

INTRODUCED: July 24, 2017

AN ORDINANCE No. 2017-142

To authorize the Chief Administrative Officer to accept funds in the amount of \$465,890.00 from James Madison University and to appropriate the increase to the Fiscal Year 2017-2018 Gas Utility Budget by increasing estimated revenues and the amount appropriated to the gas utility renewal fund for the purpose of purchasing new heavy duty trucks with engines fueled by compressed natural gas.

\_\_\_\_\_  
Patron – Mayor Stoney

\_\_\_\_\_  
Approved as to form and legality  
by the City Attorney  
\_\_\_\_\_

PUBLIC HEARING: SEPT 11 2017 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, is authorized to accept funds in the amount of \$465,890.00 from James Madison University for the purpose of purchasing new heavy duty trucks with engines fueled by compressed natural gas.

§ 2. That the funds received are hereby appropriated to the Gas Utility Budget for the fiscal year commencing July 1, 2017, and ending June 30, 2018, by increasing estimated revenues by \$465,890.00, increasing the amount appropriated for expenditures by \$465,890.00, and allotting

AYES: 9 NOES: 0 ABSTAIN: \_\_\_\_\_

ADOPTED: SEPT 11 2017 REJECTED: \_\_\_\_\_ STRICKEN: \_\_\_\_\_

to the gas utility renewal fund the sum of \$465,890.00 for the purpose of purchasing new heavy duty trucks with engines fueled by compressed natural gas.

§ 3. This ordinance shall be in force and effect upon adoption.



**CITY OF RICHMOND**  
INTRACITY CORRESPONDENCE

~~RECEIVED~~  
~~JUL 24 2017~~  
~~OFFICE OF CITY ATTORNEY~~

O & R REQUEST

4-6683  
JUN 28 2017

Office of the  
Chief Administrative Officer

~~RECEIVED~~

JUL 24 2017

**O&R REQUEST** **OFFICE OF CITY ATTORNEY**

**DATE:** June 27, 2017

**EDITION:** 2

**TO:** The Honorable Members of City Council

**THROUGH:** The Honorable Levar M. Stoney, Mayor *Levar M. Stoney*  
**THROUGH:** Selena Cuffee-Glenn, Chief Administrative Officer *SCG*

**THROUGH:** Lenora G. Reid, DCAO Finance & Administration *LR*

**THROUGH:** John Wack, Director of Finance, Department of Finance *JW*

**THROUGH:** Jay A. Brown, Director of Budget & Strategic Planning *JAB*

**THROUGH:** Robert C. Steidel, Director of Public Utilities *RC S*

**FROM:** Ransford O. Ellis, Operations Manager CNG Infrastructure Development,  
Department of Public Utilities *ROE*

**RE:** Acceptance of a \$465,890 Subaward Agreement grant from James Madison University through the Virginia Clean Cities' Vehicle Emission Reduction, Deployment, and Education (VERDE) Project, and to appropriate said funds to the Department of Public Utilities.

**ORD. OR RES. No.**

**PURPOSE:** To Authorize the Chief Administrative Officer to accept a \$465,890 Cost Reimbursement Research Subaward Grant from James Madison University ("James Madison") to replace older heavy duty ("HD") diesel or gasoline trucks with new compressed natural gas ("CNG") HD trucks. The funds will be appropriated to the Department of Public Utilities ("Department"), City of Richmond, VA Renewal Fund Budget 2017-2018 (account number: 0801-99001-43317-000000).

**REASON:** In an effort to reduce vehicle emissions in the City of Richmond, VA, James Madison, as an administrator for an EPA grant, initially (in 2015) awarded \$278,890 to the Department to replace the engines of 12 older (~13 years) HD diesel or gasoline trucks with new en-

gines powered by CNG fuel. The project became untenable because of difficulties surrounding sole source contracting for the manufacture (EPA specified) of the CNG engines, and compounded by the assumption of high maintenance costs over the remaining life of the older truck chassis, albeit with new CNG engines.

In an effort to fulfill the objective of lower emission, James Madison agreed to repurpose the grant to allow the purchase of new HD trucks powered by CNG. The Department benefits from the grant because it reduces the overall costs of replacing the older trucks with new trucks. Also, new trucks (purchased off contract) avoid the issues of sole source purchasing, and initially high maintenance costs because of new vehicle warranties.

James Madison stipulated that the repurposed grant amount would remain unchanged from the original amount (\$278,890), if the new trucks attained equivalent emission reduction, as in the initial project with new CNG engines. New trucks powered by CNG include new chassis and new CNG engines. Thus the purchase of 12 new HD trucks powered by CNG fulfills James Madison's emission target. However, one consequence of purchasing new trucks is that the cost-share of the grant will be reduced from 40% originally to approximately 11%, because of the higher cost of new trucks versus just the costs for new engines.

James Madison later (in June 2017) increased the grant by \$187,000 and amended the award to \$465,890. James Madison explained that additional funds became available because of the withdrawal of another grant participant. This raised James Madison's grant percentage to approximately 18%, which although lower than the original 40% exceeds the cost of the CNG option for the new trucks.

**RECOMMENDATION:** The City Administration recommends adoption of the proposed Ordinance.

**BACKGROUND:** Virginia Clean Cities, Inc. ("Virginia Clean Cities") is a non-profit corporation with the primary goal of advancing air quality improvement within the Commonwealth. Working in partnership with Virginia Clean Cities, James Madison is a "Pass-through Entity" for an EPA grant in support of Virginia Clean Cities' Vehicle Emission Reduction, Deployment, and Education ("VERDE") Project. The VERDE Project's goals include reduction of diesel and gasoline emissions in Virginia via the use of cleaner fuels such as CNG. This is accomplished primarily through working with entities with large fleets, such as the Department.

As a result of the VERDE Project, The Department initially received a grant of \$278,890. This was later increased to \$465,890 to replace 12 older heavy duty diesel or gasoline trucks with new trucks fueled by lower emission CNG fuel. All other conditions for the repurposed grant, as compared to the original grant, remain unchanged as to:

- Lower emission levels from the purchase of new HD trucks fueled by CNG.
- Scrapping of the replaced diesel or gasoline trucks, which involves permanently disabling the trucks by boring the engine blocks. If the scrapped vehicles are sold, then the grant amount (\$465,890) will be reduced equivalently.

- Purchasing the new HD trucks before the project deadline of November 30, 2017. Later purchases would require special permission from the EPA to obtain and use the grant funds.

**FISCAL IMPACT / COST:** The EPA, through James Madison, has awarded an amount of up to \$465,890 to the Department. The award represents a cost share of approximately 18% of the purchase price for 12 new HD trucks with CNG. The Department will be responsible for at least 82% or \$2,088,789 of the project's costs of \$2,554,680. This amount was already budgeted by the Department.

**FISCAL IMPLICATIONS:** The Department will utilize the grant to supplement eligible purchases of new trucks. The grant amount (\$465,890) saves the Department 18% of the budgeted purchase price of \$2,554,680 for 12 new HD CNG trucks.

**BUDGET AMENDMENT NECESSARY:** Yes

**REVENUE TO CITY:** Up to \$465,890

**DESIRED EFFECTIVE DATE:** Upon Adoption

**REQUESTED INTRODUCTION DATE:** July 7, 2017

**CITY COUNCIL PUBLIC HEARING DATE:** July 24, 2017

**REQUESTED AGENDA:** Consent Agenda

**RECOMMENDED COUNCIL COMMITTEE:** Finance & Economic Development Committee

**CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES:** None

**AFFECTED AGENCIES:** Department of Public Utilities, Department of Finance, and the Department of Budget & Strategic Planning.

**RELATIONSHIP TO EXISTING ORD. OR RES.:** None

**REQUIRED CHANGES TO WORK PROGRAM(S):** None

**ATTACHMENTS:** FDP Cost Reimbursement Research Subaward Agreement

**STAFF:** Michael Kearns, DPU Energy Services Manager, (804) 646-5215  
Ransford O. Ellis, Operations Manager, CNG Infrastructure Development (804) 646-8530

## FDP Cost Reimbursement Research Subaward Agreement

Pass-through Entity (PTE): <b>James Madison University</b>		Subrecipient: <b>City of Richmond</b>	
PTE Principal Investigator (PI): <b>Alleyn Harned</b>		Subrecipient Principal Investigator (PI): <b>Ransford Ellis</b>	
PTE Federal Award No: <b>96341801</b>	FAIN: <b>96341801</b>	Federal Awarding Agency: <b>EPA</b>	
Federal Award Issue Date: <b>9/24/2015</b>	Total Amount of Federal Award to PTE <b>\$ 829,954</b>	CFDA No: <b>66 039</b>	CFDA Title: <b>National Clean Diesel Funding Assistance Program</b>
Project Title: <b>Vehicle Emission Reduction, Deployment, and Education Project (VERDE)</b>			
Subaward Period of Performance: Start: <b>10/01/2015</b> End: <b>11/30/2017</b>		Amount Funded This Action: <b>\$ 465,890.00</b>	Subaward No. <b>S15-320-003</b>
Estimated Project Period (if incrementally funded): Start: _____ End: _____		Incrementally Estimated Total: <b>\$</b> _____	Is this Award R & D <input checked="" type="checkbox"/> Yes or <input type="checkbox"/> No
Check all that apply <input checked="" type="checkbox"/> Reporting Requirements (Attachment 4) <input checked="" type="checkbox"/> Subject to FFATA (Attachment 3B) <input checked="" type="checkbox"/> Cost Sharing (Attachment 5)			

### Terms and Conditions

- 1) PTE hereby awards a cost reimbursable subaward, as described above, to Subrecipient. The statement of work and budget for this subaward are (check one)  as specified in Subrecipient's proposal dated \_\_\_\_\_ or  as shown in Attachment 5. In its performance of subaward work, Subrecipient shall be an independent entity and not an employee or agent of PTE.
- 2) PTE shall reimburse Subrecipient not more often than monthly for allowable costs. All invoices shall be submitted using Subrecipient's standard invoice, but at a minimum shall include current and cumulative costs (including cost sharing), subaward number, and certification, as required in 2 CFR 200.415 (a). Invoices that do not reference PTE Subaward number shall be returned to Subrecipient. Invoices and questions concerning invoice receipt or payments should be directed to the appropriate party's Financial Contact, as shown in Attachments 3A. Please also reference JMU's department ID # 529385 on invoices.
- 3) A final statement of cumulative costs incurred, including cost sharing, marked "FINAL" must be submitted to PTE's Principal Investigator Contact, as shown in Attachments 3A, NOT LATER THAN 60 days after subaward end date. The final statement of costs shall constitute Subrecipient's final financial report.
- 4) All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of an adverse audit finding against the Subrecipient. PTE reserves the right to reject an invoice, in accordance with 2 CFR 200.305.
- 5) Matters concerning the technical performance of this subaward should be directed to the appropriate party's Principal Investigator as shown in Attachments 3A and 3B. Technical reports are required as shown above, "Reporting Requirements."
- 6) Matters concerning the request or negotiation of any changes in the terms, conditions, or amounts cited in this subaward agreement, and any changes requiring prior approval, should be directed to the appropriate party's Administrative Contact, as shown in Attachments 3A and 3B. Any such changes made to this subaward agreement require the written approval of each party's Authorized Official, as shown in Attachments 3A and 3B.
- 7) Substantive changes made to this subaward agreement require the written approval of each party's Authorized Official as shown in Attachments 3A and 3B. The PTE may issue non-substantive changes to the Period of Performance (check one)  Bilaterally, or  Unilaterally. Unilateral modifications shall be considered valid 14 days after receipt unless otherwise indicated by Subrecipient.
- 8) Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or directors, to the extent allowed by law.
- 9) Either party may terminate this subaward with thirty days written notice to the appropriate party's Authorized Official Contact, as shown in Attachments 3A and 3B. PTE shall pay Subrecipient for termination costs as allowable under Uniform Guidance, 2 CFR 200, or 45 CFR Part 74 Appendix E, "Principles for Determining Costs Applicable to Research & Development under Grants and Contracts with Hospitals, as applicable.
- 10) No-cost extensions require the approval of the PTE. Any requests for a no-cost extension should be addressed to and received by the Administrative Contact, as shown in Attachments 3A, not less than 30 days prior to the desired effective date of the requested change.
- 11) The Subaward is subject to the terms and conditions of the PTE Award and other special terms and conditions, as identified in Attachment 2.
- 12) By signing this Research Subaward Agreement Subrecipient makes the certifications and assurances shown in Attachments 1 and 2.
- 13) Research Terms & Conditions – RESERVED

By an Authorized Official of Pass-through Entity:		By an Authorized Official of Subrecipient:	
Name: <b>Tamara T. Hatch, MBA, CRA</b>	Date: _____	Name: <b>Selena Cuffee-Glenn</b>	Date: _____
Title: <b>Interim Director, Office of Sponsored Programs</b>		Title: <b>Chief Administrative Officer</b>	

**Attachment 1**  
**Research Subaward Agreement**  
**Certifications and Assurances**

By signing the Subaward Agreement, the Authorized Official of Subrecipient certifies, to the best of his/her knowledge and belief, that:

**Certification Regarding Lobbying**

1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, 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 intending 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 this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," to the Pass-through Entity.

3) The Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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 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 such failure.

**Debarment, Suspension, and Other Responsibility Matters**

Subrecipient certifies by signing this Subaward Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency.

**Audit and Access to Records**

Subrecipient certifies by signing this Subaward Agreement that it complies with the Uniform Guidance, will provide notice of the completion of required audits and any adverse findings which impact this subaward as required by parts 200.501-200.521, and will provide access to records as required by parts 200.336, 200.337, and 200.201 as applicable.

**Attachment 2**  
**Research Subaward Agreement**  
**Copy of Prime Award Terms and Conditions**

*Copy of Award Notice (attached 8 pages)*

**Special terms and conditions:**


1. **Copyrights**  
Subrecipient  grants /  shall grant (check one) to Prime Recipient an irrevocable, royalty-free, non-transferable, non-exclusive right and license to use, reproduce, make derivative works, display, and perform publicly any copyrights or copyrighted material (including any computer software and its documentation and/or databases) first developed and delivered under this Subaward Agreement solely for the purpose of and only to the extent required to meet Prime Recipient's obligations to the Federal Government under its Prime Award.
2. **Data Rights**  
Subrecipient grants to Prime Recipient the right to use data created in the performance of this Subaward Agreement solely for the purpose of and only to the extent required to meet Prime Recipient's obligations to the Federal Government under its Prime Award.
3. **Automatic Carry Forward:** /  / Yes /  / No  
(If No, Carry Forward requests must be sent to Prime Recipient's Authorized Official contact, as shown in Attachment 3).

**Additional Special Terms:**

**Conflict of Interest:** This Assistance Agreement/Amendment contains a new provision regarding Disclosing Conflict of Interests (COIs) in the General Terms and Conditions of this award and available at: [http://www.epa.gov/ogd/tc/general\\_tc\\_applicable\\_aa\\_recipients\\_dec\\_26\\_2014.pdf](http://www.epa.gov/ogd/tc/general_tc_applicable_aa_recipients_dec_26_2014.pdf) . This provision is required by and implements 2 CFR 200.112 and EPA's Interim Financial Assistance Conflict of Interest Policy. Please review this provision thoroughly and follow all requirements therein. EPA COI Policy: <http://www2.epa.gov/grants/epas-financial-assistance-conflict-interest-policy>

Funding provided by this Assistance Agreement/Amendment is subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (Uniform Grants Guidance), 2 CFR Part 200 and EPA's supplemental regulations at 2 CFR 1500.



	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>	<b>GRANT NUMBER (FAIN):</b> 96341801 <b>MODIFICATION NUMBER:</b> 0 <b>PROGRAM CODE:</b> DE	<b>DATE OF AWARD</b> 09/24/2015
		<b>TYPE OF ACTION</b> New	<b>MAILING DATE</b> 10/01/2015
		<b>PAYMENT METHOD:</b> ASAP	<b>ACH#</b> 33578
<b>RECIPIENT TYPE:</b> State Institution of Higher Learning		<b>Send Payment Request to:</b> N/A	
<b>RECIPIENT:</b> James Madison University 800 South Main St, MSC 5728 Harrisonburg, VA 22807 EIN: 54-6001756		<b>PAYEE:</b> James Madison University 800 South Main St, MSC 5728 Harrisonburg, VA 22807	
<b>PROJECT MANAGER</b> Alleyn Hamed 800 South Main St, MSC 5728 Harrisonburg, VA 22807 E-Mail: ahamed@vacleancities.org Phone: 540-568-8896		<b>EPA PROJECT OFFICER</b> Michelle Moyer 1650 Arch Street, 3AP50 Philadelphia, PA 19103-2029 E-Mail: Moyer.Michelle@epa.gov Phone: 215-814-2098	<b>EPA GRANT SPECIALIST</b> Douglas Roberts Grants and Audit Management Branch, 3PM70 E-Mail: Roberts.Douglas@epa.gov Phone: 215-814-5279
<b>PROJECT TITLE AND DESCRIPTION</b> Vehicle Emission Reduction, Deployment, and Education (VERDE) Project Virginia Clean Cities at James Madison University will continue their efforts to reduce toxic diesel emissions by working with fleets to replace their heavy duty vehicles with cleaner fuel vehicles and install emission control and idle-reduction technologies. This funding will repower or replace 1 diesel utility truck powered by LPG in Roanoke Virginia. In addition, funding is requested for 143 electrified parking spaces for 75 electric trailer refrigeration units to eliminate idling of long haul trucks.			
<b>BUDGET PERIOD</b> 10/01/2015 - 12/31/2017	<b>PROJECT PERIOD</b> 10/01/2015 - 12/31/2017	<b>TOTAL BUDGET PERIOD COST</b> \$3,322,233.00	<b>TOTAL PROJECT PERIOD COST</b> \$3,322,233.00
<b>NOTICE OF AWARD</b>			
Based on your Application dated 09/03/2015 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$829,954. EPA agrees to cost-share 24.98% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$829,954. 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.			
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>		<b>AWARD APPROVAL OFFICE</b>	
<b>ORGANIZATION / ADDRESS</b> US EPA Region 3, 3PM70 1650 Arch Street Philadelphia, PA 19103-2029		<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 3 Air Protection Division 3AP00 1650 Arch Street Philadelphia, PA 19103-2029	
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>			
Digital signature applied by EPA Award Official Ronald J. Borsellino - Assistant Regional Administrator for Policy and Management			<b>DATE</b> 09/24/2015

# EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 829,954	\$ 829,954
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$ 2,492,279	\$ 2,492,279
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 3,322,233	\$ 3,322,233

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

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1503MH0041	15	E4	03M5	102AH4	4122			829,954
									829,954

## **Administrative Conditions**

### **1. General Terms and Conditions**

The recipient agrees to comply with the current EPA general terms and conditions available at: [http://www.epa.gov/ogd/general\\_national\\_tcs\\_10\\_1\\_2014.pdf](http://www.epa.gov/ogd/general_national_tcs_10_1_2014.pdf). These terms and conditions are in addition to the assurances and certifications made as part of the award and the terms, conditions or restrictions cited below.

The EPA repository for the general terms and conditions by year can be found at: <http://www.epa.gov/ogd/tc.htm>.

### **2. State Grant Cybersecurity Condition**

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

(b) (1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure.

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

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

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

### **3. Indirect Costs**

If the recipient does not have a previously established indirect cost rate, it agrees that it will prepare its indirect cost rate proposal and/or cost allocation plan and in accordance with 2 CFR 200.416 "Cost allocation plans and indirect cost proposals."

If EPA is the cognizant federal agency, the state recipient must send its indirect cost rate proposal within six (6) months after the close of the governmental unit's fiscal year to:

#### **Regular Mail**

Financial Analysis and Rate Negotiation Service Center  
Office of Acquisition Management  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW, MC 3802R  
Washington, DC 20460

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

Financial Analysis and Rate Negotiation Service Center  
Office of Acquisition Management  
US Environmental Protection Agency  
1300 Pennsylvania Avenue, NW, 6th floor  
Bid and Proposal Room Number 61107

Washington, DC 20004

Electronic Submission (e.g. PDF)

OGD IndirectCost@EPA.GOV

Recipients are entitled to reimbursement of indirect costs, if they have a current rate agreement, or have submitted an indirect cost rate proposal to their cognizant federal agency for review and approval. Recipients are responsible for maintaining an approved indirect cost rate. Recipients with differences between their provisional rates and final rates are not entitled to more than the award amount, without EPA approval.

Recipients must comply with the audit requirements prescribed in 2 CFR 200.501(a).

#### **4. Annual Federal Financial Report**

Pursuant to 2 CFR 200.327 and 200.343, the recipient agrees to submit to EPA an annual Federal Financial Report (FFR) (SF-425) when the budget period is longer than one year. The following reporting period end dates shall be used for interim reports: 3/31, 6/30, 9/30, or 12/31. Interim reports shall be submitted no later than 90 days after the end of each reporting period.

The form is available on the internet at <http://www.epa.gov/financial/forms>. All FFRs must be submitted to the Las Vegas Finance Center (LVFC) via email [LVFC-grants@epa.gov](mailto:LVFC-grants@epa.gov) or fax at 702-798-2423.

#### **5. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES**

##### **GENERAL COMPLIANCE, 40 CFR, Part 33**

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

##### **MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E**

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

Based on EPA's review of the planned budget, this award meets the conditions above and is subject to the Disadvantaged Business Enterprise (DBE) Program reporting requirements. However, if recipient believes this award does not meet these conditions, it must provide the EPA Grant Specialist with a justification and budget detail within 21 days of the award date clearly demonstrating that, based on the planned budget, this award is not subject to the DBE reporting requirements.

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

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

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

MBE/WBE reports should be signed and emailed to [R3\\_MBE-WBE\\_Reports@epa.gov](mailto:R3_MBE-WBE_Reports@epa.gov) as a pdf file, or if that is not possible, mailed to Cynthia Burrows, Diversity/EEO Manager (3DA10), U.S. EPA - Region III, 1650 Arch Street, Philadelphia, PA 19103-2029 with a courtesy copy to the EPA Grant Specialist. The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at [http://www.epa.gov/osbp/dbe\\_reporting.htm](http://www.epa.gov/osbp/dbe_reporting.htm) ;

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

#### **FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D**

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

In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives requirements as described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption.

#### **Accepting the Fair Share Objectives/Goals of Another Recipient**

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the Virginia Department of Environmental Quality as follows:

MBE%: CONSTRUCTION 5.8%; EQUIPMENT 4.1%; SERVICES 3.9%; SUPPLIES 1.5%  
WBE%: CONSTRUCTION 4.0%; EQUIPMENT 4.2%; SERVICES 2.6%; SUPPLIES 1.6%

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as the Virginia Department of Environmental Quality.

#### **Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404**

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

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

#### **SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C**

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

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

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

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

maximum participation by DBEs in the competitive process.

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

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

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

#### **CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302**

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

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

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

### **Programmatic Conditions**

#### **1. FY 2015 Clean Diesel Funding Assistance (DERA) Programmatic Terms and Conditions**

The recipient agrees to comply with the FY2015 National DERA terms and conditions available at: [http://www.epa.gov/ogd/tc/fy\\_15\\_dera\\_national.pdf](http://www.epa.gov/ogd/tc/fy_15_dera_national.pdf). These terms and conditions are in addition to any award specific programmatic terms and conditions outlined directly on the award document.

#### **2. Leveraging**

The recipient agrees to provide the proposed leveraged funding, including any voluntary cost-share contribution or overmatch that is described in its final approved workplan. If the proposed leveraging does not materialize during the period of award performance, and the recipient does not provide a satisfactory explanation, the Agency may consider this factor in evaluating future proposals from the recipient. In addition, if the proposed leveraging does not materialize during the period of award performance then EPA may reconsider the legitimacy of the award; if EPA determines that the recipient knowingly or recklessly provided inaccurate information regarding the leveraged funding the recipient described in its final approved workplan. EPA may take action as authorized by 40 CFR Parts 30 or 31 and/or 2 CFR Part 180 as applicable.

#### **3. Mandatory Cost-Share Requirement**

This award and the resulting federal funding share of 52.10% as shown under "Notice of Award" above is based on estimated costs requested in the recipient's final approved workplan. While actual total costs may differ than those estimates, the recipient is required to provide no less than the cost-share percentages outlined below, as applicable, of the final equipment costs. EPA's participation shall not exceed the total amount of federal funds awarded or the maximum federal cost-share percentages outlined below, as applicable, of the final equipment costs. Recipients must satisfy any applicable cost share requirements with allowable costs as set forth in 40 CFR 30.23 or 31.24, as appropriate. The cost share requirements are as follows:

1. **Engine Upgrades:** EPA will fund up to 40% of the cost (labor and equipment) of an eligible engine upgrade; recipient is responsible for cost-sharing at least 60% of the cost of an eligible engine upgrade.
2. **Idle Reduction Technologies on Locomotives:** EPA will fund up to 40% of the cost (labor and equipment) of an eligible idle reduction technology on a locomotive; recipient is responsible for cost-sharing at least 60% of the cost of an eligible idle reduction technology on a locomotive.
3. **Marine Shore Power Connection and Alternative Maritime Power:** EPA will fund up to 25% of the cost (labor and equipment) of an eligible shore connection system or truck stop electrification technology; recipient is responsible for cost-sharing at least 75% of the cost of an eligible shore connection system or truck stop electrification technology.
4. **Certified Engine Repower:** EPA will fund up to 40% of the cost (labor and equipment) of an

eligible engine repower; recipient is responsible for cost-sharing at least 60% of the cost of an eligible engine repower.

**5. Certified Vehicle/Equipment Replacement:**

5.1. **Nonroad Diesel Vehicles and Equipment:** EPA will fund the incremental cost of a newer, cleaner vehicle or piece of equipment powered by a 2013 model year or newer certified nonroad diesel engine, up to 25% of the cost of an eligible replacement vehicle or piece of equipment; recipient is responsible for cost-sharing at least 75% of the cost of an eligible replacement vehicle or piece of equipment.

5.2. **Highway Diesel Vehicles:** EPA will fund the incremental cost of a newer, cleaner medium or heavy-duty vehicle powered by an engine certified to the 2013 model year or newer standards for highway heavy-duty diesel engines, up to 25% of the cost of an eligible replacement vehicle/equipment; recipient is responsible for cost-sharing at least 75% of an eligible replacement vehicle or piece of equipment.

5.3. **Drayage Vehicle Replacement:** EPA will fund up to 50% of the cost of eligible drayage trucks with a 2010 model year or newer heavy-duty engine equipped with a diesel particulate filter (or diesel oxidation catalyst in the case of a CNG engine); recipient is responsible for cost-sharing at least 50% of an eligible drayage replacement vehicle.

6. **Clean Alternative Fuel Conversions:** EPA will fund up to 40% of the cost (labor and equipment) of an eligible clean alternative fuel conversion; recipient is responsible for cost-sharing at least 60% of the cost of an eligible clean alternative fuel conversion.

The eligible acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

**4. Substantial Federal Involvement for Cooperative Agreements**

EPA will provide substantial involvement in the form of technical assistance, development of outputs, and oversight. Specifically, substantial federal involvement will take the form of monitoring the project by EPA, participation and collaboration between EPA and the recipient in program content, review of project progress, and quantification and reporting of results.

# **EPA General Terms and Conditions**

## **Effective October 6, 2015**

### **1. Introduction**

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

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

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

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

## **Financial Information**

### **3. Reimbursement Limitation**

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

### **4. Payment Methods**

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



- 4.1. Automated Standard Application for Payments (ASAP).** The ASAP system is the preferred method of payment for EPA grantees. ASAP enrollment is highly encouraged for organizations that have multiple grants/cooperative agreements and for those with a frequent need to request funds. If the recipient uses multiple bank accounts for EPA grants/cooperative agreements, the recipient must enroll in ASAP. To enroll in ASAP, please complete the ASAP Initiate Enrollment form located at: <http://www2.epa.gov/financial/forms> and email it to [LVFC-grants@epa.gov](mailto:LVFC-grants@epa.gov) or fax it to LVFC at 702-798-2423.

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

**4.2. Electronic Funds Transfer (EFT).**

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

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

**5. Payment Drawdown**

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

## **Selected Items of Cost**

**6. Consultant Cap**

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

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

**7. Establishing and Managing Subawards**

The recipient agrees to:

- 7.1. Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 2 CFR 200.308.
- 7.2. Establish all subaward agreements in writing;
- 7.3. Document the Federal Award Identification Number (FAIN), also known as the Grant Number, on all subaward agreements under this award;
- 7.4. Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
- 7.5. Ensure that any subawards comply with the standards in 2 CFR 200 Subpart D and are not used to acquire commercial goods or services for the recipient;
- 7.6. Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are allowable, reasonable and allocable;
- 7.7. Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
- 7.8. Monitor the performance of their subrecipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
- 7.9. Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
- 7.10. Ensure that any questions about subrecipient eligibility or other issues pertaining to subawards are addressed to the recipient's EPA Project Officer, as appropriate. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with 2 CFR 200 Subpart D can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and [http://www.whitehouse.gov/omb/financial\\_fin\\_single\\_audit](http://www.whitehouse.gov/omb/financial_fin_single_audit).
- 7.11. Be responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

## 8. Management Fees

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

## Reporting and Additional Post-Award Requirements

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

- 9.1. **Requirement for System for Award Management (SAM)** Unless exempted from this requirement under 2 CFR 25.110, the recipient must maintain the currency of the organization's information in SAM until the submittal of the final financial report required under this award or receipt of the final payment, whichever is later. This requires that the recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in the information or another award term.
- 9.2. **Requirement for Data Universal Numbering System (DUNS) numbers.** If the recipient is authorized to make subawards under this award, the recipient:
  - 9.2.1. Must notify potential subrecipients that no entity (definition paragraph 9.3 of this award term) may receive a subaward unless the entity has provided its DUNS number.
  - 9.2.2. May not make a subaward to an entity unless the entity has provided its DUNS number.
- 9.3. **Definitions.** For the purposes of this award term:
  - 9.3.1. **System for Award Management (SAM)** means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information

about registration procedures may be found at the System for Award Management (SAM) Internet site: <https://www.sam.gov>.

**9.3.2. Data Universal Numbering System (DUNS) number** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

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

- 9.3.3.1. A Governmental organization, which is a State, local government, or Indian tribe;
- 9.3.3.2. A foreign public entity;
- 9.3.3.3. A domestic or foreign nonprofit organization;
- 9.3.3.4. A domestic or foreign for-profit organization; and
- 9.3.3.5. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

**9.3.4. Subaward:**

- 9.3.4.1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the recipient received this award and that the recipient awards to an eligible subrecipient.
- 9.3.4.2. The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200 Subpart D).
- 9.3.4.3. A subaward may be provided through any legal agreement, including an agreement that the recipient considers a contract.

**9.3.5. Subrecipient** means an entity that:

- 9.3.5.1. Receives a subaward from the recipient under this award; and
- 9.3.5.2. Is accountable to the recipient for the use of the Federal funds provided by the subaward.

## **10. Reporting Subawards and Executive Compensation**

### **10.1. Reporting of first-tier subawards.**

**10.1.1. Applicability.** Unless the recipient is exempt as provided in paragraph 10.4. of this award term, the recipient must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph 10.5 of this award term).

**10.1.2. Where and when to report.** (1) The recipient must report each obligating action described in paragraph 10.1.1 of this award term to [www.fsrs.gov](http://www.fsrs.gov). (2) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on any date during the month of November of a given year, the obligation must be reported by no later than December 31 of that year.)

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

### **10.2. Reporting Total Compensation of Recipient Executives.**

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

- 10.2.1.1. the total Federal funding authorized to date under this award is \$25,000 or more;
- 10.2.1.2. in the preceding fiscal year, the recipient received:(i.) 80 percent or more of their annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); (ii.) and \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

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

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

### **10.3. Reporting of Total Compensation of Subrecipient Executives.**

**10.3.1. Applicability and what to report.** Unless exempt as provided in paragraph 10.4. of this award term, for each first-tier subrecipient under this award, the recipient shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

**10.3.1.1.** in the subrecipient's preceding fiscal year, the subrecipient received: (i.) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and (ii.) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

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

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

**10.3.2.1.** To the recipient.

**10.3.2.2.** By the end of the month following the month during which the recipient makes the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), the recipient must report any required compensation information of the subrecipient by November 30 of that year.

### **10.4. Exemptions**

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

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

### **10.5. Definitions.** For purposes of this award term:

**10.5.1. Entity** means all of the following, as defined in 2 CFR Part 25: (i.) A Governmental organization, which is a State, local government, or Indian tribe; (ii.) A foreign public entity; (iii.) A domestic or foreign nonprofit organization; (iv.) A domestic or foreign for-profit organization; (v.) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

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

**10.5.3. Subaward:**

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

- 10.5.3.2. The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200 Subpart D).
- 10.5.3.3. A subaward may be provided through any legal agreement, including an agreement that the recipient or a subrecipient considers a contract.
- 10.5.4. Subrecipient means an entity that:
  - 10.5.4.1. Receives a subaward from the recipient under this award; and
  - 10.5.4.2. Is accountable to the recipient for the use of the Federal funds provided by the subaward.
- 10.5.5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
  - 10.5.5.1. Salary and bonus.
  - 10.5.5.2. Awards of stock, stock options and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - 10.5.5.3. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - 10.5.5.4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - 10.5.5.5. Above-market earnings on deferred compensation which is not tax-qualified.
  - 10.5.5.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

## 11. Final Federal Financial Report (FFR)

Pursuant to 2 CFR 200.327 and 200.343, EPA recipients must submit the SF-425 no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extension of reporting due dates may be approved by EPA upon request of the recipient. The form is available on the internet at: <http://www2.epa.gov/financial/forms>. All FFRs must be submitted to the Las Vegas Finance Center (LVFC) via email [LVFC-grants@epa.gov](mailto:LVFC-grants@epa.gov) or fax at 702-798-2423.

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

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.

## 12. Indirect Cost Rate Agreements

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

## 13. Audit Requirements

In accordance with 2 CFR 200.501(a), the recipient hereby agrees to obtain a single audit from an independent auditor, if their organization expends \$750,000 or more in total Federal funds in their fiscal year beginning on or after December 26, 2014.

The recipient must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the recipient's fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse's Internet Data Entry System available at: <https://harvester.census.gov/fac/collect/ddeindex.htm>. For complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>.

#### **14. Closeout Requirements**

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

#### **15. Suspension and Debarment**

Recipients shall fully comply with Subpart C of 2 CFR Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business with Other Persons," as implemented and supplemented by 2 CFR Part 1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

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

#### **16. Disclosing Conflict of Interests**

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

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

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

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

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

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

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

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

#### **16.2. For awards to states including state universities that are state agencies or instrumentalities**

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

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

States including state universities that are state agencies and instrumentalities receiving funding from EPA are only required to disclose subrecipient COI as a pass-through entity as defined by 2 CFR 200.74. Any other COI are subject to state laws, regulations and policies. EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COIs described in section 4.0(b)(c) and (d) of the COI Policy that arise after EPA made the award regardless of the amount of the transaction. States who are pass-through entities as defined at 2 CFR 200.74 must require that subrecipients being considered for or receiving subawards disclose COI to the state in a manner that, as a minimum, in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. States must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

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

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

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

## **Programmatic General Terms and Conditions**

### **17. 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.

### **18. Copyrighted Material and Data**

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

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

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

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

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

### **19. Patents and Inventions**

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



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

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

#### **20. Acknowledgement Requirements for Non-ORD Assistance Agreements**

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

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

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

#### **21. Electronic and Information Technology Accessibility**

Recipients are subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology ("EIT"). In compliance with Section 504, EIT systems or products funded by this award must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider a recipient's websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to grant recipients, we encourage recipients to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities. Recipients may wish to consult the latest Section 508 guidelines issued by the U.S. Access Board or W3C's Web Content Accessibility Guidelines (WCAG) 2.0 (see <http://www.access-board.gov/scc508/guide/index.htm>).

#### **22. Light Refreshments and/or Meals**

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

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

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

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

### **23. Tangible Personal Property**

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

#### **23.2 Disposition**

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

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

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

## **Public Policy Requirements**

### **24. Civil Rights Obligations**

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Standard Form 424B or Standard Form 424D, as applicable. These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.

#### **24.1. Statutory Requirements**

**24.1.1.** In carrying out this agreement, the recipient must comply with:

- 24.1.1.1.** Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.

- 24.1.1.2. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
- 24.1.1.3. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.
- 24.1.2. If the recipient is conducting an education program under this agreement, it must also comply with:
  - 24.1.2.1. 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.
- 24.1.3. If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:
  - 24.1.3.1. 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.
- 24.2. **Regulatory Requirements**
  - 24.2.1. The recipient agrees to comply with all applicable EPA civil rights regulations, including:
    - 24.2.1.1. For Title IX obligations, 40 C.F.R. Part 5; and
    - 24.2.1.2. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 CFR Part 7.
    - 24.2.1.3. As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator and providing notices of non-discrimination.
- 24.3. **TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation**
  - 24.3.1. As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004\\_register&docid=fr25jn04-79.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf).
  - 24.3.2. If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at <http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf>.
  - 24.3.3. In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

## 25. 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 <http://ecfr.gpoaccess.gov/>.

## **26. Hotel-Motel Fire Safety**

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

## **27. Lobbying and Litigation**

### **27.1. All Recipients.**

- 27.1.1. The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The recipient shall abide by the Cost Principles available at 2 CFR 200 which generally prohibits the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities.
- 27.1.2. 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.
- 27.1.3. 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.
- 27.1.4. Contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
- 27.1.5. Pursuant to Section 18 of the Lobbying Disclosure Act, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

## **28. 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.

## **29. Resource Conservation and Recovery Act**

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

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

## **30. Trafficking in Persons**

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

- 30.1.1. The recipient, the recipient's employees, subrecipients under this award, and subrecipients' employees may not—**
- 30.1.1.1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;**
  - 30.1.1.2. Procure a commercial sex act during the period of time that the award is in effect; or**
  - 30.1.1.3. Use forced labor in the performance of the award or subawards under the award.**
- 30.1.2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if the recipient or a subrecipient that is a private entity —**
- 30.1.2.1. Is determined to have violated a prohibition in paragraph 30.1 of this award term; or**
  - 30.1.2.2. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph 31.1 of this award term through conduct that is either—**
    - 30.1.2.2.1. Associated with performance under this award; or**
    - 30.1.2.2.2. Imputed to the recipient or subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our Agency at 2 CFR 1532.**
- 30.2. Provision applicable to a recipient other than a private entity. EPA may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—**
- 30.2.1. Is determined to have violated an applicable prohibition in paragraph 30.1. of this award term; or**
  - 30.2.2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph 30.1 of this award term through conduct that is either—**
    - 30.2.2.1. Associated with performance under this award; or**
    - 30.2.2.2. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by EPA at 2 CFR 1532**
- 30.3. Provisions applicable to any recipient.**
- 30.3.1. The recipient must inform the EPA immediately of any information received from any source alleging a violation of a prohibition in paragraph 30.1 of this award term.**
  - 30.3.2. Our right to terminate unilaterally that is described in paragraph 30.1.2 and 30.2:**
    - 30.3.2.1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and**
    - 30.3.2.2. Is in addition to all other remedies for noncompliance that are available to us under this award.**
  - 30.3.3. The recipient must include the requirements of paragraph 30.1 of this award term in any subaward made to a private entity.**
- 30.4. Definitions. For purposes of this award term:**
- 30.4.1. "Employee" means either:**
    - 30.4.1.1. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or**
    - 30.4.1.2. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.**
  - 30.4.2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.**

**30.4.3. "Private entity":**

**30.4.3.1.** Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

**30.4.3.2. Includes:**

**30.4.3.2.1.** A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

**30.4.3.2.2.** A for-profit organization.

**30.4.4.** "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

## **FY2015 State Clean Diesel Program (DERA) Programmatic Terms and Conditions**

### **A. Substantial Federal Involvement for Cooperative Agreements**

EPA will provide substantial involvement in the form of technical assistance, development of outputs, and oversight. Specifically, substantial federal involvement will take the form of monitoring the project by EPA, participation and collaboration between EPA and the recipient in program content, review of project progress, and quantification and reporting of results.

### **B. Emissions Control Technologies**

Emissions Reduction Projects funded by the recipient pursuant to this assistance agreement must use verified technologies and/or must use engines and engine configurations certified by EPA and, if applicable, CARB. Technologies are verified under EPA or California's Retrofit Technology Verification Programs. See <http://epa.gov/cleandiesel/verification/verif-list.htm> for an updated list of EPA's verified technologies and <http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm> for a list of CARB's verified technologies. Any question as to the eligibility or preference of a retrofit technology, including vehicle/equipment replacement and repowers, should be directed to the EPA Project Officer. Technology changes may not be allowed after a final workplan has been approved. If technology compatibility issues arise, EPA may elect to terminate the cooperative agreement, at which time assistance funds must be returned to EPA.

### **C. Quarterly Reporting and Environmental Results**

Quarterly progress reports will be required. Quarterly reports are considered project status reports and will address the progress made achieving the work plan goals. In general, quarterly reports will include summary information on technical progress and expenditures, and planned activities for next quarter. A template for the quarterly report is available at <http://www.epa.gov/cleandiesel/grant-reporting.htm>.

Quarterly reports are due according to the following schedule. If a due date falls on a weekend or holiday, the report will be due on the next business day.

April 1 – June 30 Reporting Period: report due date July 30

July 1 – September 30 Reporting Period: report due date October 30

October 1 – December 31 Reporting Period: report due date January 30

January 1 – March 31 Reporting Period: report due date April 30

If a project start date falls within a defined Reporting Period the recipient must report for that period by the given due date. This quarterly reporting schedule shall be repeated for the duration of the award agreement.

**D. Final Report:**

The final project report will include all categories of information required for quarterly reporting, including a final, detailed fleet description. The final project report will also include a narrative summary of the project or activity, project results (outputs and outcomes) including final emissions benefit calculations, and the successes and lessons learned for the entire project. To the extent possible, final emission benefit calculations should be based on the actual number and type of technologies, vehicles, equipment and engines implemented under the award and actual vehicle miles traveled, idling and/or operating hours, and fuel use. If actual vehicle miles traveled, idling and/or operating hours, and fuel use are not available, the final report will include a detailed explanation of how these values are derived, as well as any assumptions or default values used, for the purposes of emissions benefit calculations. The final report will also detail the methodologies used for the emission benefit calculation.

For projects involving vehicle/equipment replacement and repowers the recipient must provide in the final report: 1) Evidence that the replacement activity is an "early replacement," and would not have occurred through normal attrition/fleet turnover (i.e. without the financial assistance provided by EPA) within three years of the project period start date. Supporting evidence can include verification that the vehicles or equipment being replaced have useful life left and fleet characterization showing fleet age ranges and average turnover rates per the vehicle or fleet owner's budget plan, operating plan, standard procedures, or retirement schedule; 2) Evidence of appropriate scrappage (see E.3.5 and E.3.6 below); and 3) Specification of the model years and the emission standard levels for PM and NOx, for both the engine being replaced and the new engine.

For projects that take place in an area affected by, or includes vehicles, engines or equipment affected by federal law mandating emissions reductions, the recipient must provide in the final report evidence that emission reductions funded with EPA funds were implemented prior to the effective date of the mandate and/or are in excess of (above and beyond) those required by the applicable mandate.

The final report shall be submitted to the EPA Project Officer within 90 days after the project period end date or termination of the assistance agreement. A template for the final report is available at <http://www.epa.gov/cleandiesel/grant-reporting.htm>.

**E. Use of Funds Restriction:**

E.1. Mandated Measures: Recipient agrees that funds under this award cannot be used for emissions reductions that are mandated under federal law. This refers to specific compliance dates within the mandate, not when the mandate is passed. Voluntary or elective emissions reductions measures shall not be considered "mandated", regardless of whether the reductions are included in the State Implementation Plan of a State.

E.2. Normal Attrition: Recipient agrees that funds under this award cannot be used for emission reductions that result from vehicle/equipment replacements or repowers that would have occurred through normal attrition/fleet turnover within three years of the project start date (e.g. FY15 award funds, including recipient cost-share, shall not be used for replacements/repowers that would have occurred through normal fleet turnover



prior to September 30, 2018). Any question as to eligibility of a vehicle/equipment replacement or repower should be directed to the EPA Project Officer.

- E.3. **Fleet Expansion:** Recipient agrees that funds under this award, including subawards/subgrants, cannot be used for the purchase of vehicles, engines, or equipment to expand a fleet. The recipient agrees that:
- E.3.1. The repowered or replacement vehicle, engine, or equipment must be of similar size and/or horsepower, and will perform the same function and operation as the vehicle, engine, or equipment that is being repowered or replaced (e.g., an excavator used to dig pipelines would be replaced by an excavator that continues to dig pipelines);
  - E.3.2. *For Engine Repowers:* Horsepower increases of more than 25 percent will require specific approval by the EPA Project Officer prior to purchase, and the applicant may be required to pay the additional costs associated with the higher horsepower engine.
  - E.3.3. *For Nonroad Replacements:* Horsepower increases of more than 25 percent will require written approval by the EPA Project Officer prior to purchase, and the applicant may be required to pay the additional costs associated with the higher horsepower equipment.
  - E.3.4. *For Highway Replacements:* The replacement vehicle must not be in a larger weight class than the existing vehicle (Class 5, 6, 7, or 8). The engine's primary intended service class must match the replacement vehicle's weight class (i.e. a LHD diesel engine is used in a vehicle with GVWR 16,001 – 19,500 pounds, a MHD diesel engine is used in a vehicle with a GVWR of 19,501 – 33,000 pounds, and an HHD diesel engine is used in a vehicle with a GVWR greater than 33,000 pounds.) Exceptions may be granted for vocational purposes, however the GVWR must stay within 10 percent of the engine's intended service class and any exceptions will require written approval by the EPA Project Officer prior to purchase.
  - E.3.5. *For Engine Repowers:* The engine being replaced will be scrapped or rendered permanently disabled within ninety (90) days of the replacement. Cutting a three inch by three inch hole in the engine block is the preferred scrapping method. Other methods may be considered and will require prior written approval by the EPA Project Officer. Evidence of appropriate disposal is required in a final assistance agreement report submitted to EPA and includes a signed certificate of destruction (to be provided by the EPA Project Officer) and digital photos of the engine tag (showing serial number, engine family number, and engine model year) and the destroyed engine block. If scrapped or salvaged engines are to be sold, program income requirements apply.
  - E.3.6. *For Nonroad and Highway Replacements:* The vehicle/equipment being replaced will be scrapped or rendered permanently disabled within ninety (90) days of the replacement. Disabling the engine may be completed as described in E.3.5 above. Disabling the chassis may be completed by cutting completely through the frame/frame rails on each side of the vehicle/equipment at a point located between the front and rear axles. Other acceptable scrapping methods may be considered and will require prior written approval by the EPA Project Officer. Evidence of appropriate disposal is required in a final assistance agreement report submitted to EPA and includes a signed certificate of

destruction (to be provided by the EPA Project Officer) and digital photos of the engine tag (showing serial number, engine family number, and engine model year), the destroyed engine block, and cut frame rails or other cut structural components as applicable. Vehicle/equipment components that are not part of the engine or chassis may be salvaged from the unit being replaced (e.g. plow blades, shovels, seats, etc.). If scrapped or salvaged vehicle/equipment chassis or components are to be sold, program income requirements apply.

- E.3.7 *For Tire Replacements*: The original tires should be scrapped according to local or state requirements, or the tires can be salvaged for reuse or retreading. If salvaged tires are sold, program income requirements apply.
- E.4. **Matching Funds**: Recipient agrees that funds under this award cannot be used for matching funds for other federal grants, lobbying, or intervention in federal regulatory or adjudicatory proceedings, and cannot be used to sue the Federal Government or any other government entity. Likewise, recipient may not use federal funds as cost-share funds for the State Clean Diesel Grant Program, including funds received under the National Clean Diesel Emissions Reduction Program and federal Supplemental Environmental Project (SEP) funds.
- E.5. **Formerly Verified Technologies**: Recipient agrees that funds under this award cannot be used for retrofit technologies on EPA's or CARB's, "Formerly Verified Technologies" lists: <http://www.epa.gov/cleandiesel/verification/deleted-list.htm>, [www.arb.ca.gov/diesel/verdev/vt/fv1.htm](http://www.arb.ca.gov/diesel/verdev/vt/fv1.htm), [www.arb.ca.gov/diesel/verdev/vt/fv2.htm](http://www.arb.ca.gov/diesel/verdev/vt/fv2.htm), and [www.arb.ca.gov/diesel/verdev/vt/fv3.htm](http://www.arb.ca.gov/diesel/verdev/vt/fv3.htm). Recipient agrees that funds under this award cannot be used for idle reduction technologies on EPA's "Technologies No Longer Verified" list that can be found at: <http://epa.gov/smartway/forpartners/technology.htm#tabs-4>. Recipient agrees that funds under this award cannot be used for technologies on EPA's De-listed Emerging Technologies list which can be found at: [www.epa.gov/cleandiesel/verification/emerg-list.htm](http://www.epa.gov/cleandiesel/verification/emerg-list.htm).
- E.6. **Emissions Testing**: Recipient agrees that funds under this award cannot be used for emissions testing and/or air monitoring activities (including the acquisition cost of emissions testing equipment), or research and development.
- E.7. **Fueling Infrastructure**: Recipient agrees that funds under this award cannot be used for fueling infrastructure, such as that used for the production and/or distribution of biodiesel, compressed natural gas, liquefied natural gas, and or other cleaner fuels.
- E.8. **Aluminum Wheels**: Recipient agrees that funds under this award cannot be used for the purchase of aluminum wheels except where a fleet is retrofitting from standard dual tires to SmartWay-verified single-wide low rolling resistance tires. In this case, the cost of aluminum single-wide wheels would be acceptable as additional equipment necessary to use the SmartWay- verified technology, as would the cost of steel or light weight steel single-wide wheels.
- E.9. **Tires and Aerodynamics**: Recipient agrees that funds under this award cannot be used to purchase aerodynamic technologies or low rolling resistance tires, unless they are combined on the same vehicle with a new installation of a verified exhaust control funded under this award. In addition, recipient agrees that funds under this award cannot be used for the purchase of low rolling resistance tires or advanced aerodynamic technologies if similar technologies have previously been installed on the truck or trailer.

- E.10. **Auxiliary Power Units**: Recipient agrees that funds under this award cannot be used for the purchase of APUs or generators for vehicles with MY 2007 or newer certified engine configurations on long haul Class 8 vehicles.
- E.11. **Idle Reduction Technologies**: Recipient agrees that funds under this award cannot be used for the purchase of idle reduction technologies unless they are combined on the same vehicle with a new installation of a verified exhaust control funded under this award, except for use on locomotives and previously retrofitted school buses, and for shore connection systems or truck stop electrification technologies.
- E.12. **On-highway Model Year**: Recipient agrees that funds under this award cannot be used to retrofit, repower, convert or replace a bus or Class 5 – Class 8 heavy-duty highway vehicle with engine model year 1990 older, or to retrofit engine model year 2007 or newer with DOCs or DPFs, or retrofit engine model year 2010 or newer with SCR, or replace engine model year 2004-2006 with other than with an all-electric vehicle, or replace, repower or convert engine model year 2007 or newer.
- E.13. **School Bus Model Year**: Recipient agrees that funds under this award cannot be used to retrofit, repower, convert or replace a school bus with engine model year 1990 or older, or replace school buses with engine model year 2004-2006 other than with an all-electric vehicle, or retrofit, replace, repower or convert school buses with engine model year 2007 or newer.
- E.14. **Nonroad Useful Life and Operating Hours**: Recipient agrees that funds under this award cannot be used to retrofit, repower, upgrade or replace a nonroad engine or equipment that has less than seven years of useful life remaining. A table distinguishing which nonroad engine model years EPA has determined to have at least seven years of useful life remaining, based on the type and age of vehicle, can be found at <http://www.epa.gov/cleandiesel/documents/fy14-nonroad-remaining-useful-life.pdf> . In addition, recipient agrees that funds under this award cannot be used to retrofit, repower, upgrade or replace nonroad engines and equipment that operate less than 500 hours per year.
- E.15 **Nonroad Repower/Replacement**: Recipient agrees that funds under this award cannot be used to repower or replace nonroad Tier 0 (unregulated) engines to a nonroad Tier 1 or lower nonroad engine standard or from a Tier 2 nonroad engine standard to a Tier 3 or lower nonroad engine standard.
- E.16. **Marine Repower/Replacement/Upgrade**: Recipient agrees that funds under this award cannot be used to repower, replace or upgrade Tier 3 or Tier 4 marine engines, or to repower or replace marine engines from Tier 1 marine engine standard to Tier 1 marine engine standard, or from a Tier 2 marine engine standard to a Tier 2 or lower marine engine standard.
- E.17 **Locomotive Retrofit/Repower/Replacement/Upgrade**: Recipient agrees that funds under this award cannot be used to retrofit unregulated or Tier 0 locomotives with SCR, or to upgrade, repower or replace locomotives from: Tier 0+/1 to Tier 0+ or lower; Tier 1+/2 to Tier 1+ or lower; Tier 2 to Tier 1+ or lower; or, from Tier 2+ to Tier 2+ or lower. In addition, recipient agrees that funds under this award cannot be used upgrade, repower or replace line-haul locomotives from Tier 2 to Tier 4, or to upgrade, repower or replace line-haul locomotives from Tier 2+ to Tiers 3 and 4 , or to install Automatic Engine Start-Stop technologies on locomotives currently certified to Tier 0+ or higher.

- E.18. **Marine Shore Connection**: Recipient agrees that funds under this award cannot be used for marine shore connection system projects that are expected to be utilized less than 2,000 MW-hr/year.
- E.19. **Locomotive Shore Connection**: Recipient agrees that funds under this award cannot be used for locomotive shore connection system projects that are expected to be utilized less than 1,000 hours/year.
- E.20. **Locomotive and Marine Operating Hours**: Recipient agrees that funds awarded under this award cannot be used to retrofit, repower, replace, upgrade or install idle reduction technologies on eligible locomotives or marine engines that operate less than 1000 hours per year.
- E.21. **Engine Upgrade**: In the case of an engine upgrade with a certified remanufacture system applied at the time of rebuild (not manufacturer upgrades that are retrofits verified by EPA or CARB), recipient agrees that funds under this award cannot be used for the entire cost of the engine rebuild, but only for the incremental cost of the certified remanufacture system and associated labor costs for installation. Any question as to eligibility of engine upgrade costs should be directed to the EPA Project Officer.
- E.22. **Expenses Incurred Prior to the Project Period**: Recipient agrees that, except for eligible pre-award costs as defined in 2 CFR 200.308 and 200.458, and 2 CFR 1500.8 funds under this award cannot be used to cover expenses incurred prior to the project period and that expenses incurred prior to the project period cannot be used as a cost-share for projects funded under this award.
- E.23. **Direct Implementation**: The recipient must use funds to develop and administer a subgrant, rebate, and/or loan program(s) as appropriate to meet the recipient's State Air Program needs and goals relating to the reduction of diesel emissions. The recipient cannot use DERA State Program funds to directly implement diesel emissions reduction projects; however, the recipient may use DERA State Program funds to award subgrants, rebates, and/or loans to other entities to carry out diesel emission reduction projects.
- E.24. **State Fleets**: Recipients may use funds to provide subgrants, rebates, and/or loans for the benefit of State fleets and State projects. The recipient may transfer funds to another State entity as a subgrantee as allowable under State law.
- E.25. **In-Kind Assistance**: The recipient may purchase equipment through blanket purchase agreements or some other mechanism that ensures a low price for the item. The recipient may then provide the equipment in lieu of money as in-kind assistance through a subgrant. In general, except where providing goods and/or services in lieu of money under a subgrant agreement, the recipient cannot directly contract or procure goods and/or services with their DERA State Program funds.
- E.26. **Expense Cap**: No more than 15 percent of the recipient's total project costs may be used to cover administrative type costs (e.g. personnel, benefits, travel, and supplies). Total project costs include the federal share as well as any cost-share provided by the recipient. The recipient's indirect costs are not considered as administrative type costs and do not count towards the 15 percent maximum.

**F. Drayage Vehicle Replacement Project Requirements:**

- F.1. In addition to the scrappage requirements for all vehicles/equipment described in E.3.4 above, recipients replacing drayage vehicles are required to establish and document

guidelines to ensure that the scrapped vehicle has a history of operating on a frequent basis over the prior year as a drayage truck.

- F.2. The recipient must establish and document guidelines to ensure that all drayage trucks receiving grant funds are operated in a manner consistent with the definition of a drayage truck, defined as any Class 8a and 8b in-use on-road vehicle with a gross weight rating (GVWR) of greater than 33,000 pounds operating on or transgressing through port or intermodal rail yard property for the purpose of loading, unloading or transporting cargo, such as containerized, bulk or break-bulk goods.

**G. Delays or Favorable Developments:**

The recipient agrees that it will promptly notify the EPA Project Officer of any problems, delays, or adverse conditions which may materially impair its ability to deliver on the outputs/outcomes specified in the work plan. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation. The recipient agrees that it will also notify the EPA Project Officer of any favorable developments which may enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

**H. Employee and/or Contractor Selection:**

EPA will not help select employees or contractors hired by the recipient.

**I. Program Income:**

If program income is generated during the course of the project, program income requirements apply. Program income as defined at 2 CFR 200.80 means gross income received by the grantee or subgrantee that is directly generated by a grant supported activity or earned as a result of the Federal award during the period of performance. "Period of performance" is the time between the start and end dates of the period of performance as included in the Federal award. Program income earned during the project period shall be retained by the recipient and, in accordance with 2 CFR 200.307 recipient is authorized to use program income as follows:

- I.1. Program income may be added to the Federal award by EPA and recipient and used to further eligible project or program objectives. The program income shall be used for the purposes and under the conditions of the grant agreement.
- I.2. Program income may be used to meet the cost sharing or matching requirement of the Federal award, including any mandatory or voluntary cost share. The amount of the Federal award remains the same.
- I.3. Deducted from the total allowable costs to determine the net allowable costs on which the federal share of costs is based. This means that the recipient shall spend program income on project activities before spending/requesting federal funds for project activities. This may result in unspent federal funds at the end of the project period.

The recipient will maintain records adequate to document the extent to which transactions generate program income and the disposition of program income.

**J. Equipment Use, Management, and Disposition**

These equipment use, management, and disposition instructions are applicable to assistance agreement recipients and subrecipients acquiring equipment under this award. State agencies

may use, manage and dispose of equipment acquired a Federal award by the state in accordance with state laws and procedures.

Recipient agrees the equipment acquired under this assistance agreement will be subject to the use and management and disposition regulations at 40 CFR 200.313.

Equipment is defined as tangible personal property having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of \$5,000, or the capitalization level established by the non-Federal entity for financial statement purposes (see 2 CFR 200.12 Capital assets). Certified or verified technologies, vehicles, engines and nonroad equipment are considered to be equipment to the extent they fall within this definition.

Recipient agrees that at the end of the project period the recipient will continue to use the equipment purchased under this assistance agreement in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award. When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property. Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.

**K. Procurement and Sub-grant Procedures:**

The recipient must follow applicable procurement and sub-grant procedures. EPA will not be a party to these transactions. If EPA funds are 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 200.317 – .326. Approval of a funding proposal does not relieve recipients of their obligations to compete service contracts, conduct cost and price analyses, and use sub-grants only for financial assistance purposes.

**L. For-Profit Sub-recipients**

In addition to the EPA General Term and Condition #7 “Establishing and Managing Subawards”, the recipient agrees to:

- L.1. Utilize terms and conditions in all subgrants to for-profit sub-recipients that apply the following regulations to for-profit sub-recipients: 2 CFR Sections 200.0 - .99, 200.212, 200.207, 200.322, 200.208, 200.306, 200.308, 200.501(h), 200.310, 200.313, 200.314, 200.315, 200.316, 200.317 -.324, 200.328, 200.333 - .337, 200.338 - .342. For the purposes of applying the listed regulations to for-profit sub-recipients, the Recipient shall perform the functions that the regulations provide will be performed by EPA.
- L.2. Establish a procedure for resolving disputes with for-profit sub-recipients.
- L.3. Not reimburse a for-profit sub-recipient until receipt of documentation that the sub-recipient has incurred eligible and allowable costs. Per 2 CFR 200.401, the allowability of costs incurred by for-profit organizations is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR Part 31.

- L.4. Obtain a final report detailing how the for-profit sub-recipient expended funds in a format prescribed by the Recipient.
- L.5. Ensure that for-profit sub-recipients are aware of requirements imposed upon them by applicable Federal statutes, regulations, and these terms and conditions.

**M. Public Notification:**

Not later than 60 days after the date of the award of a subgrant, rebate, or loan by a State, the State shall publish on the Web site of the State:

- M.1. For subgrants, rebates, and loans provided to the owner of a diesel vehicle or fleet, the total number and dollar amount of subgrants, rebates, or loans provided, as well as a breakdown of the technologies funded through the subgrants, rebates, or loans; and
- M.2. For other subgrants, rebates, and loans, a description of each application for which the subgrant, rebate, or loan is provided.

**Attachment 3A**  
Research Subaward Agreement

Subaward Number:  
**S15-320-003**

**Pass-through Entity Contacts**

**Pass-through Entity**

Name: James Madison University  
Address: 800 South Main Street

City: Harrisonburg State: Virginia Zip Code: 22807-0002

**Pass-through Entity's Administrative Contact**

Name: Sally R. Dickenson  
Address: James Madison University, Office of Sponsored Programs, MSC 5728, 800 South Main Street

City: Harrisonburg State: Virginia Zip Code: 22807-0002  
Telephone: (540) 568-2336 Fax: (540) 568-6240  
E-mail: dickensr@jmu.edu

**Pass-through Entity's Principal Investigator**

Name: Alleyn S. Harned  
Address: James Madison University, Virginia Clean Cities, MSC 4115, 1401 Technology Drive

City: Harrisonburg State: Virginia Zip Code: 22807-0002  
Telephone: (540) 568-8896 Fax: (540) 568-5181  
E-mail: hamedas@jmu.edu

**Pass-through Entity's Financial Contact**

Name: John D. Hulvey  
Address: James Madison University, Sponsored Programs Accounting, MSC 5713, 800 South Main Street

City: Harrisonburg State: Virginia Zip Code: 22807-0002  
Telephone: (540) 568-3725 Fax: (540) 568-6240  
E-mail: hulveyjd@jmu.edu

**Pass-through Entity's Authorized Official**

Name: Tamara T. Hatch  
Address: James Madison University, Office of Sponsored Programs, MSC 5728, 800 South Main Street

City: Harrisonburg State: Virginia Zip Code: 22807-0002  
Telephone: (540) 568-2350 Fax: (540) 568-6240  
E-mail: hatchtt@jmu.edu



**Attachment 4**  
**Research Subaward Agreement**  
**Reporting Requirements**

Pass-through Entity will check all that apply that the Subrecipient will agree to:

- A Final technical/progress report will be submitted to the Pass-through Entity's Principal Investigator identified in Attachment 3 within 60 days after the end of the period of performance.
- Monthly technical/progress reports will be submitted to the Pass-through Entity's Financial Contact identified in Attachment 3, within 30 days of the end of the month.
- Quarterly technical/progress reports will be submitted within thirty (30) days after the end of each project quarter to the Pass-through Entity's Administrative Contact identified in Attachment 3.
- Technical/progress reports on the project as may be required by Pass-through Entity's Administrative Contact in order that Pass-through Entity may be able to satisfy its reporting obligations to the Federal Awarding Agency.
- Annual technical /progress reports will be submitted within 90 days prior to the end of each project period to the Pass-through Entity's Administrative Contact identified in Attachment 3. Such report shall also include a detailed budget for the next budget period, updated Other Support for key personnel, certification of appropriate education in the conduct of human subject research of any new key personnel, and annual IRB or IACUC approval, if applicable.
- In accordance with 37 CFR 401.14, Subrecipient agrees to notify PTE's Financial Contact identified in Attachment 3A within 90 days after Subrecipient's inventor discloses invention(s) in writing to Subrecipient's personnel responsible for patent matters. The Subrecipient will submit a final invention report using Awarding Agency specific forms to the PTE's Principal Investigator identified in Attachment 3A within 60 days of the end of the period of performance so that it may be included with the PTE's final invention report to the Awarding Agency. A negative report  is  is not required.
- A Certification of Completion, in accordance with 2 CFR 200.201(b)(3), will be submitted within 90 days after the end of the project period to the Pass Through Entity's Administrative Contact identified in Attachment 3 (for Fixed Price subawards only.)
- Property Inventory Report; frequency, type, and submission instructions listed here and only to be used when required by PTE Federal Award

**Other Special Reporting Requirements**

The subrecipient shall provide reports as required by JMU's principal investigator. All technical reports shall be submitted to JMU's principal investigator at the address identified in Attachment 3 of this agreement.

**Attachment 5**  
**Cost Reimbursement Research Subaward Agreement**

Statement of Work(SOW)

Cost Sharing

Budget

**Statement of Work**

Below  or  Attached pages

If award is FFATA eligible and SOW exceeds 4000 characters, include a *Subrecipient Federal Award Project Description*

The Department of Public Utilities for the City of Richmond will procure 2 new CNG heavy duty (HD) utility trucks and 10 new HD dump trucks. The DPU will scrap the replaced HD trucks using an approved method of scrappage. The DPU will provide documentation that the existing truck engines have been scrapped using an approved method.

Cost Sharing:



Yes, Amount \$2,088,789



No

**Budget Information**

Below  or  Attached 1

Indirect Cost Rate (IDC) Applied 0.00% on  DC,  MTDC, or  other

Direct Costs  
 Indirect Costs  
 Total Costs

\$ 465,890  
 \$ 0  
 \$ 465,890

Check here if using the de minimis rate of 10 %

Basis	hourly	YEAR 1	THIRD PARTY	THIRD PARTY	YEAR 2	THIRD PARTY	THIRD PARTY	TOTAL
		1/1/2017-12/31/2017	IN-KIND	IN-CASH	1/1/2018-12/31/2018	IN-KIND	IN-CASH	
0	\$	0	0	0	0	0	0	0
		0	0	0	0	0	0	0
		0	0	0	0	0	0	0
		0	0	0	0	0	0	0
<b>Per Unit Cost: # Units</b>								
\$130,000.00	2	47,320.00	0	212,680.00	0	0	0	260,000.00
\$229,468.00	10	418,571.00	0	1,876,109.00	0	0	0	2,294,680.00
		465,890.00	0	2,088,789.00	0	0	0	2,554,680.00
		0	0	0	0	0	0	0
		0	0	0	0	0	0	0
		0	0	0	0	0	0	0
		0	0	0	0	0	0	0
		0	0	0	0	0	0	0
		0	0	0	0	0	0	0
		465,890	0	2,088,789.00	0	0	0	2,554,680.00
		0	0	0	0	0	0	0
		0	0	0	0	0	0	0
		465,890	0	2,088,789.00	0	0	0	2,554,680.00

Costs: 18.20%  
Costs: 81.80%

M SPONSOR	\$	465,890
PONSOR	\$	-
SOR	\$	465,890
I	\$	-
	\$	2,088,789
	\$	2,554,680