 - Grants amended to incorporate the October 2024 Revisions to 2 CFR 200 – up to a

15% de minimis rate of modified total direct costs authorized by [2 CFR 200.414\(f\)](#), effective as of the date of the amendment and going forward, cannot be applied retroactively

- EPA-approved use of an expired fixed rate with carry-forward on an exception basis, as detailed in section 6.4.a. of the IDC Policy
- “Exempt” state of local governmental departments or agencies are agencies that receive up to and including \$35,000,000 in Federal funding per the department or agency’s fiscal year and must have an IDC rate proposal developed in accordance with 2 CFR Part 200, Appendix VII, with documentation maintained and available for audit.
- Institutions of Higher Education must use the IDC rate(s) on the approved rate agreement in place at the time of award during the life of the assistance agreement (unless the rate was provisional at time of award, in which case the rate will change once it becomes final). As provided by 2 CFR Part 200, Appendix III(C)(7), the term “life of the assistance agreement”, means each competitive segment of the project. If negotiated rate agreements do not extend through the life of the Federal award at the time of the initial award, then the negotiated rate for the last year of the Federal award must be extended through the end of the award. Additional information is available in the regulation.

IDCs incurred during any period of the assistance agreement that are not covered by the provisions above are not allowable costs and must not be drawn down by the recipient. Recipients may budget for IDCs if they have submitted a proposed IDC rate to their cognizant Federal agency, or requested an exception from EPA under subsection 6.4 of the IDC Policy. However, recipients may not draw down IDCs until their rate is approved, if applicable, or EPA grants an exception. IDC drawdowns must comply with the indirect rate corresponding to the period during which the costs were incurred. If the recipient’s indirect cost rate has not been finalized within one year after the period of performance ends, the EPA Grants Management Officer is authorized to close the recipient’s award using their most recently negotiated rate per [2 CFR 200.344\(h\)](#).

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

19. Audit Requirements

In accordance with [2 CFR 200.501\(a\)](#), the recipient hereby agrees to obtain a single audit from an independent auditor, if their organization expends \$1,000,000 or more in total Federal funds in their fiscal year for that year.

The recipient must submit a single audit report within 9 months of the end of the recipient’s fiscal year or 30 days after receiving the report from an independent auditor. The single audit report MUST be submitted using the Federal Audit Clearinghouse available at: <https://fac.gov/>.

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

20. Closeout Requirements

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

21. Suspension and Debarment

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

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

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

As required by the appropriations act(s) prohibitions, the Government will not enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee with any corporation that — (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or (2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has

considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

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

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

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

23. Disclosing Conflict of Interest

23.1 For Awards to Recipients, Subrecipients, and Individuals (other than states and fellowship recipients under 40 CFR Part 46)

As required by [2 CFR 200.112](#), EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at <https://www.epa.gov/grants/epas-financial-assistance-conflict-interest-policy>. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental and incremental funding) awarded on or after October 1, 2015.

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

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

EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COI's described in section 4.0(b)(c) and (d) of the COI Policy regardless of the amount of the transaction. Recipients who are pass-through entities as defined at 2 CFR 200.1 must require that subrecipients being considered for or receiving subawards disclose COI to the pass-through entities in a manner that, at a minimum, is in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. Pass-through entities must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

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

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

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

23.2 For Awards to States Including State Universities that are State Agencies or Instrumentalities

As required by [2 CFR 200.112](#), EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at: <https://www.epa.gov/grants/epas-financial-assistance-conflict-interest-policy>. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental, incremental funding) awarded on or after October 1, 2015.

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

States including state universities that are state agencies and instrumentalities receiving funding from EPA are only required to disclose subrecipient COI as a pass-through entity as

defined by [2 CFR 200.1](#). Any other COI are subject to state laws, regulations, and policies. EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COIs described in section 4.0(b)(c) and (d) of the COI Policy that arise after EPA made the award regardless of the amount of the transaction. States who are pass-through entities as defined at [2 CFR 200.1](#) must require that subrecipients being considered for or receiving subawards disclose COI to the state in a manner that, as a minimum, in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. States must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

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

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

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

24. Transfer of Funds

24.1 Transfer of Funds

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

- (1) As provided at [2 CFR 200.308\(i\)](#), the recipient must obtain prior approval from EPA's Grants Management Officer if the cumulative amount of funding transfers among direct budget categories or programs, functions and activities exceeds 10% of the total budget, as last approved by EPA, including cost share. Recipients must submit requests for prior approval to the Grant Specialist and Grants Management Officer with a copy to the Project Officer for this agreement.

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

24.2 Post-Award Changes for Continuing Environmental Program Grants

Applicable to Continuing Environmental Program Grants subject to 40 CFR 35.114 and 40 CFR

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

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

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

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

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

26. Extension of Project/Budget Period Expiration Date

EPA has not exercised the waiver option to allow automatic one-time extensions for non-research grants under [2 CFR 200.308\(g\)\(2\)](#). Therefore, if a no-cost time extension is necessary to extend the period of availability of funds, the recipient must submit a written request to the EPA at least 10 calendar days before the conclusion of the period of performance as required by [2 CFR 200.308\(f\)\(10\)](#). **The written request must include:** a justification describing the need for additional time, an estimated date of completion, and a revised schedule for project completion including updated milestone target dates for the approved workplan activities. In addition, if there are overdue reports required by the general, administrative, and/or programmatic terms and conditions of this assistance agreement, the recipient must ensure that they are submitted along with or prior to submitting the no-cost time extension request.

27. Utilization of Disadvantaged Business Enterprises (Updated 4/03/2025) General Compliance, 40 CFR, Part 33

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

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

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

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

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

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

The specific six good faith efforts can be found at: [40 CFR Section 33.301 \(a\)-\(f\)](#).

However, in EPA assistance agreements that are for the benefit of Native Americans, the recipient must solicit and recruit Native American organizations and Native American-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts ([40 CFR Section 33.304](#)). If recruiting efforts are unsuccessful, the recipient must follow the six good faith efforts.

3) CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

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

4) BIDDERS LIST, 40 CFR Section 33.501(b) and (c)

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

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

The EPA is suspending negotiations of fair share objectives with recipients under 40 CFR Part 33, Subpart D pursuant to a class exception issued on March 17, 2025. The class exception was authorized pursuant to the authority in [2 CFR, Section 1500.4\(b\)](#).

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

The EPA is suspending recipient reporting requirements under 40 CFR 33.502 pursuant to a class exception issued on March 17, 2025. The class exception was authorized pursuant to the authority in [2 CFR, Section 1500.4\(b\)](#).

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

The EPA is suspending recipient recordkeeping requirements under 40 CFR Part 33, Subpart E pursuant to a class exception issued on March 17, 2025. The class exception was authorized pursuant to the authority in 2 CFR, Section 1500.4(b).

Programmatic General Terms and Conditions

28. Sufficient Progress

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

29. Copyrighted Material and Data

In accordance with [2 CFR 200.315](#), EPA has the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement for Federal purposes. This includes the right to require recipients and subrecipients to make such works available through agency-designated public access repositories.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for [i.e., authorized by] the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in

Federal depositories; (5) Use by State, Tribal and local governments that carry out delegated Federal environmental programs as “co-regulators” or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other recipients to carry out Federal grants provided the use is consistent with the terms of EPA’s authorization to the other recipient to use the copyrighted works or other data.

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

- The selection of another recipient by EPA to perform a project that will involve the use of the copyrighted works or other data, or
- Termination or expiration of this agreement.

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

30. Patents and Inventions

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

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

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

31. Acknowledgement Requirements for Non-ORD Assistance Agreements

The recipient agrees that any reports, documents, publications, or other materials developed for public distribution supported by this assistance agreement shall contain the following statement: “This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient). The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the

Environmental Protection Agency endorse trade names or recommend the use of commercial products mentioned in this document, as well as any images, video, text, or other content created by generative artificial intelligence tools, nor does any such content necessarily reflect the views and policies of the Environmental Protection Agency.”

Recipients of EPA Office of Research Development (ORD) research awards must follow the acknowledgement requirements outlined in the research T&Cs available at:

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

32. Electronic and Information Technology Accessibility

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

Recipients may wish to consult the latest Section 508 guidelines issued by the U.S. Access Board or W3C’s Web Content Accessibility Guidelines (WCAG) 2.0 (see <https://www.access-board.gov/about/policy/accessibility.html>).

33. Human Subjects

Human subjects research is any activity that meets the regulatory definitions of both research AND human subject. Research is a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Human subject means a living individual about whom an investigator (whether professional or student) conducting research: (i) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or (ii) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens [40 CFR 26.102\(e\)\(1\)](#).

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

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

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

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

34. Animal Subjects

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

35. Light Refreshments and/or Meals

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

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

- (1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s)
- (2) A description of the purpose, agenda, location, length, and timing for the event, and
- (3) An estimated number of participants in the event and a description of their roles

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

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

EPA funding for meals, light refreshments, and space rental may not be used for any discrete portion of an event or meeting, such as a reception, banquet, or another similar entertainment-oriented activity, where alcohol is served, purchased, or otherwise available as part of the discrete portion of the event or meeting, even if EPA funds are not used to purchase the alcohol. This restriction does not prohibit a recipient from using its own funds, private donations, or separate fees charged to the meeting attendees (that are not program income) for discrete portions of events or meetings, such as receptions, banquets, or another similar entertainment-oriented activity where alcohol is served.

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

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

If the state maintains systems capable of complying with federal grant regulations at [2 CFR 200.432](#) and [2 CFR 200.438](#), EPA has waived the prior approval requirements for the use of EPA funds for light refreshments and/or meals served at meetings, conferences, and training, as described in paragraph (a) above. The state may follow its own procedures without requesting prior approval from EPA. However, notwithstanding state policies, EPA funds may not be used for (1) Meetings

(e.g. routine staff meetings) that do not meet the definition of “Conference” in [2 CFR 200.432](#), (2) evening receptions, or (2) other evening events (with the exception of working meetings). Examples of working meetings include those evening events in which small groups discuss technical subjects on the basis of a structured agenda or there are presentations being conducted by experts. EPA funds for meals, light refreshments, and space rental may not be used for any portion of an event (including evening working meetings) where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

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

36. Tangible Personal Property

36.1 Reporting

Pursuant to [2 CFR 200.312](#) and [2 CFR 200.314](#), property reports, if applicable, are required for Federally-owned property in the custody of a recipient or subrecipient upon completion of the Federal award or when the property is no longer needed. Additionally, upon termination or completion of the project, residual unused supplies with a total aggregate fair market value exceeding \$10,000 not needed for any other Federally-funded programs or projects must be reported. For Superfund awards under Subpart O, refer to [40 CFR 35.6340](#) and [40 CFR 35.6660](#) for property reporting requirements. Recipients should utilize the Tangible Personal Property Report form series (SF-428) to report tangible personal property.

36.2 Disposition

36.2.1. Most Recipients or Subrecipients. Consistent with [2 CFR 200.313](#), unless instructed otherwise on the official award document, this award term, or at closeout, the recipient or subrecipient, including a subrecipient of a State or an Indian Tribe, may keep the equipment and continue to use it on the project originally funded through this assistance agreement or on other federally funded projects whether or not the project or program continues to be supported by Federal funds.

36.2.2. State Agencies. Per [2 CFR 200.313\(b\)](#), recipients that are State agencies must manage and dispose of equipment acquired under this assistance agreement in accordance with state laws and procedures.

36.2.3. Indian Tribes. Per [2 CFR 200.313\(b\)](#), recipients that are Indian Tribes must manage and dispose of equipment acquired under this assistance agreement in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes, unless instructed otherwise on the official award document or at closeout, may keep the equipment and continue to use it on the project originally funded through this assistance agreement or on other federally funded projects whether or not the project or program continues to be supported by Federal funds.

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

37. Dual Use Research of Concern (DURC)

The recipient agrees to conduct all life science research* in compliance with [EPA's Order on the Policy and Procedures for Managing Dual Use Research of Concern](#) (EPA DURC Order) and [United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern](#) (iDURC Policy). If the recipient is an institution within the United States that receives funding through this agreement, or from any other source, the recipient agrees to comply with the iDURC Policy if they conduct or sponsor research involving any of the agents or toxins identified in Section

6.2.1 of the iDURC Policy. If the institution is outside the United States and receives funding through this agreement to conduct or sponsor research involving any of those same agents or toxins, the recipient agrees to comply with the iDURC Policy. The recipient agrees to provide any additional information that may be requested by EPA regarding DURC and iDURC. The recipient agrees to immediately notify the EPA Project Officer should the project use or introduce use of any of the agents or toxins identified in the iDURC Policy. The recipient's Institution/Organization must also comply with USG iDURC policy and EPA DURC Order and will inform the appropriate government agency if funded by such agency of research with the agents or toxins identified in Section 6.2.1 of the iDURC Policy. If privately funded the recipient agrees to notify the National Institutes of Health at DURC@od.nih.gov.

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

38. Research Misconduct

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

- (1) Immediately notify the EPA Project Officer who will then inform the EPA Office of Inspector General (OIG) if, at any time, an allegation of research misconduct falls into one of the categories listed below:
 - A. Public health or safety is at risk
 - B. Agency resources or interests are threatened
 - C. Circumstances where research activities should be suspended
 - D. There is a reasonable indication of possible violations of civil or criminal law

- E. Federal action is required to protect the interests of those involved in the investigation
 - F. The research entity believes that the inquiry or investigation may be made public prematurely so that appropriate steps can be taken to safeguard evidence and protect the rights of those involved
 - G. Circumstances where the research community or public should be informed. [65 FR 76263.III]
- (2) Report other allegations to the OIG when they have conducted an inquiry and determined that there is sufficient evidence to proceed with an investigation. [65 FR 76263. III]

39. Scientific Integrity Terms and Conditions

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

39.1 Scientific Products

- 39.1.1.** Produce scientific products of the highest quality, rigor, and objectivity, by adhering to applicable EPA [information quality guidelines](#), [quality policy](#), and peer review policy.
- 39.1.2.** Prohibit all recipient employees, contractors, and program participants, including scientists, managers, and other recipient leadership, from suppressing, altering, or otherwise impeding the timely release of scientific findings or conclusions.
- 39.1.3.** Adhere to [EPA's Peer Review Handbook, 4th Edition](#), for the peer review of scientific and technical work products generated through EPA grants or cooperative agreements which, by definition, are not primarily for EPA's direct use or benefit.

39.2 Scientific Findings

- 39.2.1.** Require that reviews regarding the content of a scientific product that are conducted by the project manager and other recipient managers and the broader management chain be based only on scientific quality considerations, e.g., the methods used are clear and appropriate, the presentation of results and conclusions is impartial.
- 39.2.2.** Ensure scientific findings are generated and disseminated in a timely and transparent manner, including scientific research performed by employees, contractors, and program participants, who assist with developing or applying the results of scientific activities.
- 39.2.3.** Include, when communicating scientific findings, an explication of underlying assumptions, accurate contextualization of uncertainties, and a description of the probabilities associated with both optimistic and pessimistic projections, if applicable.
- 39.2.4.** Document the use of independent validation of scientific methods.
- 39.2.5.** Document any independent review of the recipient's scientific facilities and testing activities, as occurs with accreditation by a nationally or internationally recognized sanctioning body.
- 39.2.6.** Make scientific information available online in open formats in a timely manner, including access to data and non-proprietary models.

39.3 Scientific Misconduct

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

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

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

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

39.4 Additional Resources

For more information about the Scientific Integrity Policy, an introductory video can be accessed at: <https://youtu.be/FQJCy8BXXq8>. A training video is available at: <https://youtu.be/Zc0T7foot8>.

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

The recipient is required to notify EPA if there has been a change in support for senior/key persons since submission of its application or the last reporting period in the performance report. If there has been a change, the recipient must report the change within 30 calendar days to the EPA Project Officer. The information should also be included in the next due performance report. If there has been a change, submit a revised current and pending support form (see 'EPA Current and Pending Support'). Senior/key persons must certify that the information contained in the updated current and pending support form is current, accurate, and complete. For additional details on what information needs to be disclosed, please see NSTC Pre-award and Post-award disclosures Relating to the Biographical Sketch and Current and Pending (Other) Support at [NSTC Research Security Subcommittee NSPM-33 Implementation Guidance Disclosure Requirements & Standardization](#).

EPA may consult with the Lead/Contact PI and the Authorized Organization Representative (AOR), if necessary, to determine the impact of the new information on the EPA-funded research grant and, where necessary, take appropriate action.

If the recipient discovers that a senior/key person on an active EPA grant failed to disclose current and pending support information or provided inaccurate information as part of the proposal submission process, it must submit a revised current and pending support form (see ‘EPA Current and Pending Support’) to the EPA Project Officer within 30 calendar days of the identification of the undisclosed or inaccurate current and pending information.

41. Procurement of Synthetic Nucleic Acids and Benchtop Nucleic Acid Synthesis

Equipment (Effective 4/26/2025)

Beginning on April 26, 2025, the recipient must procure synthetic nucleic acids and benchtop nucleic acid synthesis equipment, as defined in the [2024 Office of Science and Technology Policy \(OSTP\) Framework for Nucleic Acid Synthesis Screening \(Framework\)](#), from providers or manufacturers that attest to adhering to the Framework. The attestation may be posted on a public website or provided directly to the recipient upon request. The recipient must include this requirement in all lower tier agreements (for example subrecipients or subcontractors).

Public Policy Requirements

42. Civil Rights Obligations (Updated 4/03/2025)

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

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

(a) Statutory Requirements

- i. In carrying out this agreement, the recipient must comply with:
 - 1) Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, by entities receiving Federal financial assistance.
 - 2) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
 - 3) The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.
- ii. If the recipient is an education program or activity (e.g., school, college, or university) or if the recipient is conducting an education program or activity under this agreement, it must also comply with:

- 1) Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance. For further information about your compliance obligations regarding Title IX, see <https://www.justice.gov/crt/title-ix>
- iii. If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:
 - 1) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

(b) Regulatory Requirements

- i. The recipient agrees to comply with all applicable EPA civil rights regulations, including:
 - 1) For Title IX obligations, 40 C.F.R. Part 5; and
 - 2) For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, [40 C.F.R. Part 7](#).

Note that for financial assistance awarded to any entity, including any subrecipient, in the State of Louisiana, pursuant to a permanent injunction issued by the U.S. District Court for the Western District of Louisiana, EPA will not impose any disparate-impact or cumulative-impact-analysis requirements under Title VI of the Civil Rights Act of 1964 in any pre-award assurances or terms and conditions accompanying the application for and receipt of this grant award.

- 3) The statutory and national policy requirements at [2 CFR 200.300\(a\)](#).
- 4) For Federal awards that are subject to a Federal statute prohibiting discrimination based on sex, the Federal agency or pass-through entity must ensure that the award is administered in accordance with [2 CFR 200.300](#).
- 5) As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements as applicable, including, but not limited to collecting, maintaining, and providing upon request compliance information, establishing grievance procedures, designating a Civil Rights Coordinator, and providing notices of non-discrimination.

(c) Title VI – Limited English Proficiency (LEP), Public Participation and Affirmative Compliance Obligation

- i. As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to take reasonable steps to provide meaningful access to LEP individuals. In implementing that requirement, the recipient may refer to the EPA document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The Guidance can be found at: <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>.
- ii. If the recipient is administering permitting programs under this agreement, the recipient may refer to EPA's "Title VI Public Involvement Guidance for EPA Assistance Recipients

Administering Environmental Permitting Programs.” The Guidance can be found at: <https://www.govinfo.gov/content/pkg/FR-2006-03-21/pdf/06-2691.pdf>.

- iii. In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective federal civil rights compliance programs, as required by EPA’s nondiscrimination regulations at 40 C.F.R. Parts 5 and 7, and ensure that it does not discriminate in its programs and activities in violation of federal civil rights laws and regulations. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented, or to otherwise demonstrate how it is meeting its federal civil rights obligations. For further assistance on civil rights compliance, the recipient may refer to the EPA document entitled, “Civil Rights Guidance on Procedural Safeguards: Requirements and Best Practices.” The Guidance can be found at: <https://www.epa.gov/external-civil-rights/civil-rights-guidance-procedural-safeguards><http://www.epa.gov/system/files/documents/2024-08/civil-rights-guidance-on-procedural-safeguards-august-2024.pdf>.

43. Drug-Free Workplace

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title [2 CFR Part 1536 Subpart B](#). Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards and keep this information on file during the performance of the award.

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

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

44. Hotel-Motel Fire Safety

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

45. Lobbying Restrictions

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

- i. The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The recipient shall abide by the Cost Principles available at [2 CFR Part 200](#) which generally

- prohibits the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities.
- ii. The recipient agrees to comply with Title [40 CFR Part 34](#), New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000 and require that subrecipients submit certification and disclosure forms accordingly.
 - iii. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
 - iv. Contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the contract provisions provided in [Appendix II to Part 200](#).
 - v. By accepting this award, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 as required by Section 18 of the Lobbying Disclosure Act; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act. Nonprofit organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are ineligible for EPA subawards.
- b) Applicable to assistance agreements when the amount of the award is over \$100,000:**
- i. By accepting this award, the recipient certifies, to the best of its knowledge and belief that:
 - 1) No Federal appropriated funds have been or will be paid, by or on behalf of the recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or any employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the recipient shall complete and submit the linked [Standard Form -- LLL, "Disclosure Form to Report Lobbying."](#) in accordance with its instructions.
 - 3) The recipient shall require that the language of this certification be included in the award documents for all subawards exceeding \$100,000 at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

- ii. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

46. Recycled Paper

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

47. Resource Conservation and Recovery Act (Updated 4/03/2025)

Consistent with goals of section 6002 of RCRA (42 U.S.C. 6962), State and local institutions of higher education, hospitals and non-profit organization recipients agree to give preference in procurement programs to the purchase of specific products containing recycled materials, as identified in [40 CFR Part 247](#).

- a) Consistent with section 6002 of RCRA (42 U.S.C. 6962) and [2 CFR 200.323](#), the recipient or subrecipient that is a State agency or agency of a political subdivision of a State and its contractors are required to purchase certain items made from recycled materials, as identified in 40 CFR Part 247, when the purchase price exceeds \$10,000 during the course of a fiscal year or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. Pursuant to [40 CFR 247.2\(d\)](#), the recipient or subrecipient may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price.

48. Trafficking in Persons

a) Provisions applicable to a recipient that is a private entity receiving funds under the award.

- i. The recipient, the recipient's employees, subrecipients under this award, and subrecipients' employees may not engage in:
 - 1) Severe forms of trafficking in persons
 - 2) The procurement of a commercial sex act during the period of time that this award or any subaward is in effect;
 - 3) The use forced labor in the performance of this award or any subaward; or
 - 4) Acts that directly support or advance trafficking in persons, including the following acts:
 - i. Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;
 - ii. 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

c) Provisions applicable to any recipient

- i. The recipient must inform the EPA and the EPA’s Office of Inspector General immediately of any information received from any source alleging a violation of a prohibition in paragraph 48.a.i. of this award term.
- ii. The EPA’s right to terminate unilaterally that is described in paragraphs 48.a. and 48.b.:
 - 1) Implements the requirements of 22 U.S.C. Chapter 78, and
 - 2) Is in addition to all other remedies for noncompliance that are available to the EPA under this award.
- iii. The recipient must include the requirements of paragraph 48.a.1. of this award term in any subaward made to a private entity.
- iv. 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:

- i. “Employee” means either:
 - 1) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - 2) Another person engaged in the performance of the project or program under this award and not compensated by 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 requirements.
- ii. “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](#)
- iii. 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 Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7102).

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

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

- (1) All iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) All manufactured products used in the project are produced in the United States— this means the manufactured product was manufactured in the United States; and the cost of the

components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and

(3) All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The construction material standards are listed below.

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

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

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

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

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

allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

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

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

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

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

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

For questions regarding the Build America, Buy America Act requirements for this assistance

agreement or to determine if there is an approved waiver in place, please contact the EPA Project Officer for this agreement.

Definitions. For legal definitions and sourcing requirements, the recipient must consult the [EPA Build America, Buy America website](#), [2 CFR Part 184](#), and the [Office of Management and Budget's \(OMB\) Memorandum M-24-02 Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#).

50. Required Certifications and Consequences of Fraud

Per [2 CFR 200.415\(a\)](#), financial reports must include a certification that must be signed by an official who is authorized to legally bind the recipient which reads as follows:

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

As outlined in [2 CFR 200.415\(b\)](#), subrecipients of all tiers under the Federal award must certify to the pass-through entity whenever applying for funds, requesting payment, and submitting financial reports as follows:

“I certify to the best of my knowledge and belief that the information provided herein is true, complete, and accurate. I am aware that the provision of false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative consequences including, but not limited to violations of U.S. Code Title 18, Sections 2, 1001, 1343 and Title 31, Sections 3729-3730 and 3801-3812.”

The certifications must be maintained in accordance with the record retention requirements at [2 CFR 200.334](#).

51. Reporting Waste, Fraud and Abuse

Consistent with [2 CFR 200.113](#), the recipient and any subrecipients of this award must promptly report in writing whenever there is credible evidence of the commission of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act (31 U.S.C. 3729-3733) to the EPA Project Officer, the pass-through entity (if applicable), and the [EPA Office of Inspector General \(OIG\)](#). The methods to contact the EPA OIG are (1) online submission via the [EPA OIG Hotline Complaint](#)

[Form](#); (2) email to OIG_Hotline@epa.gov; (3) phone 1-888-546-8740; or (4) mail directed to Environmental Protection Agency, Office of Inspector General, 1200 Pennsylvania Avenue, N.W. (2410T), Washington, DC 20460.

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

Recipients and subrecipients are also required to report matters related to recipient integrity and performance in accordance with [Appendix XII to 2 CFR Part 200](#).

52. Whistleblower Protections

This award is subject to whistleblower protections, including the protections established at 41 U.S.C. 4712 and [2 CFR 200.217](#) providing that an employee of the recipient or subrecipient may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (a)(2) of 41 U.S.C. 4712 information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract, grant, or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract), grant. These covered persons or bodies include:

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

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

53. Access to Records

In accordance with [2 CFR 200.337](#), EPA, the pass-through entity, the EPA Office of Inspector General (OIG), and the Comptroller General of the United States have the right to access any records of the recipient and subrecipient pertinent to this award, to perform audits, execute site visits, or for any other official use. This right of access also includes timely and reasonable access to the recipient and subrecipient's personnel for the purpose of interview and discussion related to such documents or the Federal award in general. This right of access shall continue as long as the records are retained.

54. Federal Anti-Discrimination Laws (Added 4/03/2025)

This term and condition applies to all new awards and funding amendments (incremental and supplemental) made on or after April 3, 2025.

By accepting this EPA financial assistance agreement, (A) the recipient agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code; and (B) the recipient certifies that it does not operate any programs promoting Diversity, Equity and Inclusion that violate any applicable Federal anti-discrimination laws.

EXHIBIT E - EPA CERTIFICATIONS

This checklist will be used to ensure that all required procurement certifications listed within have been read, initialed, and signed by the Respondent BEFORE the Statement of Qualifications is submitted. All certifications listed below follow this checklist.

Respondent/Contractor's Initials:

- | | |
|---|-------|
| A. Lobbying Certification | _____ |
| B. Suspension and Debarment Certification | _____ |
| C. Delinquent State Business Tax Certification | _____ |
| D. Prohibition on Certain Telecommunications and Video Surveillance Service or
Equipment | _____ |
| E. DBE Participation Plan | _____ |
| F. Pre-Bid Good Faith Efforts | _____ |

DATE: _____

SIGNATURE: _____

NAME / TITLE: _____

RESPONDENT/
CONTRACTOR: _____

LOBBYING CERTIFICATION FORM

To be completed by the prime contractor and all subcontractors.

The Respondent/Contractor certifies that to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]



Project Funded by the Environmental Protection Agency's Clean Ports Program

The Respondent/Contractor/Subcontractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Respondent/Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

DATE: _____

SIGNATURE: _____

NAME / TITLE: _____

RESPONDENT/
CONTRACTOR: _____

SUSPENSION AND DEBARMENT CERTIFICATION FORM

*Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions
To be completed by the prime contractor and all subcontractors.*

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

The prospective primary Respondent/Contractor certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the prospective primary Respondent is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this Statement of Qualifications.

DATE: _____

SIGNATURE: _____

NAME / TITLE: _____

RESPONDENT/
CONTRACTOR: _____

INSTRUCTIONS FOR CERTIFICATION

By signing and submitting this Statement of Qualifications, the Respondent/Contractor is providing the certification set out below.

1. The inability of a person to provide the certification required below will not necessarily result in the denial of participation in this covered transaction. The Respondent/Contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Owner's determination whether to enter into this transaction. However, failure of the Respondent/Contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
2. The certification in this clause is a material representation of fact upon which reliance was placed when the Owner determined to enter into this transaction. If it is later determined that the Respondent/Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Owner may terminate this transaction for cause or default.
3. The Respondent/Contractor shall provide immediate written notice to the Owner to which this Statement of Qualifications is submitted if at any time the Respondent/Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "bid," "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "person," "primary covered transaction," "principal," "Statement of Qualifications," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Owner to which this Statement of Qualifications is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).
5. The Respondent/Contractor agrees by submitting this Statement of Qualifications that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a subcontractor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Owner entering into this transaction.
6. The Respondent/Contractor further agrees by submitting this Statement of Qualifications that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transactions," provided by the Owner entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a Respondent/Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under paragraph 6 of these instructions, if a Respondent/Contractor in a covered transaction knowingly enters into a lower tier covered transaction with a subcontractor who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Owner may terminate this transaction for cause or default.

DELINQUENT FEDERAL AND STATE BUSINESS TAX CERTIFICATION

All Respondents shall certify that Respondent is not delinquent in a tax owed the state under Chapter 171, Tax Code, pursuant to the Texas Business Corporation Act, Texas Statutes, Article 2.45.

And

The contractor hereby certifies the following:

- a. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.
- b. Agrees to require all subcontractors to provide this certification and to flow this requirement down to participants at all lower tiers, without regard to the value of any subcontract.

DATE: _____

SIGNATURE: _____

NAME / TITLE: _____

RESPONDENT/
CONTRACTOR: _____

**PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE
SERVICE OR EQUIPMENT**

Contractor hereby acknowledges that the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115232, § 889 (Aug. 13, 2018) (the Act) prohibits the Owner from procuring certain “covered telecommunications equipment or services,” as defined in the Act, in federally assisted procurements and that the instant procurement is a federally assisted procurement subject to that prohibition. Contractor represents and warrants that it has performed a due diligence review of its supply chain and that no such “covered telecommunications equipment or services” shall be provided to the Owner that would cause the Owner to be in violation of the prohibition contained in the Act.

DATE: _____

SIGNATURE: _____

NAME / TITLE: _____

RESPONDENT/
CONTRACTOR: _____

UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISE

Respondents shall submit this completed form with the bid to demonstrate the Respondent's plan to meet EPA's Disadvantaged Business Enterprise Program contained in [40 CFR, Part 33](#). If the Respondent cannot meet the DBE goal, the Respondent has the burden to demonstrate "Good Faith Efforts," which shall include correctly and accurately preparing and submitting this form, a Record of Good Faith Efforts and supporting documentation evidencing their "Good Faith Efforts".

Procurement Categories	DBE %
Services (Design)	8%

NAICS Code	Description of Work (Plan Sheet #, Unit Price #, Scope of Work #, as applicable)	% of Total Bid Price	Services or Supplier	Certified Firm Name Firm Address Contact Name Phone No. and E-Mail

DATE: _____

SIGNATURE: _____

NAME / TITLE: _____

RESPONDENT/
CONTRACTOR: _____

PRE-BID GOOD FAITH EFFORTS**Respondent Name:** _____ **Project Name** _____

A Respondent that may be unable to complete or follow a Fair Share Objective to meet the EPA DBE Goals. If the Bidder cannot meet the DBE goals set by the EPA, the Respondent has the burden to demonstrate "Good Faith Efforts" to meet the DBE goal. Please attach any documentation on good faith efforts with the bid.

UNLESS THE RESPONDENT'S PARTICIPATION PLAN MEETS THE CONTRACT GOAL, FAILURE TO SUBMIT THIS FORM MAY RESULT IN THE RESPONDENT BEING FOUND NON-RESPONSIVE.

NAICS Code	Certified Firm Name Address, Phone No. and E-Mail	Certified Firm Contact Person	Methods of Contact	Prime Contact Dates	Certified Firm Response	Results of Contact (why suitable or not suitable for work)
			Phone E-mail			
			Phone E-mail			
			Phone E-mail			
			Phone Email			
			Phone Email			

SIGNATURE: _____**NAME / TITLE:** _____**RESPONDENT/
CONTRACTOR:** _____

EXHIBIT F - FEDERALLY REQUIRED CONTRACT CLAUSES

Contractors and subcontractors are subject to 2 CFR Part 200, Uniform Guidance.

APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

1. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
2. Termination. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
3. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
4. Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The

contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

5. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
6. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
7. Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
8. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see

2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

9. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
10. Procurement of recovered materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
11. Prohibition on certain telecommunications and video surveillance services or equipment. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - a. Procure or obtain;
 - b. Extend or renew a contract to procure or obtain; or
 - c. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- i. 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).
 - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - iii. 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
 - d. In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall 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 communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- 12. Domestic preferences for procurements. As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
 - a. For purposes of this section:
 - i. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - ii. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

EXHIBIT G - DRAFT AGREEMENT FOR PROFESSIONAL SERVICES

The draft agreement for Professional services starts on the subsequent page.

AGREEMENT FOR PROFESSIONAL SERVICES

U.S. ENVIRONMENTAL PROTECTION AGENCY GRANT NO. 02F79001

STATE OF TEXAS

§ COUNTY OF BRAZORIA §

THIS **AGREEMENT FOR PROFESSIONAL SERVICES** (the "Agreement"), is made and entered into this ____ day of _____, 2025 (the "Effective Date") by and between the **PORT FREEPORT**, a navigation district, a body politic, and a corporate and governmental agency of the State of Texas (the "Port"), and ___, a Texas corporation (the "Consultant"). Collectively, the Port and the Consultant may be referred to, together, as the "Parties."

WHEREAS, the Port is interested in retaining the services of a Professional Services firm in order to administer the U.S. Environmental Protection Agency ("EPA") Grant Number 02F79001, Charting a Cleaner Course: Port Freeport's Continuous Improvement for a Cleaner Port ("Project");

WHEREAS, the Consultant is a planning, design and professional engineering firm authorized to do business in Texas and is qualified to perform the professional services the Port wishes it to perform;

WHEREAS, the Port has determined that the Consultant is the most highly qualified provider of the requested professional services based on demonstrated competence;

WHEREAS, the Consultant represents that it is fully capable of making and qualified to assist the Port and the Consultant desires to perform the same;

NOW THEREFORE, for and in consideration of the services, payments, and other valuable consideration contained herein, the Parties agree to the following terms, covenants, and conditions:

SECTION 1 SCOPE OF AGREEMENT; PERFORMANCE BY CONSULTANT

At the Port's sole discretion, the Port shall be entitled to engage the Consultant to perform planning, design, and engineering services, in accordance with the terms and conditions of this Agreement, as those services relate to the Project. The Consultant agrees to perform such services in accordance with the terms, covenants, and conditions of this Agreement, as well as the terms, covenants, and conditions in the U.S. EPA Grant Agreement, Grant Number 02F79001, attached hereto and incorporated for all purposes herein at Attachment A.

The Consultant is being retained to provide professional services as described in this Agreement to the Port based on the Consultant's demonstrated competence and requisite qualifications to perform the scope of work described herein. The Consultant has special knowledge and expertise that is of interest to the Port. The Port agrees to and hereby does retain the Consultant as an independent contractor, and the Consultant agrees to provide Services, as that term is defined in this Agreement, to the Port, in accordance with the terms, conditions, and covenants provided in this Agreement.

SECTION 2 PROFESSIONAL SERVICES; CHARACTER AND EXTENT OF WORK

The Consultant shall provide the professional services described in Attachment B (Scope of Services and Rate Schedules) (collectively, “Services”) which are hereby attached and incorporated herein by reference and made a part of this Agreement, subject to the terms and conditions in this Agreement. In the event of a conflict between any term of provision in this Agreement and any term or provision in Attachment B, the term or provision in this Agreement shall control unless the conflicting term or provision in this Agreement is referenced, and expressly stated not to apply, in such attachments.

Any mutually agreed upon changes to the terms, conditions, covenants, and provisions to this Agreement shall be set forth in an amendment to this Agreement. The Consultant will not implement any changes or any new services until an amended agreement has been duly executed by the Port. The Port shall not be liable for any amounts not included in a duly executed Attachment B or any amendments thereto.

SECTION 3 STATUTORY STANDARD OF CARE

All Services rendered under this Agreement must be performed by the Consultant with the professional skill and care ordinarily provided by competent consultants practicing under the same or similar circumstances and professional license, in accordance with generally accepted standards applicable thereto, and shall use that degree of care and skill to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker’s compensations laws, minimum and maximum salary and wage statutes and regulations and licensing laws. When required by the Port, the Consultant shall furnish the Port with satisfactory proof of compliance.

SECTION 4 TIME OF COMPLETION

The Consultant shall begin work and the work shall be completed as stipulated in Attachment B. Upon written request of the Consultant, the Port may grant time extensions to the extent of any delays caused by the Port or other agencies with which the Services must be coordinated and over which the Consultant has no control.

The prompt completion of the Services is critical to the Port. Unnecessary delays in providing services under this Agreement shall be grounds for dismissal of the Consultant and termination of this Agreement without any or further liability to the Port other than a prorated payment for necessary, timely, and conforming work done by Consultant prior to the time of termination. Attachment B shall provide, in either calendar days or by providing a final date, a time of completion prior to which the Consultant shall have completed all Services under this Agreement.

SECTION 5 TERM; TERMINATION

This Agreement will commence on the Effective Date and shall remain in effect until completion of the Services, unless earlier terminated as provided herein.

This Agreement may be terminated:

- (1) By the mutual agreement and written consent of both the Consultant and Port;
- (2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement, in Attachment A, and in Attachment B upon giving at least ten (10) days prior written notice;
- (3) By the Port, immediately upon written notice to the Consultant, as consequence of the failure of Consultant to perform the Services contemplated by this Agreement in a timely or satisfactory manner;
- (4) By the Port, at will, without cause, or simply for convenience upon giving at least ten (10) days' written notice to the Consultant; or
- (5) By the Port, at the Port's sole discretion and effective immediately if federal funds are either delayed or rescinded during the term of the Agreement.

Upon termination of this Agreement, the Consultant shall promptly return to the Port all information, files, documentation, media, related material, and any other material that is owned by the Port, as well as any work product in progress.

Upon termination of this Agreement, the Port's sole obligation shall be the payment of any valid, outstanding invoices and any work that has not yet been invoiced but was performed prior to the effective date of termination. The Consultant agrees to render a final invoice to the Port for Services performed by the Consultant prior to termination of this Agreement within thirty (30) days after completion of the Services performed.

Upon its receipt of termination of this Agreement, the Consultant shall follow any instructions of the Port respecting work stoppage. The Consultant shall cooperate with Port and Port designees to provide for an orderly conclusion of the Services. The Consultant shall use its best efforts to minimize the amount of any non-cancelable obligations and shall assign any contracts related thereto to the Port, or the Port's designee, at the Port's request. If the Port elects to continue any activities underlying a terminated Agreement after termination, the Consultant shall cooperate with the Port to provide for an order transfer of the Consultant's responsibilities with respect to such Agreement to the Port or the Port's designee.

The Consultant understands that this is a grant-funded Agreement, and if at any time federal funds are either delayed or rescinded during the term of the Agreement, the Port, at its sole discretion, may immediately terminate the Agreement.

Upon the effective date of any termination, the Consultant shall submit a final invoice for payment, and the Port shall pay such amounts as are due to the Consultant through the effective date of termination. The Port shall only be liable for payment of services rendered before the effective date of termination. If this Agreement is terminated, certain reporting requirements identified in this Agreement shall survive termination of this Agreement.

SECTION 6 CHANGES TO THE PROJECT; ADDITIONAL WORK

The Consultant shall make such revisions to any work that has been completed as are necessary to

correct any errors or omissions as may appear in such work. If the Port finds it necessary to make changes to previously satisfactorily completed work or parts thereof that have been approved by the Port in writing, the Consultant shall make such revisions, if requested, and as directed by the Port and such services will be considered as additional work and paid for as specified in accordance with the terms of this Agreement.

The Port retains the right to make changes to the Services at any time by a written order. Work that is clearly not within the general description of the Services must be approved, in writing, by the Port by supplemental written agreement before the additional work is undertaken by the Consultant. If the Consultant is of the opinion that any work is beyond that contemplated in this Agreement and, therefore, constitutes additional work, the Consultant shall promptly notify the Port of that opinion, in writing. If the Port agrees that such work does constitute additional work, then the Port and the Consultant shall execute a supplemental written agreement for the additional work, and the Port shall compensate the Consultant for the additional work on the basis of the rates contained in Attachment B. If the changes deduct from the extent of the Services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the terms and conditions of this Agreement.

SECTION 7 THE CONSULTANT'S COMPENSATION

For and in consideration of the services rendered by the Consultant pursuant to this Agreement, the Port shall compensate the Consultant the amount of \$

for "Lump Sum Basic Services," as outlined in Attachment B, and up to an additional \$

for "Additional Services." The total fees paid under this Agreement shall not exceed \$

and

is based the grant award per EPA guidelines in Attachment A.

The Parties understand and acknowledge that the funding of this Agreement is contained in the Port's annual budget and is subject to the approval of the Port's governing body in each fiscal year. The Parties further agree that should the Port's governing body fail to approve a budget that includes sufficient funds for the continuation of this Agreement or should the Port's governing body fail to certify funds for any reason, then and upon occurrence of such event, this Agreement shall automatically terminate as to the Port, and the Port shall then have no further obligation to the Consultant. When the funds budgeted or certified during any fiscal year by the Port to discharge its obligations under this Agreement are expended, the Consultant's sole and exclusive remedy shall be to terminate this Agreement.

The Parties understand and agree that the funding of this Agreement is expressly contingent upon the receipt of grant funding from the federal government. The Parties agree that should federal funding be delayed or rescinded, this Agreement may be immediately terminated at the Port's sole

discretion, and the Port shall then have no further obligation to the Consultant. When the total funds allocated by the U.S. EPA Grant Agreement have been expended, the Consultant's sole and exclusive remedy shall be to terminate this Agreement.

Costs incurred prior to the Effective Date of this Agreement are not eligible for reimbursement. There shall be no obligation whatsoever for performance of this Agreement from the monies of the Port other than from the monies designated for this Agreement. The Port will only pay for Services rendered and shall not pre-pay for work that has not been performed unless agreed otherwise and allowable under the EPA Grant Agreement.

SECTION 8 TIME OF PAYMENT

Consultant shall be provided a purchase order number from the Port and such purchase order number shall be referenced on all invoices submitted to the Port. Upon completion of the Services, Consultant shall submit to the Port's Project Manager, or the Project Manager's designee, an invoice, in a form acceptable to the Port, setting forth the charges for the Services provided which were delivered during such billing period, and the compensation which is due for same. If the project work shall take more than thirty (30) calendar days, then such invoice shall be submitted to the Port on or about the first of each month. The Project Manager, or the Project Manager's designee, shall review the same and approve it with such modifications, as deemed appropriate. The Port shall pay each properly completed invoice as approved by the Project Manager, or the Project Manager's designee, within thirty (30) days after receipt of a true and correct invoice by the Consultant. The approval or payment of any such invoice shall not be considered to be evidence of performance by the Consultant to the point indicated by such invoice or of the receipt of or acceptance by the Port of the Services covered by such invoice.

Invoices shall be submitted to the following address:

Port Freeport

Attn: Accounts Payable

1100 Cherry Street

Freeport, Texas 77541

Accountstpayable@portfreeport.com

Cc: belmore@thegoodmancorp.com

Invoices submitted without a purchase order number will be returned unpaid. Failure to submit invoices to the above address will delay payment. The Port's payments under this Agreement, including the time of payment and the payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code.

If the Port disputes any invoice, the Port shall timely pay the undisputed portion and promptly notify the Consultant in writing of the nature of the dispute as to the remainder, and the parties will use their best efforts to resolve the dispute expeditiously.

Final payment shall be due on acceptance of the Services, provided that this Agreement be fully performed and as provided in Attachment B.

Before issuance of final payment, the Consultant shall submit satisfactory evidence to the Port that all payrolls, materials, bills, subcontractors, and other indebtedness connected with the Services have been paid in full.

SECTION 9 REPRESENTATION AND WARRANTIES OF CONSULTANT; OBLIGATIONS OF PROFESSIONAL SERVICE PROVIDER

- a. *Representation and Warranties of Consultant.*** The Consultant represents and warrants that:
1. As of the Effective Date of this Agreement, the Consultant is not a party to any oral or written contract or understanding with any third-party that is inconsistent with this Agreement or would affect the Consultant's performance under this Agreement or that will in any way limit or conflict with the Consultant's ability to fulfill the terms of this Agreement. The Consultant further represents that it will not enter into any such agreement during the Term of this Agreement.
 2. The Consultant will provide to the Port, with each deliverable to be provided under this Agreement, a written summary sheet listing any third-party software or other intellectual property contained within the deliverable, if any, together with licenses permitting the Port to use such third-party software and intellectual property in connection with its use of the deliverable and the terms, conditions, and status of the license of such software and intellectual property. Except for the third-party software and intellectual property described in the written summary provided to the Port in connection with the preceding sentence, the Consultant warrants and represents that all work product created under this Agreement shall be original work of the Consultant or in the public domain and shall not infringe any copyright, trademark, trade secret, patent, or other intellectual property right of any third party;
 3. The Consultant and its employees and subcontractors have all of the necessary qualifications, licenses, permits, and registrations to perform the Services in accordance with the terms and conditions of this Agreement, and at all times during the Term, all such qualifications, licenses, permits, and registrations shall be current and in good standing; and
 4. The Consultant shall, and shall cause its representatives to, comply with all municipal, state, and federal laws, rules, and regulations applicable to the performance of the Consultant's obligations under this Agreement.
- b. *Work on Port Premises.*** The Consultant will ensure that its employees and agents will, whenever on Port premises, obey all reasonable instructions and directions issued by the Port.
- c. *Key Person.*** The Parties agree that _____ is essential to the Consultant's performance of the Services offered pursuant to this Agreement, and should this

person no longer be active on the Port's account or be employed by the Consultant for whatever reason, the Port shall have the right to terminate this Agreement on thirty (30) days' written notice.

- d. ***Consultation, Reports.*** The Consultant agrees to make available the Consultant's representative, who shall be mutually agreed upon by the Consultant and the Port, for periodic meetings to review the progress of all work under this Agreement. The Consultant also shall prepare and submit to the Port, when requested, a written report setting forth the status of such work in a format to be mutually agreed upon by the Consultant and the Port, as well as copies of all documents relating to the Services performed by the Consultant.

SECTION 10 OBLIGATIONS OF THE PORT

The Port agrees to make available to the Consultant, upon reasonable notice, such information, data, and documentation regarding its facilities and infrastructure as may reasonably be required by the Consultant to complete the Services.

SECTION 11 INDEMNIFICATION

CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS PORT FREEPORT AND ITS RESPECTIVE OFFICERS, DIRECTORS, COMMISSIONERS, EMPLOYEES, AGENTS, ATTORNEYS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), FROM ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL CLAIMS, FINES, DAMAGES, LIABILITIES, LOSSES, COSTS, EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND COURT COSTS), PENALTIES, ASSESSMENTS, FINES, AND/OR INJUNCTIVE OBLIGATIONS RESULTING FROM CONSULTANT'S FAILURE TO COMPLY WITH THIS AGREEMENT AND ASSERTED BY ANY THIRD PARTY, THE STATE OF TEXAS, OR ANY OTHER AGENCY OR POLITICAL SUBDIVISION THEREOF WHICH MAY BE SUFFERED OR INCURRED AT ANY TIME BY THE INDEMNIFIED PARTIES, ON ACCOUNT OF CONSULTANT'S INTENTIONAL OR NEGLIGENT ACTS AND RESULTING IN ANY FAILURE TO COMPLY WITH THE TERMS OF THIS CONTRACT AND/OR ANY VIOLATION OF ANY APPLICABLE LAW, RULE, REGULATION, OR ORDER OF ANY GOVERNMENTAL AUTHORITY.

SECTION 12 NOTICES AND COMMUNICATIONS

All notices, demands, or requests from one party to another must be in writing and must be (i)



Project Funded by the Environmental Protection Agency's Clean Ports Program

personally delivered, (ii) sent by mail, certified or registered, postage prepaid, (iii) sent by electronic email with confirming copy sent by mail, or (iv) sent by overnight delivery, in any case to the address stated in this Section, or to such other address as the party may request in writing, and are deemed to have been given at the time of receipt or delivery.

IF TO PORT:

Port Freeport *Attn: Rob Lowe* 1100 Cherry Street

Freeport, Texas 77541

Telephone: 979-233-2667 Email: lowe@portfreeport.com

With a copy to: The Randle Law Office Attn: J. Grady Randle 820 Gessner, Suite 1570

Houston, Texas 77024

Email: grady@jgradyrandlepc.com

IF TO CONSULTANT:

Attn: _____

_____, Texas

Telephone: _____

Email: _____

SECTION 13 SUCCESSORS AND ASSIGNS

The Port and the Consultant bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement. Neither the Port nor the Consultant shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other, which consent will not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Services. The approval or acquiescence of the Port in the subletting of any work shall not relieve the Consultant of any responsibility for work done by such subcontractor. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto.

Any subcontract made by the Consultant with the consent of the Port must incorporate, by reference, all the terms of this Agreement. The Consultant agrees to guarantee the performance of any

subcontractor used in the performance of the Services.

SECTION 14 OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all documents prepared by the Consultant or furnished to the Consultant by the Port shall be delivered to and become the property of the Port. All drawings, charts, calculations, plans, specifications, and other data prepared under or pursuant to this Agreement shall be made available, upon request, to the Port without restriction or limitation on the further use of such materials PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE PORT OR OTHERS. ANY REUSE WITHOUT PRIOR VERIFICATION OR ADAPTATION BY THE CONSULTANT FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE PORT'S SOLE RISK AND WITHOUT LIABILITY TO THE CONSULTANT. Where applicable, the Consultant shall retain all pre-existing proprietary rights in the materials provided to the Port but shall grant the Port a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purpose for which the information was provided. The Consultant may, at Consultant's expense, have copies made of the documents or any other data furnished to the Port under or pursuant to this Agreement.

SECTION 15 INDEPENDENT CONTRACTOR

Consultant acknowledges that Consultant is an independent contractor of the Port and is not an employee, agent, official or representative of the Port. Consultant shall not represent, either expressly or through implication, that Consultant is an employee, agent, official, or representative of the Port. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Consultant. This Agreement does not create a joint venture or partnership, and neither party has the authority to bind the other to any third party.

SECTION 16 NON-COLLUSION

Consultant represents and warrants that Consultant has not given, made, promised, or paid, nor offered to give, make, promise, or pay any gift, bonus, commission, money, or other consideration to any person as an inducement to or in order to obtain the work to be provided to the Port under this Agreement. Consultant further agrees that Consultant shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the Port pursuant to this Agreement) for any of the Services performed by Consultant under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Consultant, Consultant shall immediately report that fact to the Port and, at the sole option of the Port, the Port may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Consultant under or pursuant to this Agreement.

SECTION 17 MEDIA

Contact with the news media shall be the sole responsibility of the Port. The Consultant shall under

no circumstances release any material or information developed in the performance of its work hereunder without the express written permission of the Port.

SECTION 18 PUBLIC INFORMATION ACT

Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). Effective January 1, 2020, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Service Provider agrees that this Agreement can be terminated if the Service Provider knowingly or intentionally fails to comply with a requirement of that subchapter. To the extent, if any, that any provision of this Agreement is in conflict with Texas Government Code, Chapter 552, as amended (the "Texas Public Information Act"), such provision shall be void and have no force or effect.

In accordance with Section 2252.907 of the Texas Government Code, the Service Provider is required to make any information created or exchanged with the Port pursuant to this Agreement, regardless of contrary provisions contained herein, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the Port.

SECTION 19 AUTHORITY OF PROJECT MANAGER

All work and Services to be performed by the Consultant hereunder shall be performed to the satisfaction of the Project Manager. The Project Manager shall decide any and all questions, which may arise as to the quality, or acceptability of the work performed by the Consultant, and the decisions of the Project Manager in such cases shall be final and binding on both Parties. However, nothing contained herein shall be construed to authorize the Project Manager to alter, vary, or amend this Agreement.

SECTION 20 INSURANCE REQUIREMENTS

A current certificate of insurance, with the Port named as an additional insured, is required to be submitted to the Purchasing Office before the Port will enter into a contract with a vendor.

- a. **Policy Requirements.** Prior to the approval of this Agreement by the Port, the Consultant shall furnish a completed insurance certificate to the Purchasing Office, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. **The Port shall have NO DUTY TO PAY OR PERFORM UNDER THIS AGREEMENT until such certificate has been delivered to the Port.** No officer or employee of the Port shall have authority to waive this requirement.
- b. **Insurance Coverage Required.**
 1. Worker's Compensation in accordance with statutory requirements.

2. Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.
 3. Business Automobile Liability Insurance for all owned, non-owned, and hired vehicles with combined minimum limits for Bodily Injury and Property Damage of \$1,000,000.00 each accident.
 4. Professional Liability Insurance in the amount of \$2,000,000.00 per claim and annual aggregate.
- c. **Additional Policy Endorsements.** The Port shall be entitled, upon request, and without expense, to receive copies of the insurance policies, and all endorsements thereto, and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by the Port, the Consultant shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof.
- d. **Required Provisions.** The Consultant agrees, with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions:
1. Name the Port and its officers, employees, and elected representatives as an additional insured; with the exception of the Worker's Compensation and the Professional Liability Insurance coverages;
 2. Provide for notice to the Port upon cancellation;
 3. Provide for an endorsement that the "other insurance" clause shall not apply to the Port where the Port and its officers, employees, and elected representatives are an additional insured shown on the policy; and
 4. Provide for notice to the Port at the address shown, below.
- e. **Waiver of Subrogation.** The Parties agree to waive any and all rights of recovery, claims, actions, or causes of action against the other, its agents, officers, and employees for any injury, death, loss, or damage that may occur to persons or to Port property, or any personal property of such party on Port property, by reason of fire, windstorm, earthquake, flood, or any other risks, or any other cause which is insured under the insurance policy or policies that either party is required to provide or maintain under this Agreement, to the extent and only to the extent of any proceeds actually received by the Port or the Consultant, respectively, with respect thereto, regardless of the cause or origin, including negligence of either party hereto, its agents, officers, or employees, and each party covenants that no insurer will hold any right of subrogation against the other. If such waiver is not obtained, the party failing to do so indemnifies the other party for any claim by an insurance carrier arising out of subrogation.
- f. **Notices.** The Consultant shall notify the Port in the event of any change in coverage and shall give such notices no less than thirty (30) days prior to the change, which notice must be accompanied by a replacement certificate of insurance.

- g. Approval.** Approval, disapproval, or failure to act by the Port regarding any insurance supplied by the Consultant shall not relieve the Consultant of full responsibility or liability for damages and accidents as set forth in this Agreement. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the Consultant from liability.
- h. Insurance Requirements.** Each insurance policy must be written by a company satisfactory to the Port but, in all events, a company with an A.M. Best Company financial rating of not less than A- (or similar rating by a comparable service selected by the Port should A.M. Best Company cease providing such ratings) and be licensed to do business in Texas or, if the aforesaid is not available, by a company qualified to do business as a non-admitted insurer in Texas under current Texas surplus lines requirements. All required insurance policies may contain a deductible of not more than \$25,000. Such policies must be endorsed so as to require thirty (30) days' prior written notice to the Port in the event of cancellation. Required insurance policies must contain cross-liability clauses, when applicable and available. The Consultant must deliver to the Port a certificate of insurance for any required insurance policy under this Agreement no later than the Effective Date of this Agreement. The required evidence of coverage must always be deposited with the Port. If the Consultant fails to do so, such failure may be treated by the Port as a default by the Consultant, and the Port, in addition to any other remedy under this Agreement, may purchase and maintain such required insurance policies, and the Consultant must immediately reimburse the Port for any premiums paid or costs incurred by the Port in providing such insurance. Failure of the Consultant to reimburse the Port is a default by the Consultant under this Agreement.
- i. Indemnity for Noncompliance with Insurance Requirements.** The Consultant INDEMNIFIES and HOLDS HARMLESS the Port from any loss the Consultant may suffer due to the Consultant's failure to comply with all the above insurance requirements, including the requirement for obtaining waivers of subrogation, and due to any insurance coverage being invalidated because of the Consultant's failure to comply with the terms, conditions, and warranties of any insurance policy.
- j. Cost of Insurance.** The cost of all insurance required herein to be secured and maintained by Consultant shall be borne solely by Consultant, with certificates of insurance evidencing such minimum coverage in force to be filed with Port.

SECTION 21 INJUNCTIVE RELIEF

It is hereby understood and agreed that damages shall be an inadequate remedy in the event of a breach by the Consultant of this Agreement and that any such breach by the Consultant will cause the Port great and irreparable injury and damage. Accordingly, the Consultant agrees that the Port shall be entitled, without waiving any additional rights or remedies otherwise available to the Port at law, in equity, or by statute, to injunctive and other equitable relief without proof of actual damages in the event of a breach or intended or threatened breach by the Consultant.

SECTION 22 FORCE MAJEURE

Neither CONSULTANT, its suppliers, nor PORT will be liable for any failure or delay in this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act, or failure of the Internet (not resulting from the negligence or willful misconduct of CONSULTANT), provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If CONSULTANT is unable to provide services for a period of ten (10) consecutive days as a result of a continuing force majeure event, PORT may terminate the Agreement without penalty.

SECTION 23 MODIFICATIONS

This Agreement, including Attachment A and Attachment B, and any amendments hereto, contains the entire Agreement between the Parties relating to the rights herein granted and the obligations herein assumed. In the event of any conflict between this Agreement, the Port, acting through the Port Project Manager, at his sole discretion, shall determine which provision prevails. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both Parties hereto.

SECTION 24 CHOICE OF LAW

This Agreement and all the transactions contemplated herein shall be governed by the laws of the State of Texas, without regard to the conflicts of laws principles thereof. Exclusive venue for any action arising out this Agreement shall be in Brazoria County, Texas, and the Consultant hereby consents to such jurisdiction and venue.

SECTION 25 SEVERABILITY

If any provision of this Agreement is invalid or unenforceable under any statute or rule of law, the provision is to that extent to be deemed omitted, and the remaining provisions shall not be affected in any way.

SECTION 26 CUMULATIVE REMEDIES

In the event of default by any party herein, the other party shall have all rights and remedies afforded to it, at law or in equity, to recover damages and to interpret or enforce the terms of this Agreement. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

SECTION 27 WAIVER

The failure on the part of any party herein at any time to require the performance by any other party of any portion of this Agreement shall not be deemed a waiver of, or in any way affect that party's rights to enforce such provision or any other provision. Any waiver by any party herein of any provision hereof shall not be taken or held to be a waiver of any other provision hereof or any other breach hereof. No such waiver shall be effective unless in writing and then only to the extent set forth in writing.

SECTION 28 STATUTORY TERMS APPLICABLE TO STATE POLITICAL SUBDIVISIONS

Anti-Boycott Israel Provision. As required by Chapter 2270, Government Code, the Consultant hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

Foreign Terrorist Organizations. The Consultant represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

Immigration. The Consultant represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.

Undocumented Workers. The Consultant certifies that the Consultant does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, the Consultant is convicted of a violation under 8 U.S.C. § 1324a(f), The Consultant shall repay the amount of the public subsidy provided under this Agreement, plus interest, at the rate of the prime rate plus six percent (6%) per annum, not later than the 120th day after the date the Port notifies the Consultant of the violation.

Nondiscrimination Against Firearm and Ammunition Industries. The Consultant verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the Term of this Agreement against a firearm entity or firearm trade association, as those terms are defined by Chapter 2274, Government Code, as enacted by S.B. 19, 87th Legislature, Regular Session.

Anti-Boycott of Energy Companies. The Consultant verifies that it does not boycott energy companies and will not boycott energy companies, as those terms are defined by Chapter 2274, Government Code, as enacted by S.B. 13, 87th Legislature, Regular Session, during the Term of this Agreement.

Pursuant to Chapter 2252, Texas Government Code, the Consultant represents and certifies that, at the time of execution of this Agreement neither the Consultant, nor any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the same, is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201 or 2253.153 of the Texas Government Code.



Project Funded by the Environmental Protection Agency's Clean Ports Program

{Signature Page to Follow}

IN WITNESS WHEREOF, and in acknowledgment that the Parties hereto have read and understood each and every provision hereof, the Parties have executed this Agreement on the date first set forth above.

PORT:

PORT FREEPORT

By: Phyllis Saathoff

Name: **Phyllis Saathoff**

Title: *CEO*

ATTEST:

Missy Bevers
Missy Bevers, Port Secretary

CONSULTANT:

By: _____

APPROVED AS TO FORM:

Heather N. Cook
Heather N. Cook, Attorney for Port Freeport