

## **GENERAL TERMS AND CONDITIONS FOR FEDERALLY FUNDED GRANT CONTRACTS**

- 1. ACORN FUNDING PROHIBITION:** In compliance with section 163 of the Continuing Appropriations Resolution, 2010, Division B of Pub. L. No. 111-68 (CR), none of the funds made available by this joint resolution or any prior Act may be provided to the Association of Community Organizations for Reform Now (ACORN), or any of its affiliates, subsidiaries, or allied organizations. Federal agencies are expressly prohibited from providing funds to ACORN and its associated organizations directly through grants and cooperative agreements (financial assistance). The prohibition also extends to subgrants/subawards and procurement contracts awarded by financial assistance recipients.
- 2. APPLICABLE LAWS:** This Contract shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the laws of the Commonwealth of Virginia.
- 3. APPLICATION FOR ASSISTANCE:** If grant funding assistance is continued year to year, the Grantee shall submit a complete application, including the proposed workplan, to the Department at least 75 days prior to the beginning of the next project period unless otherwise specified in the Special Terms and Conditions.
- 4. ASSURANCES - CONSTRUCTION PROJECTS:** By entering this contract, the authorized representative of the Grantee certifies that, if applicable, the Grantee will comply with the following requirement: Parts II and III of Executive Order 11246 (30 F.R. 12319, 1965) as amended by Executive Orders 11375 (32 F.R. 14303, 1967) and 12086 (43 F.R. 46501, 1978) requiring federally assisted construction contracts to include the nondiscrimination provisions of § 202 and 203 of that Executive Order and Department of Labor regulations implementing Executive Order 11246 (41 CFR § 60-1.4(b), 1991).
- 5. ASSURANCES - NON-CONSTRUCTION PROGRAMS:** By entering this contract, the authorized representative of the Grantee certifies that it is in compliance with each of the following applicable requirements:
  - (a)** Has the legal authority to apply for federal assistance, and institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project costs) to ensure proper planning, management and completion of the project description.
  - (b)** Will give the Department, the awarding federal agency, and the Comptroller General of the United States, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the agreement; and will establish a proper accounting system in accordance with generally accepted accounting standards or Department directives.
  - (c)** Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
  - (d)** Will initiate and complete the work within the applicable time frame after receipt of approval of the Department.
  - (e)** Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. § 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
  - (f)** Will comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (2) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits

discrimination on the basis of sex; (3) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (4) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (5) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (6) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, related to nondiscrimination on the basis of alcohol abuse or alcoholism; (7) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (8) Title VII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (9) The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) prohibiting discrimination on the basis of disability; (10) any other nondiscrimination provisions in the specific statute(s) under which these federal funds are being paid; and (11) the requirements of any other nondiscrimination statute(s) which may apply to the contract.

**(g)** Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchases.

**(h)** Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

**(i)** Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subcontracts.

**(j)** Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

**(k)** Will comply with environmental standards which may be prescribed pursuant to the following: (1) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (2) notification of violating facilities pursuant to EO 11738; (3) protection of wetlands pursuant to EO 11990; (4) evaluation of flood hazards in floodplains in accordance with EO 11988; (5) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (6) conformity of federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (7) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (8) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

**(l)** Will comply with Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of national wild and scenic rivers system.

**(m)** Will assist the Department in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

**(n)** Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

(o) Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

(p) Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

(q) Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

(r) Will comply with all applicable requirements of all other federal laws, executive orders, regulations and policies governing this program.

6. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the Department shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Contract.
7. **CERTIFICATION - CONFLICT OF INTEREST:** The Grantee warrants that it has fully complied with the State and Local Government Conflict of Interests Act.
8. **CERTIFICATION - DRUG-FREE WORKPLACE:** The Grantee warrants that it shall comply with the provisions of Public Law 100-690, Title V, Subtitle D, "Drug-Free Workplace Act of 1988", and all applicable federal implementing regulations, including 15 CFR Part 26 or 40 CFR Part 32, which require that the Grantee take steps to provide a drug-free workplace.

The Grantee certifies that it will or will continue to provide a drug free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace

(2) The Grantee's policy of maintaining a drug free workplace

(3) Any available drug counseling, rehabilitation, and employee assistance programs, and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the Contract, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the Department in writing, within ten calendar days after receiving notice under subparagraph (d) (2) from an employee or otherwise receiving actual notice of such conviction.

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d) (2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

**9. CERTIFICATION - LOBBYING:** The Grantee certifies that:

(a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of 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 contract, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative contract.

(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative contract, Standard Form-LLL, "Disclosure Form to Report Lobbying" will be completed and submitted, in accordance with its instructions.

(c) That the language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative contracts) and that all subrecipients shall certify and disclose accordingly.

**MUST BE INCLUDED IN ALL SUBAWARDS EXCEEDING \$100,000:** The Grantee agrees to comply with the Title 40 CFR Part 34, New Restrictions on Lobbying. Grantees must submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any Grantee 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.

Grantees shall ensure that no grant funds awarded under the federal grant contract are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The Grantee shall abide by its OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

**STATEMENT FOR LOAN GUARANTEES AND LOAN INSURANCE:** The Grantee agrees that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the Grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. 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.

**10. CERTIFICATION - NONDISCRIMINATION:** During the performance of this Contract, the Grantee agrees as follows:

(a) The Grantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Grantee. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) The Grantee, in all solicitations or advertisements for employees placed by or on its behalf, will state that such Grantee is an equal opportunity employer.

(c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The Grantee will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

**11. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION:** The recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." The recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," including a term or condition requiring compliance with Subpart C. The recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment. The recipient may access the Excluded Parties List System at <http://epls.arnet.gov>. This term and conditions supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

**12. CIVIL RIGHTS OBLIGATIONS:**

**General:**

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) 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.

**Statutory Requirements:**

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

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.

Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and

The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.

If the recipient is conducting an education program under this agreement, it must also comply with:

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.

If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:

- 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.

### **Regulatory Requirements:**

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

- For Title IX obligations, 40 C.F.R. Part 5; and
- For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 C.F.R. Part 7.
- 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.

### **Title VI — LEP, Public Participation and Affirmative Compliance Obligation:**

- 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/lcqi-bin/lqetdoc.cgi?dbriame=2004\\_register&docid=fr25M04-79.p d](http://frwebgate.access.gpo.gov/lcqi-bin/lqetdoc.cgi?dbriame=2004_register&docid=fr25M04-79.p d)
- 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://edocketaccess.gpo.gov/2006/pdf06-2691.pdf>.
- 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.

**13. COLLATERAL CONTRACTS:** Where there exists any inconsistency between this Contract and other provisions of collateral contracts which are made a part of this Contract by reference or otherwise, the provisions of this Contract shall control.

**14. CREATION OF INTELLECTUAL PROPERTY:** All intellectual property, including Subject Inventions and copyrightable material, created pursuant to this contract shall be considered work made for hire and shall belong exclusively to DEQ. Neither party intends any intellectual property created pursuant to this contract, together with any other copyrightable material with which it may be combined or used, to be a "joint work" under the copyright laws. If any copyrightable material created pursuant to this contract cannot be deemed work made for hire or deemed part of a joint work, the Grantee does hereby irrevocably assign its entire interest in such material or work to DEQ and shall execute and deliver such further documents as the DEQ may reasonably request for the purpose of acknowledging or implement such assignment. DEQ hereby grants the

Grantee a license to use the materials, so owned, for public, not-for-profit purpose within the territory of the Commonwealth.

A copyright notice shall be placed in an appropriate location on any copyrightable material being distributed or published. Such notice shall include (1) either the symbol "(c)", the word "Copyright" or the abbreviation "Copr.", (2) the year of first publication, and (3) the name of the copyright owner (the DEQ). This information shall be followed by the words, "all rights reserved".

- 15. DISCLAIMER:** Nothing in this Contract shall be construed as authority for either party to make commitments which will bind the other party beyond the project or work contained herein. Furthermore, the Grantee shall not assign, sublet, or subcontract any work related to this Contract or any interest it may have herein without the prior written consent of the Department.
- 16. DOCUMENTS:** The Grantee may retain any reports, studies, photographs, negatives, or other documents prepared by the Grantee in the performance of its obligations under this Contract and not required to be delivered to the Department. The Department shall have the copyright to all such materials, and unlimited rights to use any such materials. Where necessary for the Department's full enjoyment of its copyrights and other rights referenced in this Contract, the Grantee shall provide a clear, reproducible copy of such materials (machine readable upon request) to the Department.

The Grantee has permission to reproduce and distribute any material or documents prepared by the Grantee and for which the Department owns the copyright, but only where necessary or expeditious to the performance of the Grantee's obligations under this contract.

This provision applies only to materials or documents developed with contract funds. It does not apply to materials or documents previously copyrighted or registered under the Grantee's copyright or trademark or to materials or documents which are developed with other funds.

- 17. DUN AND BRADSTREET DATA UNIVERSAL NUMBERING SYSTEM (DUNS):** To implement the Federal Financial Accountability and Transparency Act (FFATA), it requires sub-recipients for federal awards to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number, and it is strongly recommended that the sub-recipient register in the Central Contractor Registry (CCR) system.
- 18. EMPLOYEE ADMINISTRATION AND COSTS:** In the event this Agreement provides funds to the Grantee for personnel or personnel related expenditures, the Grantee shall be solely responsible for all: (a) personnel administration and obligations, to include, but not limited to: hiring, evaluations, termination, etc.; and (b) costs, to include, but not limited to: payment for leave, unused time, unemployment insurance and unforeseen employment liabilities (e.g. unemployment compensation, leave pay out, workers compensation, etc.). The DEQ shall not assume any responsibilities or obligations as an employer; nor shall the DEQ assume any liability (during or after the term of this Agreement) for personnel related costs incurred by the Grantee in order to fulfill its obligations under this Agreement (except as noted below):

Note: The DEQ may, in its sole discretion and as specifically allowed in this Agreement, or in accordance with the overriding federal costs principles, reimburse the Grantee for salary and eligible fringe costs incurred during the performance of this Agreement.

- 19. FAIR SHARE GOAL: GENERAL COMPLIANCE, 40 CFR, PART 33:** The Grantee agrees to comply with the requirements of EPA's Program for Utilization of Minority and Women's Business Enterprises (MBE/WBE) in procurement under assistance agreements, contained in 40 CFR, Part 33.

**SIX GOOD FAITH EFFORTS, 40 CFR, PART 33, SUBPART C (Section 33.301):** Grantee agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under this

grant contract and prime contractors also shall comply. Records documenting compliance with the six good faith efforts shall be retained.

- (a) Ensure Disadvantaged Business Enterprises (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and local 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 task 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 Small Business Administration and the Minority Business Development Agency of the Department of Commerce or VA Department of Minority Business Enterprise (DMBE) in finding DBEs. MBE/WBE businesses must now be officially certified as such in order to be counted towards an EPA grantee's 'Fair Share' MBE and WBE goals accomplishments.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

Grantee agrees to complete the Substitute DEQ MBE/WBE Report Form (copy attached) semi-annually on awards of subcontract(s) to a minority or women's business. Reports shall continue until the final subcontract is awarded, whether or not a sub-contract(s) is awarded to a minority or women's business in the subsequent quarters. Reports shall be submitted according to the following schedule:

| <u>Period</u>          | <u>Report Due</u> |
|------------------------|-------------------|
| April 1 - September 30 | October 15        |
| October 1 – March 31   | April 15          |

Reports shall include all subcontracts made by the Grantee with minority or women's businesses. Reports may, but are not required to, include subsequent tiers of subcontracts. Reference BIDDERS LIST, 40 CFR, Section 33.501(b) and (c) – Grantee agrees to create and maintain a bidders list.

- 20. FEDERAL AND NON-FEDERAL COST SHARING RELATED TO GRANTS:** If actual allowable project costs are less than the total approved estimated budget, the federal and non-federal cost share ratio as reflected in the approved estimated budget shall apply. If actual allowable costs are greater than the total approved estimated budget, the federal share shall not exceed the total federal dollar amount as reflected in the contract.
- 21. FINANCIAL RECORDS AVAILABILITY:** The Grantee agrees to retain all books, records, and other documents relative to this contract for five years after final payment, or until audited by an independent auditor, whichever is earlier. The Department, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- 22. FIRE SAFETY:** Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the Grantee 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). Grantees may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

**23. FISCAL CONTROL:** The Grantee shall establish fiscal control and fund accounting procedures which assure proper disbursement of, and accounting for, contract funds. The Grantee shall for the purpose of this contract:

(a) Provide all accounting, bookkeeping, fiscal, and administrative services required by or related to this Contract.

(b) Request partial payment due from the Department in accordance with the terms of this Contract.

(c) Maintain appropriate support for all expenditures incurred and maintaining all books, documents, papers, accounting records, and other evidence supporting the costs incurred associated with this Contract. It shall make such materials available at its offices at all reasonable times during the Contract period, and for three years from the date of final payment under this Contract, for inspection and audit by the Department or any authorized representative of the Department.

**24. FOOD AND REFRESHMENTS:** Grant funds shall not be used for food/refreshments at activities/events (e.g. meetings, workshops, training, field days or conferences) unless the objectives of the event would be compromised if food/refreshments were not provided. The criteria to be used to determine whether an event qualifies and providing food/refreshments is reasonable and appropriate include:

- The length of the event (the event lasts all day, usually at least 6 hours);
- It is impractical for participants to obtain lunch on their own (due to isolation or distance to restaurant or their office);
- It can be documented that physical attendance of all participants was essential; and
- It can be documented that participants are working during the normal meal time as stated on an agenda (e.g. working lunch or dinner) and no other opportunity for a meal will be provided.

Costs for food and refreshments shall be at or less than the Commonwealth of Virginia or local per diem rates (as applicable) for the event location.

The expenditure of funds on food/refreshments, must be clearly stated in the work plan and the budget narrative).

The following EPA food policy is incorporated herein, except as modified below:

**“(EPA Food Policy GPI 11-2):** Unless the event(s) and all of its components (i.e., meetings, conferences, outreach activities, field events training or receptions, banquets and other activities that take place after normal business hours) are described in the approved workplan, the recipient agrees to obtain prior approval from the DEQ 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 in writing for approval to the DEQ Grant Manager and include:

- a) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
- b) A description of the purpose, agenda, location, length and timing for the event.
- c) 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 are allowable to the DEQ Grant Manager. However, the EPA Project officer and 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 301-74.11).”

(\*The above policy is revised as follows: The Grantee shall obtain prior authorization from the DEQ

for all food / refreshment purchases, regardless of the type of event or the date or time of the event.

Requests for reimbursement for food/refreshment costs shall be included in the Grantee's quarterly report, which shall include a copy of the: pre-authorization approval, signed attendance list, invoices or receipts for food /refreshment purchases, and the final description of the purpose, agenda etc. for the event(s) (if it changed from the Grantee's original submission). The DEQ will not reimburse the Grantee for any unauthorized costs related to food / refreshments.

- 25. INDEMNIFICATION (NOT APPLICABLE TO CONTRACTS WITH OTHER STATE AGENCIES):** Grantee agrees to indemnify, defend and hold harmless the Department and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Grantee/any services of any kind or nature furnished by the Grantee, provided that such liability is not attributable to the sole negligence of the Department or to failure of the Department to use the materials, goods, or equipment in the manner already and permanently described by the Grantee on the materials, goods or equipment delivered.
- 26. INDIRECT COSTS:** Indirect costs will not be allowable charges against the award unless specifically included as a line item in the approved budget incorporated into the Contract.
- 27. INTEGRATION AND MODIFICATION:** No alteration, amendment or modification in the provisions of this Contract shall be effective unless it is reduced to writing, signed by the parties and attached hereto.
- 28. LIABILITY (NOT APPLICABLE TO CONTRACTS WITH OTHER STATE AGENCIES):** The Grantee shall take out and maintain, during the life of this Contract, such bodily injury liability and property damage liability insurance as will protect it from claims of damages for personal injury, including death, as well as from claims for property damage, which may arise from its activities under this contract. If the Grantee has a self-insurance program, it may self-insure the risks associated with this Contract in lieu of the commercial insurance required herein.
- 29. MAINTENANCE OF RECORDS AND AUDIT (COMPLIANCE WITH CIRCULAR A-133 REQUIREMENTS):** The Grantee is required to do the following: provide the Department access to records and financial statements to determine compliance with federal requirements; facilitate the Department's monitoring and oversight activities; inform the Department in writing when not required to undergo a single audit; on request, inform the Department whether the relevant program would be audited as major using the risk-based approach (determined solely by the auditor) or, if not, the cost of having it audited as such (if desired by the Department, the Grantee must have the program audited as a major); send a copy of its audit reporting package to the Department when a single audit is required and the schedule of findings and questioned costs discloses audit findings (or the summary schedule of prior audit findings reports on the status of audit findings) related to the Department's award of federal funds; inform the Department in writing that an audit was conducted in accordance with Circular A-133 and that no audit findings and questioned costs (for the current or prior year) were related to the award (sending a copy of the audit reporting package is a sure way to meet this notification requirement); on request, send the Department a copy of the audit reporting package and any management letters issued by the auditor, even when not required to do so (e.g., no audit findings were related to the award); resolve audit findings (including the preparation of a corrective action plan) and comply with any management decision issued by the Department (due within six months of receiving the Grantee's audit report); follow-up on audit findings, unless no longer valid because they occurred at least two years earlier, the Department did not follow-up on the findings, and a management decision was never issued; and keep copies of audit reports and related documentation on file for at least three years following the audit period for review by the Department.
- 30. OBLIGATING FUNDS BEYOND PROJECT PERIOD:** The Grantee shall not incur costs or obligate funds for any purpose pertaining to the project beyond the expiration date stipulated in the contract.

Any extension of the award period can only be authorized by the Department. Verbal or written assurances of funding from other than the Department shall not constitute authority to obligate funds for programmatic activities beyond the expiration date.

The Department has no obligation to provide any additional prospective funding. Any renewal of the award to increase funding and to extend the period of performance is at the sole discretion of the Department.

- 31. OTHER FEDERAL GRANT AWARDS:** The Grantee shall immediately provide written notification to the Department in the event that, subsequent to receipt of federal funds under this contract, other federal financial assistance is received relative to the scope of work of this contract.
- 32. PRECEDENCE OF TERMS:** The Contract consists of several documents. In the event of a conflict between or among terms in these documents, the following documents control in order from the most important to the least important: Special Terms and Conditions; General Terms and Conditions; the signed Contract form; and the Scope of Work.
- 33. PRIOR WRITTEN APPROVAL OF CHANGES:** The Grantee must obtain prior written approval from the Department for changes to the Contract, including, but not limited to, changes of substance in program activities, designs, or plans set forth in the approved scope of work or project workplan.  
  
Note: This provision does not apply to minor shifts of funds among categories by the Grantee, that do not exceed 10% of any budget line item.
- 34. RECYCLED PAPER:** In accordance with EPA Order 1000.25 and Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, the recipient agrees to use recycled paper 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, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration. Please note that Section 901 of E.O. 13101, dated September 14, 1998, revoked, *Federal Acquisition, Recycling, and Waste Prevention* in its entirety.
- 35. REGULATORY COMPLIANCE:** The Grantee shall comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the project and shall give all Notices required thereby. The Grantee hereby consents to inspection by any state regulatory agency having jurisdiction over any part of the work performed with the assistance of the contract funds.
- 36. RENEWAL OF CONTRACT:** The Contract may be renewed by the Department upon written contract by both parties under the terms of the current contract, prior to the expiration.
- 37. PURCHASE OF PRODUCTS CONTAINING RECYCLED MATERIALS:** Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.
- 38. SEVERABILITY:** Each paragraph and provision of this Contract is severable from the entire contract; and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.
- 39. SUBCONTRACTS:** No portion of the Scope of Work shall be subcontracted without the prior written consent of the Department. The Grantee shall, however, remain fully liable and responsible for the work to be done by its

subcontractor(s) and shall ensure compliance with all requirements of the Contract. The Grantee shall comply with all applicable provisions of the Virginia Public Procurement Act in making such awards.

- 40. SUBRECIPIENTS (Applicable only to contracts with other state agencies):** All federally funded grants awarded by the Department to other state agencies are considered pass-thru and shall be reported as such by the Grantee and the Department on the Federal Schedules of Financial Assistance.
- 41. TERMINATION, BREACH AND ENFORCEMENT:** In the event that the Grantee fails to comply with any of the conditions as set forth in this Agreement, including failure to meet the final deadline or noncompliance with the Scope of Work (Attachment A) or Milestone Table (Attachment B), DEQ shall provide written notice of noncompliance to the Grantee specifying the manner in which the Agreement has been breached and the consequences for failure to take the required corrective action. If a notice of noncompliance is given and the Grantee has not substantially corrected the breach within sixty (60) days of receipt of the written notice, DEQ shall have the right to terminate the Agreement in whole, or in part, and shall provide the Grantee with written notice of the termination to the Grantee. The Grantee shall not be paid for services rendered nor expenses incurred after receipt of the notice of termination, except such fees and expenses incurred prior to the effective date of termination as are necessary for curtailment of its work under this Agreement. In addition, if not corrected, within sixty (60) days of receipt of written notice of noncompliance from DEQ, the Grantee shall pay liquidated damages in the amount of \$1,000 or 15%, whichever is greater, of the total award in addition to any repayment for services not rendered. Repayments and liquidated damages will be paid into the State Treasury and credited to the appropriate grant fund.
- 42. TERMINATION FOR CONVENIENCE:** The Department may terminate any resulting contract, in whole or in part, upon thirty (30) days written notice to the Grantee specifying the extent to which the performance under the contract is terminated, and the date of termination. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, in whole or in part, after the initial 12 months of the contract period upon thirty (30) days written notice to the other party specifying the extent to which the performance under the contract is terminated, and the date of termination. In addition, (a) the Department may terminate the contract immediately if its funding is terminated or; (b) the Department or the Grantee may terminate the contract, in whole, or in part, if both parties agree that the continuation will not produce beneficial results commensurate with further expenditure of funds; in this event, the Department and the Grantee shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated.

In the event the contract (or portion thereof) is terminated (regardless of cause), the Grantee shall not incur new obligations for the contract (or terminated portion thereof) after the effective date of termination, and shall cancel as many outstanding obligations as possible; however, termination shall not relieve the Grantee of the obligation to deliver and/or perform on all outstanding obligations established prior to the effective date of cancellation.

- 43. UNIFORM ADMINISTRATIVE REQUIREMENTS:** The Grantee shall comply with all applicable federal regulations pertaining to "Uniform Administrative Requirements for Grants and Cooperative Contracts to State and Local Governments" and "Cost Principles for State and Local Government", including but not limited to the requirements of OMB Circular A-102, the provisions stipulated in the Common Rule, 2 C.F.R. Part 225 (formerly OMB Circular A-87), and any specific implementing regulations promulgated by the federal awarding agency.

If the Grantee is an Institution of Higher Education or a Non-profit Organization, the Grantee shall comply with all applicable federal regulations pertaining to "Uniform Administrative Requirements for Grants and Cooperative Contracts with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations, 2 C.F.R. Part 215 (formerly OMB Circular A-110) and for Institutions of Higher Education including but not limited to the requirements of 2 C.F.R. Part 220 (formerly OMB Circular A-21), and for Non-profit Organizations including but not limited to the requirements of 2 C.F.R. Part 230 (formerly OMB Circular A-122).

**44. USE OF GRANT FUNDS:** Grant funds shall only be used for the purposes and activities covered in the Project Workplan.

**45. TRAFFICKING VICTIM PROTECTION ACT (PROHIBITION STATEMENT):** You as the subrecipient under this subrecipient contract and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the subrecipient contract.